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On November 30, 2021, after receiving a short extension to file, PSERS notified the OOR that it had determined that there was no legal barrier to provision of the responsive record, that such record would be provided, and that the appeal should be dismissed as moot. The same day, the Requester notified the OOR that the record had not yet been received. On December 6, 2021, the OOR contacted the parties to determine whether the record had been provided, but the parties did not respond.

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt from disclosure, or that an appeal is moot after a record is provided. 65 P.S. § 67.708(a)(1). To show that an appeal is moot, an agency must demonstrate that it provided all responsive records on appeal, either by an evidentiary submission or simply submitting the responsive material for the record. *See, e.g., Angelucci v. Pa. Office of Admin.*, OOR Dkt. AP 2016-1558, 2016 PA O.O.R.D. LEXIS 1446 (the OOR will dismiss an appeal as moot where it can determine that the provided record is, on its face, fully responsive to the request); *Kutztown Univ. of Pa. v. Bollinger*, 2019 Pa. Commw. Unpub. LEXIS 521, *6 (Pa. Commw. Ct. 2019) (holding that an appeal is properly dismissed as moot where no controversy remains). In the present case, PSERS withdrew its objection to providing the responsive communication, but has not submitted evidence to demonstrate that the record has been provided. Because PSERS has not submitted evidence that the record has been properly provided, PSERS has not met its burden to show that the appeal is moot. *See* 65 P.S. § 67.305.

For the foregoing reasons, the Requester's appeal is **granted**, and PSERS is required to provide all responsive records within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the

appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 13, 2021

/s/ Jordan C. Davis

Jordan C. Davis, Esq.
Appeals Officer

Sent to: Craig McCoy (via email only);
Charles Serine, Esq. (via email only)

¹ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).