



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**ELIZABETH WEIR,
Requester**

v.

**WISSAHICKON SCHOOL DISTRICT,
Respondent**

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Docket No: AP 2021-2518

On November 3, 2021, Elizabeth Weir (“Requester”) submitted a request (“Request”) to the Wissahickon School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “all emails sent and received by the nine school board members, [D]istrict Superintendent and Assistant Superintendent from 8/1/21 - 9/30/21.”

On November 9, 2021, the District indicated it required a thirty-day extension to provide records, 65 P.S. § 67.902(b), and sought prepayment of fees estimated at \$875. The District indicated that unless payment was received by November 17, 2021, it would presume the Request was withdrawn. The District estimated that it would need to print and redact about 3,500 pages of responsive records and noted that it would either refund or require additional payment if the estimate is incorrect prior to providing access to the records.

Thereafter, the Requester attempted to contact the District regarding its ability to redact electronically and seeking verification that it cannot do so, prior to either paying the fee or withdrawing the Request.

On November 18, 2021, the Requester appealed to the OOR, challenging only the reasonableness of the fee charged by the District and its asserted inability to electronically redact the records and seeking a finding of bad faith. The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On December 2, 2021, the District submitted a position statement, arguing that the duplication fees were appropriate because the District does not have the ability to make electronic redactions. In support of its position, the District submitted the attestation, made under penalty of perjury, of Wade Coleman, the District's Open Records Officer and Business Administrator.

On December 7, 2021, the Requester submitted additional argument in support of her appeal and asserting that the District did not provide evidence regarding whether each and every email required redaction.

The Requester disputes the propriety of the duplication fees by arguing that the District should have the ability to electronically redact the responsive records through software it already utilizes or other free software programs.

The permissibility of fees is properly before the OOR on appeal. *See* 65 P.S. § 67.1307(b); *Prison Legal News v. Office of Open Records*, 992 A.2d 942 (Pa. Commw. Ct. 2010). Section 1307 of the RTKL provides that the OOR has the authority to establish duplication fees for Commonwealth and local agencies. *See* 65 P.S. § 67.1307(b)(1)(i). Pursuant to this authority, the OOR has created a fee schedule capping the maximum amount which an agency may charge for duplication. The OOR has approved fees of up to \$0.25 per page for the duplications of records for the first 1,000 pages and up to \$0.20 per page beyond 1,000 pages.¹ This fee schedule does

¹ *See* Official RTKL Fee Schedule, available at <https://www.openrecords.pa.gov/RTKL/FeeStructure.cfm> (last accessed January 6, 2022).

not permit an agency to impose any additional fees for the time and labor spent making redactions; however, it does permit an agency to charge copying fees for any printing necessary to securely redact records, even when inspection is sought. *See, e.g., DeBartola v. Cambria County District Attorney's Office*, OOR Dkt. AP 2017-0050, 2017 PA O.O.R.D. LEXIS 1019.

Mr. Coleman explains that upon receipt of the Request, he conducted an initial partial search of the District's server to determine the scope of the potential response. He searched for the emails of one individual and determined that person to have 9,226 emails on the server. Then, Mr. Coleman examined all emails for that single individual on a random sampling of days during the requested time period and determined that approximately 20% of those (or 1,845) would require redaction for various reasons. He then extrapolated that figure to the 11 people named in the Request which would mean roughly 20,295 records would need to be redacted. He calculated the cost of that at \$0.25 per page to create an estimated cost of \$5,073.75. Mr. Coleman determined that the remainder of the individuals would likely have fewer emails so he lowered the estimate to 3,500 pages of redactions which resulted in an estimated cost of \$875. Finally, Mr. Coleman affirms that he does not have a Pro license for Adobe Acrobat or any other software package that would permit him to securely redact records electronically and that he confirmed this with the District's IT department. He affirms he only intended to print pages that required redaction.²

As set forth above, an agency is permitted to charge copying fees for any printing necessary to securely redact records. *DeBartola, supra*. An agency may only charge a per-page fee for electronically transmitted records where it is required to make copies in order to fulfill the request. *Id.* Mr. Coleman's attestation establishes that the District does not have the technology to enable

² Under the RTKL, a statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

him to electronically redact records. Furthermore, it establishes that only some records were going to be printed for redaction, not all. Accordingly, based on the evidence presented, the District has demonstrated that the duplication fees were permissible under Section 1307 of the RTKL, 65 P.S. § 67.1307(b)(1)(i).

However, because the OOR's fee schedule now sets a different rate for duplication of records beyond 1,000 pages, the District's calculation is incorrect.³ Utilizing the estimate of 3,500 pages that need to be redacted, the cost for duplication is \$0.25 per page for the first 1,000 and \$0.20 per page for the next 2,500 – that totals \$750.

Finally, the Requester argues that the District is acting in bad faith because the Solicitor has instructed the School Board and Administration to require RTKL requests from this Requester. Section 1305(a) of the RTKL states that “[a] court may impose a civil penalty of not more than \$ 1,500 if an agency denied access to a public record in bad faith.” 65 P.S. § 67.1305(a); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119, 1140-41 (Pa. Commw. Ct. 2017) (“An example of bad faith is a local agency’s failure to comply with the mandate of Section 901 of the RTKL, which requires that a local agency make a good faith search for information responsive to a request and determination of whether that information is public.”). As set forth above, the District did perform a search and came up with an estimate of fees. Accordingly, based on the evidence presented, the record does not support a finding of bad faith.

For the foregoing reasons, the appeal is **denied**, and the District is not required to take any additional action. 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 Montgomery County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal.

³ The OOR's fee schedule was updated in December 2020.

The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. 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.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 14, 2022

/s/ Erin Burlew

APPEALS OFFICER
ERIN BURLEW, ESQ.

Sent via email: Elizabeth Weir, Wade Coleman, A. Kyle Berman, Esq.

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).