



FINAL DETERMINATION

IN THE MATTER OF

**STEVEN BURDA,
Requester**

v.

**MONTGOMERY COUNTY,
Respondent**

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Docket No.: AP 2022-0005

On December 21, 2021, Steven Burda (“Requester”) submitted a request (“Request”) to Montgomery County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records regarding expense and budget information for 2021 and 2022. On December 28, 2021, the County denied the Request, arguing that the Requester owed outstanding fees in the amount of \$19.75 for records prepared in response to a 2017 RTKL request. In its email to the Requester, the County also stated that “the County posts its annual budgets online on the County’s website. The link to the page for our proposed and adopted budget for 2021 and 2022 is: [https://www.montcopa.org/93/Finance\[.\]](https://www.montcopa.org/93/Finance[.])” On January 3, 2022, the Requester appealed to the Office of Open Records (“OOR”).¹ The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

¹ The Requester sought *in camera* review of the records and oral argument; however those requests are denied.

On January 13, 2022, the County submitted the attestation of Joshua Stein, Esq., Solicitor for the County, in support of its denial. On January 14, 2022, the Requester made a submission, stating that he paid all required fees.² The Requester also included receipts from PayPal, as well as a check copy. Lastly, the Requester asserts that “[t]he [C]ounty granted RTK[L] requests in the past few weeks, to me and/or my wife.”

Attorney Stein attests that “as a professional courtesy, the County provided the direct link to the County’s Finance Department’s webpage on the County website, where present and past years’ budgets are available online.” *See* Stein Attestation, ¶ 7. Under the RTKL, an attestation is generally competent evidence to sustain an agency’s burden of proof. *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). Furthermore, an agency is permitted to fulfill RTKL requests by directing a requester to a specific part of a public website. 65 P.S. § 67.704(a).

Additionally, an agency may deny access to public records where a requester has an outstanding balance due from previous RTKL requests. *See* 65 P.S. § 67.901 (“[a]ll applicable fees shall be paid in order to receive access to the record requested”); *Pa. Dep’t of Transp. v. Drack*, 42 A.3d 355, 363 (Pa. Commw. Ct. 2012). Attorney Stein attests that the Requester owes past-due fees associated with a prior RTKL request. *See* Stein Attestation, ¶¶ 5-6. Moreover, the County has notified the Requester of his past-due balance and provided details regarding the charges. *See also See Brown v. Pa. Dep’t of Corr.*, 178 A.3d 977 (Pa. Commw. Ct. 2017) (unpublished); *Volkova-Burda v. Montgomery Cnty.*, OOR Dkt. AP 2021-2818, 2022 PA O.O.R.D. LEXIS 32.

² The Requester’s submission was received after the record closed; however, the submission was considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

Because the prior requests for which fees were owed were submitted by the Requester, the County is permitted to deny the Request based on an outstanding balance. *See Steven Burda and Alina Burda v. Montgomery Cnty.*, OOR Dkt. AP 2021-2334, 2021 PA O.O.R.D. LEXIS 2310; *Burda v. Montgomery Cnty.*, OOR Dkt. AP 2019-2029, 2019 PA O.O.R.D. LEXIS 1711. In addition, in *Burda v. Montgomery Cnty.*, OOR Dkt. AP 2020-0024, 2020 PA O.O.R.D. LEXIS 2103, the OOR determined that the County demonstrated that “it has not received the payments the Requester contends were sent via check and PayPal because (1) the personal check was not received, and (2) the County does not accept PayPal as a method of payment.” *See also Burda v. Montgomery Cnty.*, OOR Dkt. AP 2021-2900, 2022 PA O.O.R.D. LEXIS ____.

For the foregoing reasons, the Requester’s appeal is **denied**, and the County is not required to take any further 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. 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.³ This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 21, 2022

/s/ Magdalene C. Zeppos-Brown

MAGDALENE C. ZEPPOS-BROWN, ESQ.
DEPUTY CHIEF COUNSEL

Sent to: Steven Burda (via email only); and
Joshua Stein, Esq. (via email only)

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