

FINAL DETERMINATION

DATE ISSUED AND MAILED: January 20, 2022

IN RE: *Dylan Segelbaum and The York Daily Record v. York County*;
OOR Dkt. AP 2021-2943

Upon review of the appeal filed with the Office of Open Records (“OOR”) to the above-referenced docket number, it is determined that the appeal is **GRANTED** because:

On December 14, 2021, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b)(2), York County (“County”) denied the Request,¹ stating that the requested record does not exist within the County’s possession, custody or control. Local agencies have the burden of proving that records are exempt from access. 65 P.S. § 67.708(a)(1). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). Here, the County did not participate on appeal; therefore, the County did not submit evidence demonstrating that the record requested does not exist within the County’s possession or that the record is otherwise exempt from disclosure. *Id.*; *see also* 65 P.S. § 67.708(a).

For this reason, the County is required to provide the requested record to the Requester within thirty days, or, in the alternative, a written statement demonstrating that the requested record does not exist. Within thirty days of the mailing date of this Final Determination, either party may file an appeal or petition for review with the York 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 according to court rules as per 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.²

Issued by:

/s/ *Joshua T. Young*

JOSHUA T. YOUNG
DEPUTY CHIEF COUNSEL

Sent via email only to: Dylan Segelbaum;
Michéle Pokrifka, Esq., AORO

¹ The Request sought “[a] copy of the curriculum vitae (CV) for Joseph Garcia, the ‘senior team leader’ of CSAU-1 LLC....”

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).