



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
PATRICIA FOWLER,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2018-1830
	:	
CITY OF SCRANTON,	:	
Respondent	:	

On August 27, 2018, Patricia Fowler (Requester”) submitted a request (“Request”) to the City of Scranton (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a list of active or retired employees that have had judgments placed against them by the City.

The City invoked a thirty-day extension to respond on September 4, 2018. *See* 65 P.S. § 67.902(b). As the City did not respond within the extension period, the Request was deemed denied. *See* 65 P.S. § 67.902(b)(2). On October 9, 2018, the Requester filed a timely appeal with the Office of Open Records (“OOR”), stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the City to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c). The City did not make a submission in this matter and has not submitted proof that it notified any third parties about this appeal.

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a)(1). In the present case, the City did not comply with the RTKL by timely responding to the Request, nor did it provide any factual or legal

support for denying access to responsive records.¹ Based on the City's failure to comply with the statutory requirements of the RTKL or provide any evidentiary basis in support of an exemption under the RTKL, the City did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305.

For the foregoing reasons, the Requester's appeal is **granted**, and the City 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 or petition for review to the Lackawanna County Court of Common Pleas. *See* 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 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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 29, 2018

/s/ Erin Burlew

Erin Burlew, Esq.
APPEALS OFFICER

Sent to: Patricia Fowler (via email only);
Nancy Krake (via email only)

¹ *See generally* 65 P.S. § 67.1304(a) (noting that a court “may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived the requester of access to a public record ... or otherwise acted in bad faith...”); 65 P.S. § 67.1305(a) (“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”).

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