



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MARK STOOKEY,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2019-0484
	:	
UNIONVILLE-CHADDS FORD SCHOOL	:	
DISTRICT,	:	
Respondent	:	

INTRODUCTION

Mark Stookey (“Requester”) submitted a request (“Request”) to the Unionville-Chadds Ford School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking emails of a meeting with the Requester, meeting minutes, and audio and video recordings of meetings. The District partially denied the Request, stating that the Requester already has possession of the requested emails. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part and denied in part**, and the District is required to take further action as directed.

FACTUAL BACKGROUND

On January 31, 2019, the Request was filed seeking, in relevant part:

2. All emails sent by John Sanville to Mark Stookey from June 1, 2018 to date in which Mr. Sanville invites Mr. Stookey to meet.
3. All emails sent by Linda Miller to Mark Stookey from June 1, 2018 to date in which an invitation for Mr. Stookey to meet with Mr. Sanville is extended.

4. All emails sent by any other member of District staff working on behalf of Mr. Sanville in which an invitation for Mark Stookey to meet with Mr. Sanville is extended. Please provide such emails for the period June 1, 2018 to date.
5. All emails for which John Sanville was copied (either as a 'cc' or 'bcc') and in which an invitation for Mark Stookey to meet with Mr. Sanville was extended. Please provide such emails for period June 1, 2018 to date.
6. All video and audio recordings of School Board meetings, work sessions, and other public meetings in which John Sanville invites Mark Stookey to meet. Please provide such recordings for the period June 1, 2018 to date. If such recordings are provided, please provide the approximate time of the recording in which the invitation is extended.

On February 4, 2019, the District invoked a thirty day extension to respond. *See* 65 P.S. § 67.902.

On March 11, 2019, the District partially denied the Request, stating that the Requester was copied on the emails responsive to Items 2-5 and should already have possession of these records. The District provided the records responsive to Items 1, 6 and 7 of the Request.

On March 29, 2019, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. 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. *See* 65 P.S. § 67.1101(c).

On April 9, 2019, the Requester made a submission under the penalty of perjury, stating that the District did not conduct a good faith search for records responsive to Items 2-6¹ of the Request. Further, for Item 6, the Requester argues that the District responded by stating the records would be on the District's website; however, the Requester states that he is unsure where to locate the responsive records. The District did not make a submission in support of its denial on appeal.

¹ The Requester limited his appeal to Items 2-6 of the Request. As the Requester does not challenge the remaining items of the Request, the Requester has waived any objections regarding the sufficiency of the responsive information provided by the District. *See Pa. Dep't of Corr. v. Office of Open Records*, 18 A.3d 429 (Pa. Commw. Ct. 2011).

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The District is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901.

An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). The 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).

The District denied Items 2-5 of the Request, stating that the Requester is seeking records he was copied on by the District. Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a). In the present case, the District did not provide any factual or legal support for denying access to the responsive records, other than stating that Requester already has copies of the records. However, the RTKL must be construed without regard to the identity of the requester. *See Slaby v. Northumberland County*, OOR Dkt. AP 2011-0331, 2011 PA O.O.R.D. LEXIS 257. The reason for requesting a record is not relevant to determining a record’s public status. *Advancement Project v. Pa. Dep’t of Transp.*, 60 A.3d 891 (Pa. Commw. Ct. 2013). Therefore, the fact that the District suggests that the Requester may already have copies of the records is irrelevant; the Requester is

free to seek copies of such records. *See Epstein v. Central Dauphin Sch. Dist.*, OOR Dkt. AP 2013-1251, 2013 PA O.O.R.D. LEXIS 751. Based on the District'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 District did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305.

With respect to Item 6 of the Request, the District directed the Requester to its publicly available website for responsive records. Section 704(b) of the RTKL permits an agency to respond to a request for records "by notifying the requester that the record is available through publicly accessible electronic means[.]" 65 P.S. § 67.704(b)(1). "If a requester is unwilling or unable to access the records electronically, the requester may, within 30 days following receipt of the agency notification, submit a written request to the agency to have the record converted..." 65 P.S. § 67.704(b)(2).² If the requester does not timely do so, an agency has no further obligation under the RTKL relative to a requester's access to the particular requested record(s). An appeal to the OOR is not "a written request to the agency to have the record converted," such that it triggers an agency's responsibility to take further action pursuant to Section 704(b)(2) of the RTKL. *See Borden v. Ridgebury Twp.*, OOR Dkt. AP 2011-1460, 2011 PA O.O.R.D. LEXIS 1223. Accordingly, the District's response to Item 6 was permissible under Section 704 of the RTKL. However, this ruling does not preclude the Requester from filing a new Request with the District.

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted in part** and **denied in part**, and the District is required to provide records responsive to Items 2-5 of the Request. This Final

² Once the Requester submits a written request to convert the record to paper, "[t]he agency shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper." 65 P.S. § 67.704(b)(2).

Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Delaware 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: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 18, 2019

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent to: Mark Stookey (via email only);
John Sanville (via email only)

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