



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>BARBARA BOWES,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2020-0968</b>
	:	
<b>LEHIGHTON AREA SCHOOL DISTRICT,</b>	:	
<b>Respondent</b>	:	

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* For the following reasons, the appeal is dismissed.

On June 2, 2020, Barbara Bowes (“Requester”) submitted a request (“Request”) to the Lehigh Area School District (“District”) pursuant to the RTKL, seeking “a physical copy of the printed budget that was made available for public inspection on January 9, 2020. This would be the copy of the preliminary budget that was passed at the Special Board Meeting on January 29, 2020 but printed and made available for inspection on January 9, 2020.”

On June 12, 2020, the Requester filed an appeal with the OOR, arguing that the Request was deemed denial. *See* 65 P.S. § 67.901.

On June 17, 2020, the District submitted a final response to the Requester. The District noted that due to the COVID-19 pandemic, it was not operational full time. The District provided a link to the preliminary budget as approved on January 29, 2020. 65 P.S. § 67.704(b)(1).

On June 29, 2020, the Requester responded, arguing that the document provided was not available to the public prior to January 29, 2020 and therefore was not responsive to her Request. She argues that 53 P.S. § 6926.311 requires the District to provide the proposed preliminary budget for public inspection. That section reads, “[t]he board of school directors shall print the preliminary budget proposal and make it available for public inspection at least 20 days prior to its adoption. The board of school directors shall give public notice of its intent to adopt the preliminary budget at least ten days prior to adoption and may hold a public hearing prior to its adoption.” 53 P.S. § 6926.311(c).

On July 16, 2020, the District submitted a position statement arguing that it has provided the only responsive record in its possession. In support of its assertion, the District submitted the attestation of Melanie Windhorn, the District’s Open Records Officer and an accountant for the District.

Ms. Windhorn affirms that she is working in the office on a very limited schedule and that June 17, 2020, was the fifth business day that the District’s Right-to-Know office was open. She affirms that the only copy of the preliminary budget of which she is aware is the one on the District’s website, which she provided access to on June 17, 2020.

Under the RTKL, a sworn affidavit or 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). In the absence of any evidence that the District has acted in bad faith or that the records exist, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). The District has demonstrated that the it

provided all records responsive to the Request to the Requester on June 17, 2020. Therefore, because the District provided all responsive records to the Requester, the appeal is **dismissed as moot**.

Further, the OOR is not the proper venue to contest the District's compliance with 53 P.S. § 6926.311.

The Requester argues that the District is acting in bad faith by providing a nonresponsive record. However, the District has provided an affidavit sufficient to demonstrate that the only responsive record is the record provided. 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.”). Accordingly, based on the evidence presented, the record does not support a finding of bad faith.<sup>1</sup>

The file is now closed and no further action will be taken. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Carbon 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 court rules 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

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<sup>1</sup> It is not entirely clear from the evidence before the OOR if the preliminary budget which was made available for inspection on January 9, 2020, differs in any way from the preliminary budget approved and posted online on January 29, 2020. Regardless, the District has demonstrated that no other responsive records exist.

and should not be named as a party.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: July 31, 2020**

*/s/ Erin Burlew*

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APPEALS OFFICER  
ERIN BURLEW, ESQ.

Sent to: Barbara Bowes (via email only);  
Eric Filer, Esq. (via email only);  
Melanie Windhorn (via email only)

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