



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JUSTIN MACEY,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2019-1258
	:	
PITTSBURGH WATER AND SEWER	:	
AUTHORITY,	:	
Respondent	:	

On July 2, 2019, Justin Macey (“Requester”), submitted a request (“Request”) to the Pittsburgh Water and Sewer Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to two projects. The Authority did not respond within five business days of receiving the Request, and the Request was, therefore, deemed denied on July 10, 2019. *See* 65 P.S. § 67.901.

On July 29, 2019, 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 Authority to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On August 7, 2019, Samuel Hornak, Esq., the Authority’s solicitor, sought an extension of time to submit information and/or provide documents to the Requester; however, the Requester did not grant an extension beyond the statutory timeframe. 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under

subsection (a).”). There is no mechanism to extend or toll the process absent the Requester’s agreement. Here, without more time, the OOR could not further supplement the record in any way.

The OOR was unable to grant the Authority’s request and on August 14, 2019, Attorney Hornak provided an email stating that while the Authority has been working to locate and review potentially responsive documents, “[d]ue to bona fide staffing limitations, the [Authority] has been unable to respond substantively with any further argument in support of exemptions to the production of responsive records, or with the production of responsive, non-exempt documents and records.”

The Authority has not provided factual or legal support for nondisclosure 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 Authority 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. Based on the Authority’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 Authority 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 Authority 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 Allegheny 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.¹ This Final Determination shall be placed on the website at:

<https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 26, 2019

/s/ Erin Burlew

Erin Burlew, Esq.
APPEALS OFFICER

Sent to: Justin Macey (via email only);
Samuel A. Hornak, Esq. (via email only)

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).