

On June 2, 2016, the City invoked a thirty-day extension of time to respond to the Request. *See* 65 P.S. § 67.902. On June 20, 2016, the City partially denied the Request, withholding certain records, the disclosure of which would jeopardize computer security, 65 P.S. § 67.708(b)(4). The City, however, provided hard copies of two sections of the York City Police manual.

On June 28, 2016, the Requester appealed to the OOR, arguing that the denial misconstrued the Request, that the Request sought copies of records and not access to the police computer system, and that other records should have been provided. The OOR invited the parties to supplement the record, and directed the City to notify third parties of their ability to participate in the appeal. 65 P.S. § 67.1101(c).

On July 7, 2016, the City submitted a position statement and the affidavit of Patricia Siebert, the City's Open Records Officer. In its statement, the City attests that the Requester sought only to inspect records and that the records sought are contained exclusively on the City's secure database, to which it is not required to grant access. 65 P.S. § 67.701(b). The City further attests that it has provided the Requester with copies of the most responsive records of its own volition.

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; however, 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, neither of the parties requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate this matter.

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be 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 to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly 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).

1. The Request sought only inspection of the records

The Requester argues that the Request sought copies of records in addition to inspection, and that the City should have contacted her if they had any questions about the Request. Further, the Requester argues that the City obviously could have copied and provided records because they did so for several responsive documents. The City argues that the Request, on its face, sought only inspection because the Request sought “access,” specifically indicated a desire to inspect the records and was entirely silent as to whether copies were desired.

The Requester submitted the request on the Agency’s request form. On that form, the Requester marked “yes” in reply to a question asking if she wanted to inspect the records and marked “no” in reply to a question asking if she wanted certified copies. However, the Requester did not mark either “yes” or “no” to the question asking if she wanted copies.

While the Requester now states that she intended to seek copies, the Request cannot be modified on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Staley v. Pittsburgh Water and Sewer Auth.*, OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256 (“A requester may not modify the original request as the denial, if any, is premised upon the original request was written”). Here, the Request specifically indicates that inspection is desired and that certified copies are not desired, but is silent as to whether uncertified copies are also sought. The City’s interpretation that the Request seeks only inspection of the named records is reasonable. *See Raich v. Ligonier Valley School District*, OOR Dkt. AP 2012-1227, 2012 PA O.O.R.D. LEXIS 1140. Nothing in this Final Determination

prohibits the Requester from re-filing the Request with a clear request for copies of whatever records were not provided in the medium the Requester desires.¹

Because the Request sought only inspection of the records, this appeal is denied insofar as it pertains to copies of the records at issue.

2. The City is not required to grant access to the City's database

The Requester argues that the City can provide access to the records outside of the City's secure database, and that the Request never sought access to the database. The City attests that the manual exists only on the City's secure database, and argues that seeking inspection would require granting the Requester access to the City's computers. The Requester does not contest the City's description of where the records lie, but argues that her Request should not be construed as seeking records from the City's database.

The Commonwealth Court has found that information contained in an agency's database must be available to the public through the RTKL. See *Gingrich v. Pa. Game Comm'n*, 2012 Pa. Commw. Unpub. LEXIS 38, 21 (Pa. Commw. Ct. 2012) ("This Court holds that information contained in a database must be accessible to requesters and provided in a format available to the agency."). In *Gingrich*, however, the requester specifically sought copies of the records at issue, and the agency sought to deny under Section 705, arguing that pulling information from a database constitutes the creation of a record. *Id* at 18. Here, the Request seeks only inspection, which typically contemplates viewing the records in their native form- in this case, on the City database. The RTKL does not compel an agency to grant access to an agency or agency

¹The City did provide the Requester with two sections of the City's manual, which it states are the sections "responsive to" the Request. Though the Requester, on appeal, argues that this proves the City could do the same with 'the rest of the documents,' it is not clear from the face of the Request or appeal what other documents are responsive. While the OOR encourages agencies to work with citizens to determine what records are sought and timely provide them, the City should not be penalized for providing copies of records when it did not believe they were being sought.

employee's computer. *See* 65 P.S. § 67.701(b). Since the City has demonstrated that the manual is only available for perusal on a secure database, the City is not required to grant access to that database for inspection. Because the records sought exist only on the City's secure database, this appeal is denied insofar as it pertains to inspection of the records.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the City is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to 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 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 OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: July 21, 2016

/s/Jordan Davis

JORDAN C. DAVIS, ESQ
APPEALS OFFICER

Sent to: Darlene Herrera (via e-mail only);
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² *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).