



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**STEVEN BURDA,  
Requester**

**v.**

**METHACTON SCHOOL DISTRICT,  
Respondent**

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**Docket No.: AP 2017-2342**

## **INTRODUCTION**

Steven Burda (“Requester”) submitted a request (“Request”) to the Methacton School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records relating to a vacancy on the District’s school board. The District denied the Request, arguing that it was not filed on the form required by the District’s RTKL policy. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied in part** and **dismissed as moot in part**, and the District is not required to take any further action.

## **FACTUAL BACKGROUND**

On December 12, 2017, the Request was filed, seeking:

... copies of all candidates who submitted their resumes and CV’s and Letters of Interest and any other relevant documents for the vacant role of candidate for Board of Directors at MSD, during the month of December 2017. Please provide all, but do not include documents/records/submittals for ‘Steven Burda’ as that was me.

On December 13, 2017, the District denied the Request, stating that it “was not submitted on the required form....”

On December 13, 2017, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited the parties to supplement the record, and directed the District to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On December 25, 2017, the Requester submitted an unsworn position statement, arguing that the RTKL does not require the use a specific form so long as a request clearly describes the records being sought. The Requester also provided citations to several OOR final determinations.<sup>1</sup>

On January 3, 2018, following a request for additional information from the OOR, the District submitted unsworn correspondence acknowledging “some grey area in our policy and page” and stating that “we will not be advancing our denial, and have provided the records.” The District also indicated that it had provided the Requester with the records responsive to the Request.<sup>2</sup>

On January 4, 2018, the Requester submitted correspondence stating that he “d[id] not believe all records requested were provided” and asking the OOR to remind the District “that it is against the RTKL to require the [R]equester to use” a specific form.

On January 10, 2018, in response to an additional request for information from the OOR, the District submitted the attestation, made subject to the penalty of perjury, of Angela Lynch, the District’s Open Records Officer, who attests that all the records responsive to the Request were provided to the Requester.

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<sup>1</sup> The Requester made additional submissions on January 3, 2018, January 4, 2018 and January 5, 2018, respectively.

<sup>2</sup> By correspondence dated January 3, 2018, the OOR asked the Requester to confirm whether he received the responsive records and if he was satisfied with the District’s production and wished to withdraw the appeal. However, the Requester did not respond to the OOR’s inquiry.

On the same day, the Requester replied to the District's submission, reiterating, among other things, that the District had not provided him with all the responsive records and requesting an *in camera* review.

### 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, oral argument and *in camera* review was requested; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter. Therefore, the requests for oral argument and *in camera* review are hereby denied.

The District 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 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).

During the course of the appeal, the District abandoned its grounds for denial and provided the Requester with responsive records. Accordingly, insofar as the appeal pertains to the records provided to the Requester, it is dismissed as moot.

However, in unsworn e-mail correspondence, the Requester disputes that the District provided him with all the records responsive to the Request. In support of its assertion that it

provided the Requester with the records, the District provides the attestation of Ms. Linch, who attests that “all existing records deemed responsive to the [R]equest were provided to Request[e]r, as if he used the proper form” and, more specifically, that “[i]n response to the Request, and prior to production of the responsive documentation, a thorough examination of District files, in the possession, custody and control of the District for records responsive to the [R]equest underlying this appeal, was conducted and the records deemed responsive were compiled, thereafter our Solicitor provided the responsive records as noted above.” Under the RTKL, an attestation made under the penalty of perjury is competent evidence to sustain an agency’s burden of proof. *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 competent evidence that the District acted in bad faith or that additional responsive records exist, “the averments in [the attestation] 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)). Based upon the evidence provided, therefore, the District has proven that it provided the Requester with all of the records responsive to the Request and that no additional responsive records exist within the District’s possession, custody or control. *See Hodges*, 29 A.3d at 1192.

## CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied in part** and **dismissed as moot in part**, and the District 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 Montgomery 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.<sup>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: 12 January 2018**

*/s/ Joshua T. Young*

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JOSHUA T. YOUNG  
APPEALS OFFICER

Sent to: Steven Burda (via e-mail only);  
Robert Iannozzi, Jr., Esq. (via e-mail only);  
Angela Linch, AORO (via e-mail only)

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