



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION ON RECONSIDERATION

IN THE MATTER OF	:	
	:	
THOMAS BENJAMIN,	:	
Complainant	:	
	:	Docket No.: AP 2010-1176R
v.	:	
	:	
COLONIAL INTERMEDIATE	:	
UNIT 20,	:	
Respondent	:	

INTRODUCTION

Thomas Benjamin (the “Requester”) submitted a request (the “Request”) to Colonial Intermediate Unit 20 (“Unit”) seeking idling policies for various vehicles pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”). The Unit did not respond, and the Request was deemed denied. The Requester appealed to the Office of Open Records (“OOR”). The OOR issued a Final Determination granting the appeal on January 5, 2011. The Unit filed a Petition for Reconsideration on January 20, 2011, which was granted on January 24, 2011. For the reasons set forth in this Final Determination, the appeal is **dismissed as moot** and the Unit is not required to take any further action.

FACTUAL BACKGROUND

On November 12, 2010, the Request was filed, seeking “[E]lectronic copies of [the Unit’s] current idling policy for [Unit] buses, other [Unit] vehicles, and vehicles idling on school property and a listing of your [Unit’s] school bus fleet: the year, make, model, mileage, and annual mileage.” As the Unit did not respond within five business days, the Request was deemed denied. *See* 65 P.S. § 67.901.

The Requester appealed to the OOR on December 9, 2010. The OOR invited both parties to supplement the record. On December 16, 2010, the Unit provided the requested records to Requester. The December 16, 2010 submission was not reviewed or considered in the Final Determination issued on January 5, 2011, although it was received timely.

LEGAL ANALYSIS

The RTKL 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. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). 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.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* 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.* Here,

neither party requested a hearing and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

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

In the present case, the Unit provided all responsive records to Requester during the pendency of the appeal. Accordingly, the appeal is moot as to these records.

CONCLUSION

For the foregoing reasons, Requester's appeal is **dismissed as moot** and the Unit is not required to take any further action. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal to the Northampton 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. This Final Determination shall be placed on the OOR website at:

<http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: February 22, 2011



APPEALS OFFICER
J. CHADWICK SCHNEE, ESQ.

Sent to: Thomas Benjamin; John Freund, Esq.