

**FRANK, GALE, BAILS, MURCKO & POCRASS, P.C.**

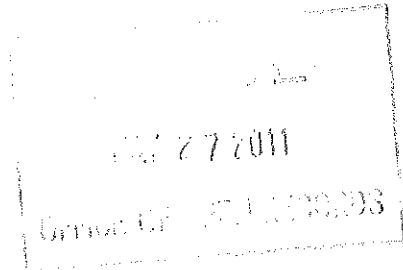
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Frederick N. Frank  
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May 26, 2011

**By Overnight Mail**

Lucinda Glinn, Senior Attorney  
Pennsylvania Office of Open Records  
400 North Street  
Fourth Floor  
Harrisburg, PA 17120-0225



Re: Right to Know Law Appeal of the Pittsburgh Post-Gazette via Patricia Sabatini

Dear Ms. Glinn:

Enclosed, please find the following:

1. Petition for Review and Exhibits

Very truly yours,

A handwritten signature in cursive script that reads "Frederick N. Frank".

---

Frederick N. Frank

cc: Patricia Sabatini (via e-mail)  
T. H. Johnson, Open Records Officer, County of Allegheny (via hand delivery)

IN THE  
COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PATRICIA SABATINI

and

THE PITTSBURGH POST-GAZETTE,

Petitioners,

v.

ALLEGHENY COUNTY  
HEALTH DEPARTMENT,

Respondent,

and

PENNSYLVANIA OFFICE OF  
OPEN RECORDS,

Interested Party.

No.: ~~60~~ 11-9654

PETITION FOR REVIEW

Filed on Behalf of:  
Patricia Sabatini and  
The Pittsburgh Post-Gazette

Filed By:  
Frederick N. Frank, Esq.  
PA. I.D. No.: 10395  
FRANK, GALE, BAILS,  
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Attorneys for Patricia Sabatini and  
The Pittsburgh Post-Gazette

2011 MAY 29 PM 3:09  
PROCEDURAL  
NOTICE  
ALLEGHENY COUNTY  
COURT OF COMMON PLEAS  
CIVIL DIVISION

IN THE  
COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PATRICIA SABATINI :  
 :  
 and :  
 :  
 THE PITTSBURGH POST-GAZETTE, :  
 :  
 Petitioners, :  
 :  
 v. :  
 :  
 ALLEGHENY COUNTY :  
 HEALTH DEPARTMENT, :  
 :  
 Respondent, :  
 :  
 and :  
 :  
 PENNSYLVANIA OFFICE OF :  
 OPEN RECORDS, :  
 :  
 Interested Party. :

No.: SA  
**NOTICE TO PLEAD**

**NOTICE TO PLEAD**

TO: Allegheny County Health Department  
C/O T.H. Johnson  
3333 Forbes Avenue  
Pittsburgh, Pennsylvania 15213

You are required to plead to the within petition for judicial review of a final determination of the Pennsylvania Office of Open Records within twenty (20) days from the date of service thereof or a default judgment may be entered against you.

*Frederick N. Frank*

\_\_\_\_\_  
Frederick N. Frank, Esquire  
Attorney for Petitioners

## **PETITION FOR REVIEW**

NOW COME Patricia Sabatini and The Pittsburgh Post-Gazette, Petitioners, by and through their counsel of record, and, pursuant to 65 P.S. § 67.1302(a), move this Court for a review of the final determination of the Pennsylvania Office of Open Records dated May 11, 2011.

### **PARTIES AND GOVERNMENT UNIT**

1. Petitioners are Patricia Sabatini, a reporter employed by The Pittsburgh Post-Gazette; and The Pittsburgh Post-Gazette, a newspaper of general circulation in Allegheny County and several surrounding counties (collectively "Sabatini").

2. Respondent, Allegheny County Health Department, is a local, noncommonwealth agency (hereinafter "Health Department") as defined by 65 P.S. § 67.102.

3. The government unit whose action is at issue is the Pennsylvania Office of Open Records (hereinafter "OOR").

### **JURISDICTION AND ORDER TO BE REVIEWED**

4. Jurisdiction is proper in this Court pursuant to 65 P.S. § 67.1302(a), which provides that "[w]ithin 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under section 1101(b) . . . a requester or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located." Specifically, this Petition seeks the reversal of a final determination rendered pursuant to 65 P.S. § 1101(b), OOR Docket No.: AP 2011-0372, dated May 11, 2011, which denied the Petitioners' requests and which is attached

hereto as Exhibit A.

5. This Petition for Review is timely pursuant to 65 P.S. §67.1302(a).

### **FACTUAL AND PROCEDURAL HISTORY**

6. On February 15, 2011, Sabatini made a request pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101 *et seq.*, to inspect, review, and/or copy any records that evidenced comments made by the public, solicited at the request of the Health Department, in regard to the proposed changes to the Health Department's food safety regulations, including a new system for rating restaurants. Sabatini's request is attached hereto as Exhibit B.

7. Sabatini's request, noting that the public comment period ran through March 20, 2011, asked for the Health Department to provide all comments up to the date of the request (February 15, 2011) and asked that "future comments be forwarded to me on a weekly basis, until the comment period ends."

8. By letter dated February 17, 2011, attached hereto as Exhibit C, T.H. Johnson, Allegheny County Open Records Officer ("Mr. Johnson"), on behalf of the Health Department, responded to Sabatini's request by informing her that the Health Department was invoking its right to a thirty-day extension.

9. While noting that an extension was invoked pursuant to 65 P.S. §67.902(a)(3), stating that "a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations," Mr. Johnson advised that "private information (i.e. phone number and e-mail addresses) of the individuals making the comments would need to be redacted."

10. On March 21, 2011, the thirty-day extension period expired with the Health

Department's having failed to provide a response to Petitioner Sabatini; this constituted a deemed denial of Sabatini's request pursuant to 65 P.S. § 67.902(B)(3) and an appeal to the OOR followed on March 29, 2011, which appeal is attached hereto as Exhibit D.

11. On April 1, 2011, after the filing of Sabatini's OOR appeal, Kathy Colosimo from the County of Allegheny Department of Administrative Services sent an email to Sabatini (hereinafter "April 1, 2011 Response"). Attached to that email were a letter from Mr. Johnson dated April 1, 2011, and fourteen (14) public comments, from which the email addresses and telephone numbers of the commentators, where provided, had been redacted. The April 1, 2011 Response and attachments are attached hereto as Exhibit E.

12. In his April 1, 2011 letter, Mr. Johnson does not dispute the requested records constitute public records. Mr. Johnson, however, stated that the comments included in his response were only those received by the Health Department up to the date of Sabatini's February 15, 2011, request. Any comments received by the Health Department after Sabatini's request were denied to her. Specifically, Mr. Johnson stated, "[y]our response to have future copies 'forwarded to me on a weekly basis' is denied as not a proper Right-to-Know request as it is asking for non-existent records on the date of request." In contravention of 65 P.S. §67.903(2), no legal authority was cited in support of this denial.

13. On April 14, 2011, Sabatini contacted Health Department spokesperson Guillermo Cole to inquire as to how many total comments had been received. Mr. Cole informed Sabatini that 25 comments had been received by the extended March 30,

2011 comment deadline.<sup>1</sup> Therefore, the Health Department withheld 11 comments which were in its possession when it responded on April 1, 2011.

14. After receipt of the April 1, 2011 Response, Sabatini supplemented the record before the OOR with an affidavit detailing the April 1, 2011 Response and her conversation with Mr. Cole described in paragraph 13 above. Thus, although Sabatini's appeal was filed on March 29, 2011, the OOR had the record of the subsequent events in April 2011.

15. On May 11, 2011, the OOR issued its Final Determination ("Final Determination"), Exhibit A. In the Final Determination, the OOR denied Sabatini's appeal. It found, *inter alia*, that: (a) the Health Department only was required to produce those documents in its possession at the time of Sabatini's request; and, (b) the Health Department could redact the email addresses and phone numbers on the public comments it produced.

#### GROUND FOR REVIEW

16. In reviewing a Right to Know Law determination from the Office of Open Records, a court must determine whether an error of law was committed, whether Constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. *See Lukes v. Department of Public Welfare*, 976 A.2d 609 (Pa. Cmwlth. 2009).

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<sup>1</sup> Subsequent to its original request for comment to be made by March 20, 2011, the Health Department, on its website, posted an extension of the comment period to March 30, 2011.

**I. The OOR Committed an Error of Law when it Determined that Petitioners were not Entitled to Public Comments the Health Department Received after the Date of the Request but before said Request was Fulfilled**

17. As noted in Paragraph 13, above, the Health Department withheld at least 11 comments from its April 1, 2011 Response.

18. The April 1, 2011 Response is deficient and constitutes a denial, in that, while the Health Department requested a 30-day extension (which it, in turn, arbitrarily converted into a 40-day extension), it only provided records to Sabatini up to the date of her original request, February 15, 2011. Sabatini had requested that future comments be provided to her through the closing date of the public comment period, March 20, 2011 (later extended to March 30, 2011). Although Mr. Johnson responded to Sabatini's request on April 1, 2011, after the comment period was closed on March 30, 2011, he still only provided documents from comments received as of February 15, 2011. Therefore, he has denied Petitioner Sabatini's request for documents received by the County Health Department during the period of February 16 through March 30, 2011.

19. In its Final Determination in the instant matter, the OOR cites its own prior determinations for the proposition that RTKL requests may not properly encompass public records that come into existence after the date of the request but before the date on which the request is fulfilled. The OOR cited *Schucht v. Office of the Budget*, OOR Dkt. 2011-0056; and *Scolforo v. Office of the Governor*, OOR Dkt. AP 2011-0276 citing *Shields v. City of Philadelphia* OOR Dkt. 2009-0787. In *Shields*, the Requestor requested documents "up through the time this request is fulfilled." *Shields* at 1. In *Shields*, citing 65 P.S. § 67.705, which provides that an agency is not required to create

a record in order to respond to a request for records, the OOR determined that a “proper request for records may only seek records that are in existence as of the date of a request; otherwise, an agency would in effect be ‘creating’ a record in order to respond to a request, which it cannot be compelled to do.” *Shields* at 4.

20. 65 P.S. § 67.705 provides that “[w]hen responding to a request for access, an agency shall not be required to create a record *which does not currently exist* or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record. 65 P.S. § 67.705 (emphasis added).

21. The plain language of section 705 is clear: an agency is not required to create a record in order to respond to a request; however, the relevant period of time for which the agency must provide records is up to the time the *response* is being made, not up to the time that the *request* was made. Therefore, the OOR’s reading of the statute is incorrect. Agencies are required by section 705 to provide all responsive records that *currently exist when responding*.

22. In the present case, no request was made for the Health Department to create records, but only provide those that the Health Department *received* throughout the comment period. Given the date on which the Health Department deigned to respond, the comments for the entirety of the comment period were in its possession when it responded, and yet it withheld those records.

23. The clear purpose of section 705 is to prevent requests that would burden an agency with creating records for the sole purpose of responding to a RTKL request. No such burden is laid on agencies by requiring them to include in their responses

responsive documents that come into existence in the ordinary course of business between the time of the request and the time of the response, and, therefore, the concerns underlying the purpose of section 705 are not implicated in the present case. Under the OOR's ruling, a requestor like Sabatini would be required to bombard the agency with daily requests to capture all responsive documents that come into existence between the date of the request and the date of an agency's response.

**II. The OOR Committed an Error of Law when it Determined that the Health Department was Permitted to Redact Telephone Numbers and E-Mail Addresses from the Public Comments as "Personal Identifying Information"**

24. In the Health Department's untimely April 1, 2011 Response, fourteen (14) e-mail comments were provided with the e-mail addresses and telephone numbers (if telephone numbers were provided by the commentators) redacted.

25. Mr. Johnson's response is deficient and constitutes a denial in that the documents provided have been improperly redacted. Each of the comments provided has the sender's email address redacted. Only three responses contain the sender's mailing address, and only one contains the sender's telephone number. Pursuant to 65 P.S. § 67.706, "Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9."

26. Sabatini asserts that the Health Department's denial of production of all comments in its possession in unredacted form is contrary to the RTKL.

27. With respect to any redaction, the Health Department bears the burden of proving the proper application of an exception under the RTKL by a preponderance of the evidence. *Green v. Pocono Mountain School District*, OOR Dkt. AP 2009-1013, at 3.

28. Section 708(b)(10)(iv) provides in pertinent part: “[t]his paragraph [section 708(b)(10) related to predecisional deliberations] shall not apply to the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinions.”

29. Section 708(b)(10)(iv) in effect creates an exception to the exemption for predecisional deliberations. Notably section 708(b)(10)(iv) does not provide for the redaction of any information in the disclosure of the public opinion surveys, such as redaction of email addresses or phone numbers. Manifestly, the comments sought by the Health Department at issue in this petition are the type of measurement of public opinion contemplated by section 708(b)(10)(iv).

30. The only place within the RTKL’s exemptions where personal email addresses and telephone numbers are mentioned is a separate section, section 708(b)(6)(i), which provides for redaction of “[a] record containing all or part of a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, *employee number or other confidential personal identification number.*” 65 P.S. § 67.708(b)(6)(i)(A) (emphasis added).

31. The RTKL should be read as a whole and its terms construed with an eye toward furthering the goal of the RTKL: to provide open access to the government. In

light of this goal, section 708(b)(6)(i)(A) should be construed more narrowly than the OOR has done to cover only the personal identifying information of people who have not voluntarily provided such information for the purpose of commenting *publicly* on matters of public concern. Section 708(b)(6)(i)(A), in light of the RTKL's presumption that records held by a local agency are public records, is intended to protect the dissemination of personal identifying information of persons who have not voluntarily responded to a request for *public* comments, such as public employees who gave their email addresses, etc., to their employers with an expectation of privacy.

#### **RELIEF SOUGHT**

32. Sabatini respectfully requests that this Honorable Court reverse the Final Determination of the Office of Open Records, at Docket No.: AP 2011-0372, which held that: (a) the Health Department only was required to produce those documents in its possession at the time of Sabatini's request, and (b) the Health Department could redact the email addresses and phone numbers on the public comments it produced. Further, Sabatini requests that this Court order the Health Department to produce unredacted copies of the comments received up to the date of its April 1, 2011 Response.

WHEREFORE, Sabatini respectfully request that this Court reverse the Final Determination of the Office of Open Records and Order the Health Department to fully fulfill Petitioners' Right to Know Request of February 15, 2011.

Respectfully submitted,

FRANK, GALE, BAILS,  
MURCKO & POGRASS, P.C.

*Frederick N. Frank*

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412.471.3000  
Attorneys for Petitioners Patricia Sabatini and  
The Pittsburgh Post-Gazette

VERIFICATION

I, Patricia Sabatini, Petitioner herein, am employed as a reporter for the Pittsburgh Post-Gazette, and am authorized to make this Verification. I hereby aver that the facts set forth in the foregoing *Petition for Review* are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

May 25, 2011  
Date

Patricia Sabatini  
Patricia Sabatini, Petitioner

**CERTIFICATE OF SERVICE**

Pursuant to 65 P.S. § 67.1303(a), the undersigned hereby certifies that this 26<sup>th</sup> day of May 2011, the foregoing *Petition for Review* was served upon the following persons by the following means:

**Via hand delivery:**

Thomas H. Johnson  
Allegheny County  
Open Records Officer  
202 Courthouse  
436 Grant Street  
Pittsburgh, Pennsylvania 15219

**Via overnight mail:**

Lucinda Glinn, Esquire  
Appeals Officer  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0255

*Frederick N. Frank*

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Attorneys for Petitioners Patricia Sabatini and  
The Pittsburgh Post-Gazette



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

*THE PITTSBURGH POST-GAZETTE*,  
Complainant

v.

ALLEGHENY COUNTY,  
Respondent

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**Docket No. AP 2011-0372**

### INTRODUCTION

*The Pittsburgh Post-Gazette* (“Requester”) submitted a request to Allegheny County (the “County”) pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”) seeking public comments submitted to the County Health Department. The County invoked an extension advising redaction would be necessary. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied** and the County is not required to take any further action.

### FACTUAL BACKGROUND

On February 15, 2011, the Requester submitted a right-to-know request seeking copies of “public comments on proposed changes to the [County Health Department’s] food safety regulation, including a new system for rating restaurants” and asked that comments be preserved and forwarded to her on a weekly basis until the comment period ends on March 20, 2011 (the “Request”). T.H. Johnson, the Open Records Officer (“ORO”), timely responded, invoking a thirty-day extension due to staffing limitations, stating “[p]rivate information (*i.e.*, phone number

and email addresses of the individual making the comments will need to be redacted.” The County did not submit a written response or responsive records upon the expiration of the thirty-day extension period.

The Requester responded to the County, stating that it did not believe that the described information is exempt and argues that Section 708(b)(10) as it applies to “efforts designed to measure public opinion” makes the public comments “public records” under the RTKL.

The Requester timely appealed, arguing that public comments submitted to an agency are public in their entirety, including source information. The Requester argues that home addresses cannot be redacted for non-public employees and that there is no expectation of privacy in submissions to an agency in response to a request for public comments. The Requester notes the written comments are in lieu of comments made in a public hearing during which the speaker is identified, such as by address. Without the source of the commentator, allegedly the comments lose value because they could be skewed if untraceable. The Requester submitted a press release the County published and posted on its website regarding its request for public comments upon the proposed restaurant rating system proposed.

The Requester supplemented the record on appeal in response to the County’s post-appeal provision of responsive records on April 1, 2011. Patricia Sabatini attests that the County’s response is not complete and further that the County is precluded from raising grounds to withhold records after she filed the appeal because she had no ability to refute its new defenses, and any late-asserted defenses are waived pursuant to *Signature Information Solutions, LLC v. Aston Township*, 995 A.2d 510 (Pa. Commw. Ct. 2010). The Requester argues *Signature* precludes an agency from raising a defense not set forth in its original denial, to include a

“deemed denial” after the agency failed to respond within its thirty-day extension as it renders Section 903(2) a nullity.

Sabatini attests that, as of the thirty-day extension elapsing, the County failed to provide responsive records or to support its intended redaction of “private information.” She attests that, after the thirty-day extension elapsed, she received fourteen comments from which identifying information was redacted under Section 708(b)(6)(i)(A). Sabatini notes she has been advised twenty-five comments had been received as of April 4, 2011, and should have been included. Email addresses and some telephone numbers have been redacted from the comments submitted via email. Addresses, if included with the emailed comments, were not redacted.

The County supplemented the record with a copy of its response of April 1, 2011 with the records provided, stating that personal emails and telephone numbers were redacted as permitted by Section 708(b)(6)(1).

The Requester agreed to extend the Final Determination due date to May 11, 2011.

### **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. Ct. 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).

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 requisite and necessary information before it to adjudicate the matter.

The County is a local agency subject to the RTKL and required to disclose public records. *See* 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. Upon receipt of a request, an agency is required to assess whether a record requested is in its possession, custody or control and respond within five business days to the requester. 65 P.S. § 67.901. However, the County cannot provide records that do not exist.

**1. A request cannot be continuing or recurring in nature**

The Requester sought comments submitted to the County on a continuing basis seeking to receive comments as they were submitted, even when submitted after February 1, 2011, the date of her Request. A request is finite in time and need only be fulfilled with those records that exist as of the date the request is submitted to the agency. *See Scolforo v. Office of the Governor*, OOR Dkt. AP 2011-0276, 2011 PA O.O.R.D. LEXIS 213; *see also Schucht v. Office of the Budget*, OOR Dkt. AP 2011-0056, 2011 PA O.O.R.D. LEXIS 81. Therefore, the County is not required to disclose any comments received after the date of the Request.

**2. Source identifiers for public comments submitted on-line**

With regard to the redactions of commentators' email addresses and telephone numbers, the Requester argues that the contact information for commentators are part of the "public comments" and thus by their nature "public." Specifically, the Requester argues that the comments cannot be explored via an interview when certain commentators' contact information is redacted, putting a pall on the veracity of the comments.

There is no question that “public comments” are by their nature, public records and the entire content of the comments should be available for public review. Only the identifiers of the source of the comments are at issue in this appeal. The Requester asserts that Section 708(b)(10)(iv) renders efforts designed to measure public opinion, like public comments, public as a matter of law. Exceptions contained within the RTKL do not set forth the public nature of records other than as to the exception being asserted. For example, had the County asserted the predecisional deliberative exception at (b)(10)(i), the defense that the comments are public based upon (iv) could arguably apply. However, the exception to (b)(10) contained in subsection (iv) does not apply to other exceptions, such as the personal identification information exception in (b)(6)(i)(A). The Requester asserted no other grounds for the public nature of personal email addresses and telephone numbers contained within online public comments. Further, by its terms, subsection (vi) pertains only to the results of public opinion gathering, not to the source documents that may or may not contain personal identifiers.

The Requester argues from a public policy perspective that email addresses and/or telephone numbers contained as part of public comments are public because the sender of the comments waived any expectation in the confidentiality of the information. The exceptions contained within Section 708(b) are to be construed narrowly, in accordance with their terms. *See Bowling, supra* at 824. While the Requester’s arguments are compelling from a policy perspective, the OOR consistently holds that email addresses and telephone numbers are properly exempt under Section 708(b)(6) and has not recognized an exception for materials submitted to an agency as part of a public comment process. Moreover, from review of the redacted records, a few of the commentators included addresses at which they could be reached, thus permitting the Requester to contact the source.

### **3. The County did not waive its grounds for redactions**

Having addressed whether the identifiers of those who submit public comments are “public” by virtue of being part of the public comment process, the OOR addresses the Requester’s waiver argument. The Requester urges the OOR to apply *Signature v. Aston Township* to bar the County from redacting any information on the comments because it failed to respond by the thirtieth day of its extension. *Signature* has been consistently applied to bar an agency that has raised defenses in its timely denial from raising new ones on appeal because to do so would leave a requester without the requisite notice to address grounds for appeal. In *Signature*, the Township denied the records under Section 704 based upon their electronic existence, and the requester addressed that ground in its appeal as required by Section 1101(a). The Commonwealth Court reasoned that Section 1102(a) of the RTKL “does not permit an agency that has given a specific reason for a denial to assert a different reason on appeal” and thus have two bites at the apple. *Signature, supra* at 514. The Court did not reach the question of whether an agency can submit new information upon appeal when the initial right-to-know request was deemed denied.

In this case, the County timely responded initially, invoking a thirty-day extension due to bona fide staffing limitations, and advising that “[p]rivate information (i.e., phone number and e-mail addresses) of the individual making the comments will need to be redacted.” The County did not cite the supporting legal authority within the RTKL as required by Section 903(2) until it submitted the records, with redactions, to the Requester in April. The Requester argues that the County’s failure to do so is fatal to its redactions, and that to permit redactions after the thirty-day extension elapsed renders Section 903(2) a nullity.

The OOR agrees that *Signature* should not be construed to benefit the agencies that do not comply with their statutory duties by failing to respond to requests for records, as such a course would deprive requesters of the ability to meaningfully appeal. Within the context of a deemed denial, an agency by definition cannot “give[] a specific reason for a denial” in its initial response because, when a request is deemed denied, the agency has not issued a response at all. *See generally* 65 P.S. § 67.901 (stating that a failure to respond constitutes a “deemed denial”); 65 P.S. § 67.902(b)(2) (stating that requests may be deemed denied following an extension).

Given the circumstances of this case, the OOR cannot agree that the County waived its exception asserted in its thirty-day extension notice. In its initial notice, the County set forth reasons for its redactions, by stating emails and personal telephone numbers would be redacted as personal information. The County did not alter those grounds on appeal, and the Requester thus had notice of the grounds despite the lack of a citation to (b)(6). Because the Requester had notice and an opportunity to address the proposed redactions on appeal, and received the citation before the record closed, the OOR declines to extend *Signature* to the County’s “deemed denial.”

The Requester challenges redaction of the emails and telephone numbers from individuals who submitted comments to the County because if the comments had been made in a public meeting, the commentators would have been required to identify themselves. The Requester also makes a public policy argument that redaction of these identifiers makes it more difficult to contact those who made comments in order to assess their veracity. On their face, however, personal emails and telephone numbers are expressly exempt under Section 708(b)(6)(i)(A) as “personal identification information.” From review of the redacted records supplied by the Requester, only email addresses and telephone numbers have been redacted, making factual substantiation unnecessary.

## CONCLUSION

For the foregoing reasons, the appeal is **denied** and the County need not take 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 Allegheny 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. This Final Determination shall be posted on the website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: May 11, 2011**



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**LUCINDA GLINN, ESQ.**  
**APPEALS OFFICER**

Sent to: Frederick Frank, Esq.; Timothy H. Johnson