

FINAL DETERMINATION

DATE ISSUED AND MAILED: October 8, 2024

IN RE: *Jason Delp v. Barrett Township*, OOR Dkt. AP 2024-2292

On August 19, 2024,¹ Jason Delp (“Requester”) submitted a request (“Request”) to Barrett Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* The Request sought records regarding a consulting group, the Solicitor, payroll and maintenance workers. The Township did not respond within five business days of receiving the Request, and the Request was, therefore, deemed denied on August 26, 2024. 65 P.S. § 67.901. On August 29, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”).

Local agencies have the burden of proving that records are exempt from access. 65 P.S. § 67.708(a)(1). Here, the Township did not comply with the RTKL by timely responding to the Request, nor did the Township participate on appeal by submitting legal argument or evidence in support of withholding records.² Accordingly, the Township did not meet its burden of proof under the RTKL. 65 P.S. § 67.305.

For this reason, the appeal is **granted**, and the Township is required to provide the requested records to the Requester within thirty days, or, in the alternative, a sworn affidavit or a statement made under the penalty of perjury demonstrating that the records do not exist. Within thirty days of the mailing date of this Final Determination, either party may appeal or petition for review with the Monroe 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 65 P.S. § 67.1303, but 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.³ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

Issued by:

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ, APPEALS OFFICER

Sent via portal only to: Jason Delp; Pamela Gardsy

¹ The Request is dated August 17, 2024, a Saturday. As a result, the date of the Request is the next business day, or August 19, 2024, in this instance.

² On September 11, 2024, the OOR provided additional time to submit evidence and telephoned the Township regarding evidentiary submissions; however, to date, no submissions have been made by the Township.

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