



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

:

**JOHN YAKIM,  
Requester**

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:

**v.**

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**Docket No.: AP 2016-1499**

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**MUNICIPALITY OF MONROEVILLE,  
Respondent**

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### **INTRODUCTION**

John Yakim (“Requester”) submitted a request (“Request”) to the Municipality of Monroeville (“Municipality”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to police requests for reimbursement. The Municipality purported to grant the Request in part, and the Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Municipality is required to take further action as directed.

### **FACTUAL BACKGROUND**

On August 1, 2016, the Request was filed, seeking “all requests for reimbursement by the Municipality of Monroeville or the Monroeville Police Department for all federal drug enforcement task force overtime (OCDETF) for the time period of July 1-31, 2016.” The Requester also requested “any similar request for reimbursement for state related task forces involving Monroeville Police Officers.” On August 8, 2016, the Municipality invoked a thirty-

day extension of time to respond to the Request. *See* 65 P.S. § 67.902. On August 30, 2016, the Municipality purported to grant the Request in part, providing records from 2015 with individually-identifying information redacted and asserting that other records were withheld because they are related to a criminal investigation. *See* 65 P.S. §§ 67.708(b)(6), (b)(16).

On September 2, 2016, the Requester appealed to the OOR, asserting that the records provided were not responsive to the Request. The OOR invited both parties to supplement the record and directed the Municipality to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On September 9, 2016, the Requester submitted a statement explaining that the records provided are not for the date range specified in the Request. The Requester states that he contacted the Municipality prior to filing an appeal, but did not receive a response. On the same day, the Municipality submitted the sworn and notarized statement of its Chief of Police, Kenneth Cole, who attests that overtime reimbursement requests were provided from August 1, 2015 through December 31, 2015. Chief Cole also attests that these include all of the requests made by the Municipality during July 1-31, 2016. Chief Cole's statement addresses neither the materials withheld because of their relation to a criminal investigation nor the redactions made for personal identification information.

### **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. 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 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; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Municipality is a local agency subject to the RTKL that is 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. 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 respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. 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 Municipality claims it has provided records responsive to the Request, but as Chief Cole admits, the records are from 2015, not 2016, as requested. The supplemental response from the Municipality indicates that the records provided were “requests [] for reimbursement that were submitted during the time frame indicated.” The Request seeks reimbursement requests “for the time period of July 1-31, 2016,” not requests *from* July 1-31, 2016. Accordingly, the Municipality must provide the responsive records.<sup>1</sup>

### CONCLUSION

For the foregoing reasons, Requester’s appeal is **granted**, and Municipality is required to provide the requested information to the Requester within thirty days. 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 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 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>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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<sup>1</sup> In its original response, the Municipality had redacted individually-identifying information from the records provided and had withheld other records, arguing that they relate to a criminal investigation. However, because it has not submitted any evidence in support of either exemption, the Municipality has not met its burden of proving that the claimed exemptions apply. See 65 P.S. § 67.708(a)(1). Thus, it cannot redact or withhold responsive records.

<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

**FINAL DETERMINATION ISSUED AND MAILED: September 28, 2016**

/s/ Blake Eilers

Blake Eilers, Esq.

Appeals Officer

Sent to: John Yakim (via e-mail only);  
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