



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
LORRAINE LENGE,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2016-1338
	:	
CLIFTON TOWNSHIP,	:	
Respondent	:	

On July 21, 2016, Lorraine Lenge (“Requester”) filed a request (“Request”) with Clifton Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking monthly tax reports for January through June of 2016. The Township did not respond to the Request within five business days, and the Request was, therefore, deemed denied on July 28, 2016.¹ *See* 65 P.S. § 67.901.

On August 12, 2016, the Requester appealed to the OOR, and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On August 23, 2016 and September 1, 2016, the Township submitted unsworn position statements indicating that it was providing the Requester with responsive records. On September 1, 2016, the Requester submitted a position statement acknowledging her receipt of responsive tax reports for March through June of 2016, while arguing that she did not receive the requested reports for January and February of 2016. As the Township has provided responsive records for March through June of 2016, the appeal as to these records is **dismissed as moot**.

With respect to the remaining responsive records, Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a)(1). Because the Township has not provided evidence to withhold the tax

¹ On August 2, 2016, the Township issued a response denying the Request, stating that any request for local tax records must be submitted to the Township Real Estate Tax Collector. As this response was outside of the five business days required for a response, and the Township has not submitted any evidence or argument that the Request was received on a date other than July 21, 2016, the Request was deemed denied.

reports for January and February of 2016, nor has the Township provided evidence that all responsive records in its possession, custody or control have been provided to the Requester, the appeal is **granted** as to the tax reports for January and February of 2016.

For the foregoing reasons, the appeal is **granted in part** and **dismissed as moot in part**, and the Township is required to provide tax reports for January and February of 2016. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Lackawanna 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.² This Final Determination shall be placed on the OOR website at: <http://www.openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 12, 2016

/s/ Kathleen A. Higgins

APPEALS OFFICER
KATHLEEN A. HIGGINS, ESQ.

Sent to: Lorraine Lenge (via e-mail only);
Donna Stefanski (via e-mail only)

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