



FINAL DETERMINATION

IN THE MATTER OF

**BOB RYAN,
Requester**

v.

**RIEGELSVILLE BOROUGH,
Respondent**

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Docket No: AP 2022-1425

On June 2, 2022, Bob Ryan (“Requester”) submitted a request (“Request”) to Riegelsville Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, “[a]ll PA Ethics Commission required ‘Statement of Financial Interest’ forms filed by council member Edward Bartosiewicz for the years 2010 to 2021. Include all originally filed forms as required by May 1 for each previous fiscal year. Also include any amended ‘Statement of Financial Interest’ forms for years 2016, 2017, 2018 and 2020 as Bartosiewicz was required by direction of Pa Ethics Commission.” The Borough failed to respond to the Request by June 9, 2022, and, therefore, the Request was deemed denied. *See* 65 P.S. § 67.901.

On June 13, 2022, the Requester appealed to the Office of Open Records (“OOR”), stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c). On June 15, 2022, the Requester submitted a statement in support of the appeal

asserting that, “[s]tatements of [f]inancial [i]nterest, filed by public officials as required by the PA Ethics Act,¹ are among the most basic of public records.”

On June 22, 2022, the OOR issued a Final Determination granting the appeal. However, the record for submissions in the appeal was open until June 23, 2022; as a result, the Final Determination was issued prematurely before the Borough’s time for making a submission had elapsed. On June 23, 2022, the Borough noted the prematurity of the Final Determination and requested that the OOR vacate the Final Determination.² Because of this error, on June 23, 2022, the Final Determination issued by the OOR on June 22, 2022 was vacated. The record for submissions was reopened, and the parties had until June 30, 2022, to make submissions in support of their respective positions. The Final Determination issuance deadline was set for July 13, 2022.

On June 24, 2022, the Requester submitted a supplemental statement reiterating his argument that the requested records are public records and accessible under the RTKL. The Borough did not make a submission in support of its position on appeal.

On July 29, 2022, the Requester contacted the OOR regarding the status of the appeal. At that time it was discovered that, while the Final Determination issuance deadline was set for July 13, 2022, following the issuance of the June 22, 2022 vacate order, the OOR’s appeal docketing database was inadvertently not updated to reflect that the record had been reopened and that the appeal was pending.

Nevertheless, in order to provide the parties with sufficient due process, in the June 22, 2022 order, the record was expressly reopened for submissions by June 30, 2022. To date, the Borough has not made a submission in support of its deemed denial of the Request. Section 708

¹ Formally known as the Public Official and Employee Ethics Act. *See* 65 Pa.C.S. §§ 1101, *et seq.*

² The Borough also argued that the appeal itself was premature but did not provide any evidence in support of that assertion.

of the RTKL 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). In this matter, the Borough did not comply with the RTKL by timely responding to the Request, nor did the Borough submit any evidence in support of its denial of the Request. Specifically, although it claims that the appeal is premature, it did not submit any evidence in support of that position. Based on the Borough's failure to comply with the statutory requirements of the RTKL or to provide any evidentiary basis in support of an exemption under the RTKL, the Borough did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305.

Furthermore, the Ethics Act provides that “[a]ll statements of financial interests ... shall be made available for public inspection and copying...” 65 Pa.C.S. § 1104(e). The Act also provides that, in the event of a conflict with another statute, “the provisions of [the Ethics Act] shall control.” *See* 65 Pa.C.S. § 1112; *see also* 65 P.S. § 67.3101.1 (“If the provisions of [the RTKL] regarding access to records conflict with any other ... state law, the provisions of [the RTKL] shall not apply.”). As a result, the records requested are unquestionably public.

For the foregoing reasons, the Requester's appeal is **granted**, and the Borough is required to provide all responsive records 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 or petition for review to the Bucks County Court of Common Pleas. *See* 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 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.³ This Final Determination shall be placed on the website at:
<http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 1, 2022

/s/ Kelly C. Isenberg

SENIOR APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

Sent to: Bob Ryan (via email only);
William Dudeck, Esq. (via email only);
Sherry Masteller, AORO (via email only)

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