



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>JAMES TOWNSEND AND THE DANIEL LAW GROUP, PLLC,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2022-2547</b>
	:	
<b>NORTHERN CAMBRIA BOROUGH,</b>	:	
<b>Respondent</b>	:	

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* For the following reasons, the appeal is dismissed.

On October 20, 2022, James Townsend and The Daniel Law Group, PLLC (collectively “Requester”) submitted a request (“Request”) to Northern Cambria Borough (“Borough”) pursuant to the RTKL, seeking:

A copy of any new or amended ordinances, plans, proposals, and projects that reference or implicate the unopened road known as Saint Mary’s Alley from [April 1, 2022] to the present day. Also a copy of any new or amended ordinances, plans, proposals, and projects that reference or implicate [a specified] property...from [April 1, 2022] to the present day.

On November 7, 2022, the Requester appealed to the OOR, arguing that the Request was deemed denied, 65 P.S. § 67.901, and 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. 65 P.S. § 67.1101(c).

On November 9, 2022, the Borough submitted a position statement indicating that it did not receive the Request until it was forwarded by the OOR, along with the Official Notice of Appeal, and arguing that no responsive records exist within the Borough's possession, custody or control. On November 10, 2022, upon request by the OOR for further information, the Borough submitted the attestation, made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, of its Open Record's Officer, Claudine Nagle ("Nagle Attestation").

Section 901 of the RTKL states "[t]he time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency." 65 P.S. § 67.901; *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014). In support of the Borough's position that the Request was not received until it was forwarded by the OOR, along with the Official Notice of Appeal, the Nagle Attestation states that "[a]fter conducting a good faith search of the [Borough's] files...the [Borough] did not receive the [R]equest" and that "[t]he [Borough] only received the [R]equest upon receipt of the appeal documents." *See* Nagle Attestation, ¶¶ 4-5. Under the RTKL, a sworn affidavit or statement made under the penalty of perjury is competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Because the Borough did not receive the Request prior to this appeal, the appeal is **dismissed as premature**.<sup>1</sup>

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<sup>1</sup> On November 9, 2022, the Borough responded to the Request, stating that no responsive records exist. The OOR further notes that the Nagle Attestation states that "the Borough...does not possess any records that have been requested." *See* Nagle Attestation, ¶ 6. However, the Requester is not precluded from filing an appeal of the Borough's response pursuant to the requirements of 65 P.S. § 67.1101(a).

The file is now closed, and no further action will be taken. 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 Cambria 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 court rules 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>.

**FINAL DETERMINATION ISSUED AND MAILED: November 29, 2022**

*/s/ Erika Similo*

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APPEALS OFFICER  
ERIKA SIMILO, ESQ.

Sent to: James Townsend (via email only);  
Claudine M. Nagle (via email only)

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