



FINAL DETERMINATION

IN THE MATTER OF

**DAVID BAYNE,
Requester**

v.

**PLUM BOROUGH,
Respondent**

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Docket No: AP 2023-0030

On December 19, 2022, David Bayne (“Requester”) submitted a request (“Request”) to Plum Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[T]o do an in-person inspection of the borough of [P]lum police department policy on 1) use of force, 2) handcuffing and restrain[t]s, 3) control devices, 4) conducted energy devices, 5) officer-involved shooting and deaths [and] 6) firearms.

The Borough did not respond within five business days of receiving the Request, and the Request was, therefore, deemed denied. *See* 65 P.S. § 67.901. On January 4, 2023, the Requester filed an appeal with 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. 65 P.S. § 67.1101(c).

On January 23, 2023, the Borough's solicitor submitted a position statement.¹ The Borough agreed to allow in person inspection of the requested documents.² In order to preserve its rights during appeal, the Borough alternatively argued that the records are exempt as disclosure would likely threaten public safety, 65 P.S. § 67.708(b)(2), create a reasonable likelihood of endangering the safety or physical security of public infrastructure, 65 P.S. § 67.708(b)(3), reveal a trade secret or confidential proprietary information, 65 P.S. § 67.708(b)(11), and result in a substantial and demonstrable risk of physical harm to or the personal security of an individual, 65 P.S. § 67.708(b)(1)(ii).

Section 708 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 the present case, the Borough did not comply with the RTKL by timely responding to the Request prior to the Requester's appeal. Additionally, while the Borough may have offered an in-person inspection to the Requester during the appeal, the Requester did not respond to this offer. This offer did not relieve the Borough's burden of proof regarding the alternative argument presented by the Borough, i.e., that the records are exempt pursuant to the RTKL. Based on the Borough's failure to provide any evidentiary basis in support of the claim of exemptions, the Borough did not meet its burden of proof under the RTKL. 65 P.S. § 67.305; 65 P.S. § 67.708(a).

For the foregoing reasons, the appeal is **granted**. The Borough is required to permit an in-person inspection of the requested records within 30 days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal

¹ On January 16, 2023, the Borough's solicitor requested an extension with which to submit documentation. The OOR granted this request and the Borough was permitted to submit documentation through January 23, 2023.

² The Borough's solicitor suggested that the Requester agree to an extension for the OOR to issue the Final Determination in this matter so that the appeal could be resolved prior to the issuance of a Final Determination. The OOR sent correspondence regarding a two-week extension to the Requester. The Requester did not respond to the OOR's correspondence regarding an extension. As a result, this Final Determination was issued in accordance with the OOR's Notice of Deadlines issued on January 5, 2023.

or petition for review 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 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.³ 65 P.S. § 67.1303. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 30, 2023

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: David Bayne (via email only)
Dayne F. Dice, Esq. (via email only)
Jessica Yamnitzky (via email only)

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