

FINAL DETERMINATION

DATE ISSUED AND MAILED: March 17, 2023

IN RE: *David Bayne v. Plum Borough*, OOR Dkt. AP 2023-0427

Upon review of the appeal filed with the Office of Open Records (“OOR”) to the above-referenced docket number, as well as the submission of Plum Borough (“Borough”), it is determined that the appeal is **DISMISSED** because:

The appeal is untimely. The Request was filed on January 11, 2023, and was deemed denied when the Borough did not respond by January 19, 2023.¹ *See* 5 P.S. § 67.901 (stating that a request “shall be deemed denied” where an agency fails to respond within five business days of receipt of the request by the agency open-records officer). Appeals of denied Right-to-Know requests must be filed within 15 business days of the mailing date of a denial or deemed denial, or by February 9, 2023 in this instance. *See* 65 P.S. § 67.1101(a)(1). The appeal was filed on February 27, 2023. The Requester is not prohibited from making a new request for these records and, if necessary, filing a new appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).²

For this reason, the Borough is not required to take any further action. Within thirty days of the mailing date of this Final Determination, either party may appeal or petition for review with 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 65 P.S. § 67.1303. 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

Issued by:

/s/ Blake Eilers

Blake Eilers, Esq.
Appeals Officer

Sent via email only to: David Bayne, Jessica L. Yamnitzky and Dayne Dice, Esq.

¹ On January 23, 2023, the Borough attempted to invoke a thirty-day extension to respond. *See* 65 P.S. § 67.902(b). However, the extension was ineffectual, as the Request had already been deemed denied by operation of law. 65 P.S. § 67.901.

² On March 8, 2023, the Borough submitted evidence indicating that the requested records do not exist. On March 14, 2023, in response to the OOR’s inquiry, the Borough submitted a copy of the Request with a legible time stamp indicating that the Request was received on January 11, 2023.

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