

## **FINAL DETERMINATION**

DATE ISSUED AND MAILED: May 15, 2024

IN RE: *Gary Rohrbach v. Black Creek Township*, OOR Dkt. AP 2024-0756

On March 18, 2024, Gary Rohrbach (“Requester”) submitted a request (“Request”) to Black Creek Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking applications for permits by Michael Fischer and Fischer Investments, along with denied, incomplete and issued permits. On the same day, the Township produced a responsive zoning permit, but argued that the Uniform Commercial Code (“UCC”) allows it to withhold applications, *see* 34 Pa. Code § 403.85. Also on March 18, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”).

Local agencies have the burden of proving that records are exempt from access. 65 P.S. § 67.708(a)(1). Here, the Township did not participate on appeal by submitting legal argument or evidence justifying withholding records.<sup>1</sup> Accordingly, the Township did not meet its burden of proof under the RTKL.<sup>2</sup> 65 P.S. § 67.305.

For this reason, the appeal is **granted**, and the Township is required to provide all responsive zoning applications within thirty days. Within thirty days of the mailing date of this Final Determination, either party may appeal or petition for review with the Luzerne 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.<sup>3</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

Issued by:

/s/ Blake Eilers

BLAKE EILERS, ESQ.

APPEALS OFFICER

Delivered via E-file Portal to: Gary Rohrbach and Jennifer Hall

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<sup>1</sup> On April 9, 2024, noting that the record had closed without a submission, the OOR reopened the record. However, to date, the Township has failed to make a submission.

<sup>2</sup> The UCC applies to “[T]he construction, alteration, repair, movement, equipment, removal, demolition, location, maintenance, occupancy or change of occupancy of every building or structure which occurs on or after April 9, 2004 ...” 34 Pa. Code § 403.1. However, on a number of occasions, the OOR has recognized that nothing in the UCC expressly applies to zoning matters. *See, e.g., Reimer v. City of Phila. City Council*, OOR Dkt. AP 2023-1656, 2023 PA O.O.R.D. LEXIS 1846.

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