

FINAL DETERMINATION

DATE ISSUED AND MAILED: June 18, 2024

IN RE: *Dion Derrig v. Athens Township*; OOR Dkt. AP 2024-1516

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

The appeal is premature. The appeal states that the Request was mailed to the Township on May 15, 2024, and that the Request was deemed denied; however, the Township’s Open Records Officer did not receive a copy of the Request until receiving the OOR’s Notice of Appeal. *See* Township Position Statement; *Parrish* Attestation, ¶ 3.¹ Because an appeal may only be filed from the denial or deemed denial of a request, and the Township **did not receive the Request prior to receiving the appeal**, the appeal must be dismissed as premature.² 65 P.S. § 67.901.

For this reason, the Township 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 Bradford 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, but 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 All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

Issued by:

/s/ Joshua T. Young

JOSHUA T. YOUNG, ESQ.
SENIOR DEPUTY CHIEF COUNSEL

Sent to: Dion Derrig, 22B4318 (via U.S. Mail);
Megan Carling, AORO; Cindy Parrish, Deputy AORO (via e-file portal)

¹ The Parrish Attestation, which was authored by Cindy Parrish, the Township’s Deputy Open Records Officer, and made under the penalty of perjury, explains that the Request was eventually received by Sgt. Thomas of the Township Police Department, who, following a search for records, informed Ms. Parrish that no responsive private criminal complaints exist. *See Parrish* Attestation, ¶¶ 3–4. Thereafter, on June 11, 2024, the Township issued a final response to the Request, notifying the Requester that no such records exist within the Township’s possession, custody or control. A copy of this final response was also provided to the OOR during the appeal. The Requester is not prohibited from filing an appeal of this final response with the OOR, if necessary, pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

² In her Attestation, Ms. Parrish confirms that she was first made aware of the Request upon receipt of the appeal documents. *Parrish* Attestation, ¶ 5.

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