

## OOOR RESPONSE TO PETITION FOR RECONSIDERATION

DATE ISSUED AND MAILED: July 10, 2024

IN RE: *Adrian Jadic v. Wyomissing Borough*, OOR Dkt. AP 2024-1050

Upon review of the petition for reconsideration (“Petition”) filed by Adrian Jadic (“Requester”) with the Office of Open Records (“OOR”) to the above-referenced docket number, it is determined that the Petition is respectfully **DENIED** for the following reasons.

The Requester raises five “key points” that he argues supports a grant of reconsideration. The first three (“Insufficiency of Affidavits”; “OOR Case 2024-1141”; and “Misinterpretation of Investigative Records”) can be read together as a challenge to the sufficiency of the evidence presented by the Borough. The Requester argues that the Borough’s affidavits “should not be the sole basis for withholding records,” that the agency has previously “provid[ed] false information in a sworn affidavit,” and that the evidence does not support the application of the RTKL’s noncriminal investigation exemption. Under the Right-to-Know Law, affidavits submitted by an agency are competent evidence to meet the agency’s burden of proof. I cannot conclude that the Appeals Officer committed any error of law or abuse of discretion in relying upon the evidence submitted by the Borough. To the extent that the Requester believes that the Borough misrepresented the evidence, or that the evidence should be disregarded due to some alleged act of bad faith, the Requester may advance that claim in a statutory appeal before the court of common pleas. 65 P.S. § 67.1302(a).

The remaining “key points” consist of two public policy arguments (“Public Presentation of Hogg Report” and “Selective Enforcement and Discrimination”) and a request that the OOR provide guidance (“Sunshine Act and Copyright Law Conflict”). These arguments are not sufficient bases for the OOR to grant reconsideration. First, while records may be discussed during an open meeting, this does not make the contents of those records available to the public. An agency can selectively waive exemptions. 65 P.S. § 67.506(c). Second, the OOR is not the proper venue for any claims regarding selective enforcement and discrimination, and the OOR is unable to direct access to records merely because such a claim is made. Finally, the OOR is not the venue for any matters concerning the Sunshine Act, 65 Pa.C.S. § 715, and agencies’ obligations under the RTKL with respect to Copyright Law have been settled. *Ali v. Phila. City Planning Comm’n*, 125 A.3d 92 (Pa. Commw. Ct. 2015).

For the reasons set forth above, none of the arguments raised by the Requester set forth a basis for the OOR to grant the Petition. While a party may vehemently disagree with an OOR Final Determination, reconsideration is not appropriate in the absence of an error of law or abuse of discretion. The Requester’s statutory remedy is to appeal the OOR’s Final Determination to the Berks

County Court of Common Pleas if they wish to challenge the evidence submitted by the Borough or the OOR's conclusions derived from that evidence.

Issued by:

/s/ Kyle Applegate

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CHIEF COUNSEL

Sent via email to: Adrian Jadic; Melissa Miller; Matthew Fessler, Esq.