



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**ANDREW HOLMAN AND  
AMERICANS FOR FAIR TREATMENT,  
Requester**

**v.**

**NEW GALILEE BOROUGH,  
Respondent**

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: **Docket No.: AP 2020-1921**  
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On September 9, 2020, Andrew Holman and Americans For Fair Treatment (collectively, “Requester”) sent a request (“Request”) to New Galilee Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. Any and all collective bargaining agreements (CBAs) for each bargaining unit within [the Borough] executed at any point between January 1, 2010, and the date of this [R]equest;
2. Any and all CBAs for each bargaining unit within [the Borough] executed prior to January 1, 2010, but remaining in force (e.g. as the status quo expired contract) at any point between January 1, 2020, and the date of this [R]equest;
3. Any and all memoranda of understanding (MOUs), side agreements, or any other agreements between [the Borough] and any employee or labor organizations as those terms are defined in the Public Employee Relations Act, Public School Code, or Police and Firemen Collective Bargaining Act (ACT 111), concerning terms and conditions of employment.

The Borough did not respond to the Request; therefore, the Request was deemed denied. 65 P.S. § 67.901. On September 24, 2020, the Requester appealed to the Office of Open Records (“OOR”), stating grounds for disclosure.

Submissions were to be provided to the OOR on or before October 6, 2020. Having received no submission from the Borough, the OOR made an additional attempt to contact the Borough. The Requester agreed to provide the Borough additional time to provide a submission; however, to date, the OOR has not received any response from the Borough.

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, nor did it provide any factual or legal support for denying access to responsive records.<sup>1</sup> Based on the Borough's failure to comply with the statutory requirements of the RTKL or provide any evidentiary basis in support of an exemption under the RTKL, the Borough did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305.

For the foregoing reasons, the Requester's appeal is **granted**, and the Borough is required to provide the Requester with all responsive records, within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Beaver 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 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.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

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<sup>1</sup> *See generally* 65 P.S. § 67.1304(a) (noting that a court “may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived the requester of access to a public record ... or otherwise acted in bad faith...”); 65 P.S. § 67.1305(a) (“A court may impose a civil penalty of not more than \$ 1,500 if an agency denied access to a public record in bad faith”).

<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

**FINAL DETERMINATION ISSUED AND MAILED: November 20, 2020**

*/s/ Ryan W. Liggitt*

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RYAN W. LIGGITT, ESQ.  
APPEALS OFFICER

Sent to: Andrew Holman (via email only); and  
Borough Agency Open Records Officer (via email and US Mail)