



**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:
	:
<b>ANDREW HOLMAN AND AMERICANS</b>	:
<b>FOR FAIR TREATMENT,</b>	:
<b>Requester</b>	:
	:
<b>v.</b>	<b>: Docket No.: AP 2020-2487</b>
	:
<b>JACKSON TOWNSHIP,</b>	:
<b>Respondent</b>	:

On November 3, 2020, Andrew Holman and Americans for Fair Treatment (collectively, the “Requester”) submitted a request (“Request”) to Jackson Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking copies of collective bargaining agreements and other labor agreements.

The Township did not respond within five business days of receiving the Request, and the Request was, therefore, deemed denied on November 10, 2020. *See* 65 P.S. § 67.901. On November 23, 2020, the Requester filed an appeal with the Office of Open Records (“OOR”), stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in this appeal. *See*

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<sup>1</sup> The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

65 P.S. § 67.1101(c). The Township did not make a submission in this matter and has not submitted proof that it notified any third parties about this appeal.<sup>2</sup>

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 Township 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. Based on the Township'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 Township did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305.<sup>3</sup>

For the foregoing reasons, the Requester's appeal is **granted**, and the Township is required to provide 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 or petition for review to the Greene County Court of Common Pleas. *See* 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 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>4</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

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<sup>2</sup> The record in this matter closed on December 8, 2020. Having received no response, the OOR reached out to the parties and afforded the Township through December 16, 2020, to make a submission. To date, the Township has not submitted any evidence in this appeal.

<sup>3</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>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

**FINAL DETERMINATION ISSUED AND MAILED: January 22, 2021**

*/s/ Magdalene C. Zeppos-Brown*

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MAGDALENE C. ZEPPOS-BROWN, ESQ.  
APPEALS OFFICER

Sent to: Andrew Holman (via email only); and  
Jackson Township AORO (via email only)