



**FINAL DETERMINATION**

**IN THE MATTER OF**

**ANONYMOUS,  
Requester**

**v.**

**HOMESTEAD BOROUGH,  
Respondent**

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**Docket No: AP 2022-0355**

On December 29, 2021, an unnamed individual (“Requester”) submitted a request (“Request”) to Homestead Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[a]ny disciplinary records for Police Chief Desimone, his salary, and also his resume/application for his position.”

On February 2, 2022, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Borough denied the Request, arguing that it is not required to respond to anonymous requesters. 65 P.S. § 67.702. The Borough noted that if the Requester would provide a name and address, it would provide responsive records, but noted that certain information is exempt from disclosure pursuant to the RTKL, including disciplinary information. 65 P.S. § 67.708(b)(7).

On February 2, 2022, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On February 24, 2022, the Borough submitted a position statement reiterating its grounds for denial. The Borough claims that the Requester does not meet the definition of “requester,” 65 P.S. § 67.102, and further, it has the discretion to fulfill or not fulfill anonymous requests, 65 P.S. § 67.702; as such, the Borough argues that the OOR must uphold its denial. The Borough also notes that certain records would be exempt disciplinary records of an employee, 65 P.S. § 67.708(b)(7), and certain records do not exist in its possession, custody, or control. In support of its position, the Borough submitted the affidavit of Vanessa McCarthy-Johnson, the Borough Manager and Open Records Officer. The Requester did not submit anything on appeal.

The Borough argues that the Requester is anonymous, and, as such, is not a “requester” for purposes of the RTKL and is not entitled to request records under the RTKL. A “requester” is defined by the RTKL as “[a] person that is a legal resident of the United States....” *See* 65 P.S. § 102. Thus, under the RTKL, a requester must both be a “person” and “a legal resident of the United States.” While not defined by the RTKL, the Statutory Construction Act of 1972 (“SCA”) defines the term “person” to “[i]nclude[] a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S. § 1991.

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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).”).

Here, the Request was filled out by hand, but the Requester provided only “Anonymous” as a name and an email address, [ironcityaudits@gmail.com](mailto:ironcityaudits@gmail.com). Section 703 of the RTKL requires that a written request include the name and address to which the agency should address its response. 65 P.S. § 67.703.

Based on the face of the Request, the Requester cannot be identified as a “person that is a legal resident of the United States....” 65 P.S. § 67.102. As such, the OOR finds that the Requester is anonymous and does not meet the definition of a “requester” under the RTKL. *See Concerned Citizens of West Easton v. West Easton Borough*, OOR Dkt. AP 2013-0246, 2013 PA O.O.R.D. LEXIS 131 (finding that the requester was not a “person” entitled to seek records under the RTKL and that the requester was anonymous).

Pursuant to 65 P.S. § 67.702, an agency “may,” in its discretion, fulfill anonymous requests. However, because the decision of whether to fulfill an anonymous request remains entirely within an agency’s discretion, the OOR cannot supplant an agency’s statutorily-prescribed exercise of its decision-making under 65 P.S. § 67.702. Further, appeal rights only attach to written requests. 65 P.S. § 67.702. Because Section 703 of the RTKL is clear that a written request must contain a name and address<sup>2</sup>, the Request at issue does not meet the requirements of a written request under the RTKL. 65 P.S. § 67.703. Accordingly, the OOR is constrained to uphold the Borough’s discretion to deny the instant Request.<sup>3</sup> The Request may be re-filed, meeting the requirements of Section 703 of the RTKL.

For the foregoing reasons, the appeal is **dismissed**, and the Borough is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the

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<sup>2</sup> The RTKL does not require that this be a physical address.

<sup>3</sup> As a result, the OOR need not reach the Borough’s alternative grounds for denying access. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

mailing date of this Final Determination, any party may appeal to the Allegheny 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. 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>4</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: March 25, 2022**

*/s/ Erin Burlew*

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APPEALS OFFICER  
ERIN BURLEW, ESQ.

Sent via email to: [ironcityaudits@gmail.com](mailto:ironcityaudits@gmail.com); Sam Dalfonso, Esq.; Vanessa McCarthy-Johnson

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