

OOOR RESPONSE TO PETITION FOR RECONSIDERATION

DATE ISSUED AND MAILED: June 21, 2022

IN RE: *Robert Ricedorf v. West Donegal Township*, OOR Dkt. AP 2022-0711

Upon review of the petition for reconsideration (“Petition”) filed with the Office of Open Records (“OOR”) to the above-referenced docket number, it is determined that the petition is **DENIED** because:

In the Final Determination, the Appeals Officer held that the underlying request was insufficiently specific under 65 P.S. § 67.703 and noted that the Requester was not prohibited from filing a new request for records with additional details to guide the Township’s search. The Requester has filed the Petition, wherein the Requester does not challenge the merits of the Final Determination, but instead challenges the record-keeping practices of the West Donegal Township (“Township”) Fire and EMS Commission (“Commission”).¹

As the petition for reconsideration does not specify any alleged errors by the Appeals Officer, it must be denied for that reason. *See* 1 Pa. Code § 35.241(b) (stating that petitions for reconsideration “shall state concisely the alleged errors in the adjudication or other order for the agency”).

Nevertheless, the OOR is without jurisdiction over either the Township’s or the Commission’s record-keeping practices. Section 507 of the Right-to-Know Law (“RTKL”) explains that the RTKL does not supersede any agency record retention policy. 65 P.S. § 67.705. Most importantly, Section 705 of the RTKL mandates that the OOR may not direct an agency to create a record which does not exist. 65 P.S. § 67.705. Therefore, while the OOR may determine whether or not a record *does* exist, it may not determine that a record *should* exist and order an agency to create it.

Based on the foregoing, the petition is DENIED.

Issued by:

/s/ Kyle Applegate

CHIEF COUNSEL

¹ The Township has submitted a response to the Petition; however, that response was not considered by the undersigned because answers to a petition for reconsideration are not permitted at this stage. 1 Pa. Code § 35.241.

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