INTRODUCTION

Bill Wellock, a reporter for the Citizens’ Voice (collectively, the “Requester”), submitted a request (“Request”) to Wyoming Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 et seq., seeking a resignation letter. The Borough denied the Request, arguing, among other things, that the letter constitutes an exempt personnel record. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is denied, and the Borough is not required to take any further action.

FACTUAL BACKGROUND

On November 14, 2018, the Request was filed, seeking an electronic copy of “[f]ormer [B]orough manager Tamra Smith’s resignation letter.” On November 30, 2018, after extending its time to respond by thirty days, 65 P.S. § 67.902(b), the Borough denied the Request, arguing that the resignation letter contains information regarding the discipline, demotion or discharge of
an agency employee, 65 P.S. § 67.708(b)(7)(viii), and information regarding an employee’s medical history, 65 P.S. § 67.708(b)(5).

On December 13, 2018, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. 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 20, 2019, the Borough submitted a position statement, reiterating its grounds for denial, as well as an attestation, made under the penalty of perjury, from Roseanne Colarusso, the Borough’s Manager and Open Records Officer. The Borough also submitted a copy of minutes from the Borough’s November 13, 2018 council meeting.

On February 21, 2019, the Requester submitted a position statement, arguing that a redacted copy of the resignation can be provided, as “there is no blanket exemption of an employee’s resignation letter[.]” The Requester also asked the OOR to conduct an in camera review of the letter.

**LEGAL ANALYSIS**

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their

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1 Despite being filed with the OOR on December 13, 2018, due to a technical error, this appeal was not docketed until February 13, 2019. However, the Requester granted the OOR until March 15, 2019 to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. Id. The decision to hold a hearing is discretionary and non-appealable. Id.; Giurintano v. Pa. Dep’t of Gen. Servs., 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the Requester asked the OOR to conduct an in camera review of the requested record; however, because the OOR has the necessary information and evidence before it to properly adjudicate the matter, the request for in camera review is hereby denied.

The Borough is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. See 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. See 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the
Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder … to find that the existence of a contested fact is more probable than its nonexistence.” Pa. State Troopers Ass’n v. Scolforo, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd., 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

Section 708(b)(7) of the RTKL exempts from disclosure certain records relating to an agency employee, including “[i]nformation regarding discipline, demotion or discharge contained in a personnel file.” 65 P.S. § 67.708(b)(7)(viii). However, the exemption “shall not apply to the final action of an agency that results in demotion or discharge.” Id.

In support of its position, the Borough submitted the attestation of Ms. Colarusso, who attests, in relevant part, as follows:

The resignation letter of Tamra Smith dated November 7, 2018 addressed to the members of the Wyoming Borough Council (“Resignation Letter”) is contained in Ms. Tamra Smith’s personnel file.

At the time the Resignation Letter was received by … [the] Borough, Ms. Smith was employed by the Borough.

The Resignation Letter includes the representation that Ms. Smith is resigning her position as Borough Manager.

On November 13, 2018, in response to the Resignation Letter[,] the … Borough Council voted to accept the resignation of Ms. Smith which was accepted and served as the final action to terminate her employment.

Consequently, the Resignation Letter relates to Ms. Smith’s discharge.

While the RTKL does not define the term “discharge,” under its common meaning, “discharge” means “[a]ny method by which a legal duty is extinguished.” Black’s Law Dictionary 561 (10th ed. 2014); see also Jackson and the Standard-Speaker v. Butler Twp., OOR Dkt. AP 2018-1810, 2018 PA O.O.R.D. LEXIS 1456 (concluding that a resignation letter was exempt from disclosure under Section 708(b)(7)). Therefore, Ms. Smith’s employment obligations were discharged when the Borough Council voted to accept her resignation at its November 13, 2018 meeting, as evidenced by the minutes provided with the Borough’s submission. Because the Borough has demonstrated that the Resignation Letter is also contained in Ms. Smith’s personnel file, it has proven that the letter is exempt from disclosure under the Section 708(b)(7)(viii) of the RTKL. Cf. Easton Area Sch. Dist. v. Miller, 191 A.3d 75, 83-84 (Pa. Commw. Ct. 2018) (finding that a video was not exempt under Section 708(b)(7)(viii) because it was not contained in a personnel file).

The Requester argues that “there is no blanket exemption of an employee’s resignation letter, and … if the letter contains any exemption information, said information can be redacted [from the] letter, and the remainder of the letter disclosed.” However, as explained above, the Borough Council’s acceptance of Ms. Smith’s resignation constituted the discharge of her employment, and the Resignation Letter pertains to that discharge. Under Section 708(b)(7)(viii), the Borough’s “final action” is the acceptance of Ms. Smith’s resignation, and the record of that “final action” is the vote memorialized in the meeting minutes provided by the Borough on appeal. See Silver v. Borough of Wilkinsburg, 58 A.3d 125, 128 (Pa. Commw. Ct. 2012) (“Clearly, the agency’s ‘final action’ was the employment termination, and the employment termination letter was the ‘record’ of said employment termination”).
CONCLUSION

For the foregoing reasons, the appeal is denied, and the Borough is not required to take any further action. 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 Luzerne 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. This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: 12 March 2019

/s/ Joshua T. Young

JOSHUA T. YOUNG
APPEALS OFFICER

Sent to: Michael Cosgrove, Esq. (via email only);
        Lars Anderson, Esq. (via email only);
        Roseanne Colarusso, AORO (via email only)

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