



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**JOHN YAKIM,
Requester**

v.

**MUNICIPALITY OF MONROEVILLE,
Respondent**

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Docket No. AP 2016-1516

On August 1, 2016, John Yakim (“Requester”), submitted a request (“Request”) to the Municipality of Monroeville (“Municipality”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to the Municipality’s Home Rule Charter Committee. On August 8, 2016, the Municipality invoked a thirty-day extension to respond to the Request. *See* 65 P.S. § 67.902. On September 7, 2016, the Municipality partially denied the Request, claiming that it redacted personal identification information, 65 P.S. § 67.708(b)(6), from the requested records.

On September 7, 2016, the Requester filed an appeal with the Office of Open Records (“OOR”), claiming that the Municipality did not conduct a good faith search for the requested records, challenging the redactions, and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Municipality to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c). The Municipality did not make a submission in this matter.

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a). In the present case, the Municipality did not provide any factual or legal support for denying access to responsive records. Based on the Municipality’s failure to provide any evidentiary basis in support of an exemption under the RTKL or the non-existence of responsive records, the Municipality did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305; *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, Requester’s appeal is **granted**, and the Municipality is required to provide all responsive records within thirty (30) days. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal or petition for review 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 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.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 6, 2016

/s/ Benjamin A. Lorah

APPEALS OFFICER
BENJAMIN A. LORAH, ESQ.

Sent to: John Yakim (via e-mail only);
Joe Sedlak (via e-mail only)

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).