



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

<b>IN THE MATTER OF</b>	:
	:
<b>JENNIFER BORRASSO AND KDKA-TV,</b>	:
<b>Requester</b>	:
	:
<b>v.</b>	:
	:
	:
<b>LEET TOWNSHIP,</b>	:
<b>Respondent</b>	:

**Docket No: AP 2023-0235**

On January 26, 2023, Jennifer Borrasso of KDKA-TV (“Requester”) submitted a request (“Request”) to Leet Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a copy of an “[i]nternal report that commenced [i]n March 2022 regarding former Police Chief Michael Molinaro [(“Report”)]”. On January 31, 2023, the Township denied the Request, stating that the requested Report was exempt from access under various sections of the RTKL, including Sections 708(b)(7)(ii), (vi), and (viii), all of which pertain to certain records relating to an agency employee, Sections 708(b)(16)(i) and (ii), which pertain to records related to a criminal investigation, and Sections 708(b)(17)(i), (ii), (vi)(A),(vi)(C), and (vi)(D), which pertain to records related to a noncriminal investigation.

On February 1, 2023, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. 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. 65 P.S. § 67.1101(c).

On February 15, 2023, the OOR reached out to the Township, noting that evidentiary submissions were due from the parties by February 13, 2023 and that, to date, no submissions had been filed. The OOR also noted, however, that the Notice of Appeal issued on February 2, 2023 was likely sent to an incorrect email address for the Township's Open Records Officer. The OOR requested that the Township reply by the end of February 16, 2023 as to whether the contact information was correct and to advise whether the Township wished to file a submission in the matter.

On February 16, 2023, Stephen Chesney, Esq., legal counsel for the Township, contacted the OOR and requested an extension of the submission deadline so that the Township could "respond to the [R]equest and avoid the decision being appealed to the Court of Common Pleas." Attorney Chesney stated that he wished to "speak with the [R]equester to better understand the information she seeks in the [R]equest." Attorney Chesney also indicated his hope that the parties could potentially reach some sort of an agreement to resolve the matter well before the deadline for the issuance of a Final Determination on March 1, 2023.

Later that same day, the OOR proposed a new timeline to the parties whereupon, to the extent the parties were unable to resolve this matter by agreement, evidentiary submissions from the parties would be due by Monday, February 27, 2023, and the OOR's deadline to issue a Final Determination would be extended to March 14, 2023. Both parties agreed to the new timeline.

On March 1, 2023, the OOR reached out to the parties to inquire whether the parties had reached an agreement in this matter, noting that the OOR had not received any submissions to date. Attorney Chesney replied on behalf of the Township, stating that he would reach out to the Requester to inquire about a resolution; to the extent an agreement was reached, Attorney Chesney inquired whether the OOR would be willing to issue an order "to release the information." The

OOR advised Attorney Chesney that it was not inclined to issue an order directing the release of a record based upon the parties' agreement. However, to the extent that the Requester was willing to withdraw her appeal based upon an agreement, the OOR directed that it be notified of same. In addition, the OOR noted that the Township was permitted to release records at its discretion under the RTKL. The OOR also indicated that if the parties were unable to reach an agreement, then the appeal would proceed on the merits and submissions should be made no later than March 3, 2023. That timeline, the OOR noted, could be adjusted, to allow for additional time to file submissions to the extent that the Requester would be agreeable to extending the OOR's deadline for the issuance of the Final Determination. The OOR requested that the parties provide an update as soon as possible and advise as to whether additional time was needed to discuss settlement or to file submissions.

On March 8, 2023, the OOR sent an email to the parties in which it requested a status update on this matter. Attorney Chesney replied on that same date, indicating that the parties were unable to reach an agreement unless the OOR issued an order directing the Township to redact information from the Report. The OOR subsequently provided the Township with an additional opportunity to provide evidence in support of its withholding of the Report, or any redactions thereto. The OOR also advised the Township that if no evidence was submitted, then the OOR would likely grant access to the entire Report. On March 9, 2023, the Requester advised that she would accept redactions to the Report.

To date, no further correspondence has been received by the OOR; nor have any evidentiary submissions from the parties been received.

Local agencies have the burden of proving that records are exempt from access. 65 P.S. § 67.708(a)(1). While the Township in the instant matter raised several grounds to deny the Request

in its January 31, 2023 response letter, it has not asserted any of those same grounds on appeal or submitted any evidence to support its initial denial of the Request. As such, the Township did not meet its burden of proof under the RTKL. 65 P.S. § 67.305.

For the foregoing reasons, the appeal is **granted**, and the Township is required to provide a copy of the Report to the Requester within thirty (30) 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 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 court rules 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>1</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: March 14, 2023**

*/s/ Angela Edris*

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ANGELA EDRIS, ESQ.  
APPEALS OFFICER

Sent via email to: Jennifer Borrasso, KDKA-TV;  
Stephen Chesney, Esq.;;  
Betsy Rengers, AORO

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