

IN RE: : RIGHT-TO-KNOW REQUEST  
: DAUPHIN COUNTY, PENNSYLVANIA  
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APPEAL OF MATTHEW DEVINE : RTK-2021-DA-001 (STEELTON P.D.)

**FINAL DETERMINATION**

After review of the decision of the Open Records Officer for the Borough of Steelton, the appeal is denied. The requester, Mr. Matthew Devine, filed a request seeking twenty-eight (28) different items from the Borough of Steelton. After those requests were deemed denied, he appealed to the Office of Open Records (OOR). The OOR, after allowing the parties to supplement the record, issued a Final Determination on January 5, 2021, disposing of 27 of the original items, and referring one of the items (“Item 13”) to the Dauphin County District Attorney’s Office for resolution. Specifically, as it pertains to Item 13, the requester sought “[a]ny and all records of complaints filed formally or informally pertaining to the use of excessive force, unlawful force by Officer Arthur Etnoyer.” That item was appropriately referred to this Appeals Officer as it involves a question of whether the requested items are “criminal investigative records.” The Final Determination of the OOR provided helpful background information and is incorporated herein by reference, as well as attached collectively with the requester’s initial request and letter of appeal as Appendix “A.”

A record in the possession of a local agency shall be presumed to be a public record. 65 P.S. §67.305(a). However, the presumption shall not apply if the record is exempt from disclosure under section 708 of the Right to Know Law. 65 P.S. §67.305(a)(1). The burden of proving that a record of a local agency is exempt from public access is on the local agency receiving the request by a preponderance of the evidence. 65 P.S. §67.708(a)(1). The duty of this Appeals Officer is solely to determine whether the receiver of the request was obligated by law to disclose the requested item(s). Whether to disclose one or more items outside the boundaries of the Right to Know Law is within the discretion of the agency possessing the requested item(s).

On February 2, 2021, this Appeals Officer contacted the Requester via email and asked if he would be agreeable to an extension of the timeframe for issuing the Final Determination in this matter. I also invited him to supplement the record with any materials or information he would like pertaining to Item 13. I received no response as of the date of this writing.

On February 2, 2021, I contacted Anne Shambaugh, Open Records Officer for the Borough of Steelton, inviting her to supplement the record with any information or materials she would like. In response, Ms. Shambaugh submitted an affidavit representing that she reviewed all relevant files, including but not limited to the personnel file for Officer Etnoyer, and found that they did not contain any records that would be responsive to Item 13. A copy of that affidavit is attached as Appendix "B."

Under the Right to Know Law, an affidavit may suffice as evidentiary support. **Sherry v. Radnor Twp. Sch. Dist.**, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); **Moore v. OOR**, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). The averments in the affidavit should be accepted as true absent some competent evidence that the Borough acted in bad faith or that the records do, in fact, exist. **McGowan v. Pennsylvania DEP**, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014). In the instant matter, no evidence has been presented to contradict the averments in the affidavit. Accordingly, the Borough has met its burden of proving that the requested records do not exist within its possession, custody or control.

For the above reasons, the denial of the request for the disclosure of the documents listed at Item 13 is affirmed. The parties are hereby notified of their right to appeal this decision to the Dauphin County Court of Common Pleas within thirty days.

  
MICHAEL A. SPROW  
APPEALS OFFICER

FINAL DETERMINATION ISSUED AND MAILED: 2/5/21  
Date

DISTRIBUTION:

Matthew Devine, 98 Lake Drive, Middletown, PA 17057  
Anne Shambaugh, ORO, Steelton Borough (ashambaugh@steeltonpa.com)  
Kelly Callihan, Esq., ORO, Dauphin County District Attorney's Office  
Jill Wolfe, Esq., OOR, 333 Market St., 16<sup>th</sup> Fl., Harrisburg, PA 17101 (jiwolfe@pa.gov)

## **APPENDIX "A"**



RECEIVED

JAN 08 2021

DISTRICT ATTORNEY'S  
OFFICE  
DAUPHIN COUNTY

January 5, 2021

Sent Via First Class Mail

The Honorable Francis Chardo  
Dauphin County District Attorney  
Courthouse-2<sup>nd</sup> floor  
101 Market Street  
Harrisburg, PA 17101

Dear District Attorney Chardo:

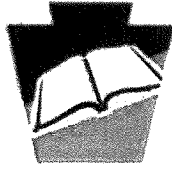
Pursuant to 65 P.S. §§ 67.503(b)-(d), the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-.3104, requires that you have an Appeals Officer designated for hearing appeals involving the RTKL. An Appeals Officer of the Office of Open Records ("OOR") has issued a final order transferring a RTKL appeal to your jurisdiction.

The OOR's final order and a record of the appeal proceedings before the OOR are included with this correspondence.

Please contact me with any questions.

*/s/ Charles Rees Brown*

Charles Rees Brown  
Chief Counsel



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

MATTHEW DEVINE,  
Requester

v.

STEELTON BOROUGH,  
Respondent

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: Docket No: AP 2020-2172

### INTRODUCTION

Matthew Devine (“Requester”) submitted a request (“Request”) to Steelton Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking various records of the Borough’s police department. The Borough did not respond, and the Request was deemed denied. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part, denied in part, dismissed as moot in part and transferred in part**, and the Borough is required to take further action as directed.

### FACTUAL BACKGROUND

On September 17, 2020, the Request was filed seeking:

[Item 1] Steelton Police Department hiring and background check policy and procedure.

[Item 2] Steelton Police Department Formal/Non formal Complaint Policy and procedure.

[Item 3] Steelton Police Department use of force continuum guidelines and policies.

[Item 4] Steelton Police Department Officer guidelines/Policy on dealing with domestic violence victims.

[Item 5] Steelton Police Department Body Cam and Vehicle dash cam use and video retention policy.

[Item 6] Steelton Police Department internal disciplinary procedures and policy guidelines.

[Item 7] Steelton Police Department application for Arthur Etnoyer.

[Item 8] Steelton Police Department application for Bret Palmer.

[Item 9] Verbal or written disciplinary records for Officer Athur Etnoyer that involve a final action that resulted in demotion or discharge.

[Item 10] Verbal or written disciplinary and or termination records for Officer Brett Palmer that involve a final action that resulted in demotion or discharge.

[Item 11] Citizen complaint records made against Officer Arthur Etnoyer either formally or informally that involve a final action that resulted in demotion or discharge.

[Item 12] Citizen complaint records made against Officer Brett Palmer either formally or informally that involve a final action that resulted in demotion or discharge.

[Item 13] Any and all records of complaints filed formally or informally pertaining to the use of excessive force, unlawful force by Officer Arthur Etnoyer in the interest of the public.

[Item 14] Steelton Police Officer schedules for all months of 2018 and 2019.

[Item 15] Steelton Police vehicle sign out/operator logs for all months of 2018 and 2019.

[Item 16] Steelton Police Department officer Over-time logs from 2018 and 2019.

[Item 17] Police request for services/call logs and or records for 911 calls labeled as domestic violence for all months of 2018 and 2019.

[Item 18] All Itemized Cell phone bill records from 2018 and 2019 from officer Arthur Etnoyer's assigned department phone.

[Item 19] All Itemized Cell phone bill records from 2018 and 2019 from Officer Brett Palmer's assigned department phone.

[Item 20] All itemized agency expense records assigned to and made by Officer Arthur Etnoyer from 2018 and 2019.

[Item 21] Any and all records pertaining to settlement agreements made to any party in a civil or criminal action against any current or former Steelton police officer or the Steelton police department.

[Item 22] Any and all records pertaining to settlement agreements made to any party by Steelton Borough.

[Item 23] Full name, title and salary information of Officer Arthur Etnoyer.

[Item 24] Full name, title, current status and salary information of Officer Brett Palmer.

[Item 25] Any and all records relating to the recordings and or transcripts of a 911 call made by the requestor Matthew Devine for Steelton police services ... and/or

[Item 26] [R]ecords/logs relating to the names of the officers who responded to said ... and/or

[Item 27] [L]ogs/records relating to the police response time to call.

[Item 28] Any and all records relating to, any current or former Steelton Police officer having their act 120 revoked at any time during their course of employment with the Steelton police or following a termination from the Steelton police and the reason and cause of termination also resulted in the revocation of the license.

On September 17, 2020, the Borough invoked a thirty day extension to respond to the Request pursuant to 65 P.S. § 67.902. The Borough did not respond within thirty days, and the Request was deemed denied on October 26, 2020.

On October 27, 2020, the Requester appealed to the OOR, 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 the appeal pursuant to 65 P.S. § 67.1101(c).

On November 9, 2020, the Borough emailed the Requester stating that it had certain responsive records available.

On November 16, 2020, the Borough submitted its position statement confirming that it provided access to certain records, but that certain records do not exist. The Borough further argues



that records are exempt as information relating to discipline, demotion or discharge, 65 P.S. § 67.708(b)(7), are 911 records, 65 P.S. § 67.708(b)(18), and relate to criminal investigations, 65 P.S. § 67.708(b)(16). Lastly, the Borough states that it redacted personal identifying information from the responsive records, 65 P.S. § 67.708(b)(6). The County also submitted an affidavit made under the penalty of perjury from Anne Shambaugh, Open Records Officer of the Borough.

On December 9, 2020, the Borough submitted additional information clarifying its position statement. And, on December 11, 2020, the Borough submitted a supplemental affidavit from Ms. Shambaugh, in support.

#### 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 actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

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, neither party requested a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The Borough is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the 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). 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)). The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

**1. The Borough has provided certain records to the Requester and provided sufficient evidence that other records do not exist**

The Borough provided access to certain records on appeal and proved certain records do not exist. Ms. Shambaugh attests that:

3. Upon receipt of the [R]equest, I conducted a thorough examination of files in the possession, custody and control of the [Borough] for records responsive to the [R]equest underlying this appeal, specifically I met with the Chief of Police to review the original [R]equest, what was sent and what additional documentation and records could be provided in response to your [R]equest.

4. Additionally, I have inquired with relevant [Borough] personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession.

5. After conducting a good faith search of the [Borough's] files and inquiring with relevant [Borough] personnel, I identified all records within the [Borough's] possession, custody or control that are responsive (see the attached list) to the [R]equest and advised [R]equester they are available for review and copying. I have determined the following records are exempt for the reasons stated (see attached list).

The Borough attached a list to the Ms. Shambaugh's affidavit listing Items 5 in part, 8, 9, 10, 11, 12, 14, 15, 19 and 20 as records that do not exist in the Borough's possession, custody and control. With respect to Item 5, the Borough clarified that the portion of Item 5 seeking vehicle dash cam policy does not exist, but that the remainder of Item 5 seeking body cam use and retention policy does exist and was provided to the Requester. In her supplemental affidavit, Ms. Shamabaugh attest that, with respect to Item 28, "[O]fficer Rupert was associated with an Act 120 issue, but the Borough can locate no responsive records of this issue." The Borough also submitted a list of records that were provided to the Requester, listing Items 1, 2, 3, 4, 5 in part, 6, 16, 18, 21, 22, 23 and 24 of the Request.

Under the RTKL, an affidavit may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open*

*Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the Borough acted in bad faith or that additional responsive records exist, “the averments in [the affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Based on the evidence provided, the Borough has met its burden of proving that certain records do not exist in the Borough’s possession, custody or control and that other records have been provided to the Requester.

**2. The Borough has not established that all records are exempt under Section 708(b)(18) of the RTKL**

The Borough argues that the records responsive to Items 17, 25-27 sought by the Requester are exempt under Section 708(b)(18)(i) of the RTKL, which exempts from public disclosure “[r]ecords or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.” 65 P.S. § 67.708(b)(18)(i). Section 708(b)(18)(ii) of the RTKL, however, permits disclosure of such records “if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.” 65 P.S. § 67.708(b)(18)(ii). Additionally, the Borough asserts 42 Pa.C.S. § 67A02(a)-(b) applies to the records. Section 67A02 provides:

(a) Exemption.— The provisions of this chapter, and not the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, shall apply to any audio recording or video recording made by a law enforcement agency.

(b) Limitation.— Nothing in this chapter nor the Right-to-Know Law shall establish a right to production of an audio recording or video recording made inside a facility owned or operated by a law enforcement agency or to any communications between or within law enforcement agencies concerning an audio or video recording.

Here, the records sought are “police request for services/call logs and or record for 911 calls” (Item 17) and “recordings and/or transcripts of a 911 call” (Item 25), “records/logs relating

to names of the officers who responded” (Item 26) and “logs/records relating to the police response time to call” (Item 27). Ms. Shambaugh attests that “I have determined the following records are exempt for the reasons stated (see attached list).” The attached list provides with respect to Item 17, “the Borough of Steelton has denied your request for the above records pursuant to § 708(b)(18)(i-ii) of the [RTKL] and 42 Pa.C.S. § 67A02(a)-(b).” The Borough also indicated that it intended to include Items 25-27 with this denial.<sup>1</sup>

Under the RTKL, an attestation is generally competent evidence to sustain an agency’s burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). However, “a generic determination or conclusory statements are not sufficient to justify the exemption of public records.” *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013).

In the instant matter, the Borough does not identify the responsive records to Items 17, 25-27 and how Section 708(b)(18) applies to each record. However, from the face of the Request, Item 25 seeks transcripts and recordings of 911 calls that are expressly exempt under Section 708(b)(18)(i) and 42 Pa.C.S. § 67A02(a). In turn, Item 27 seeks logs of police response times which are expressly public under Section 708(b)(18)(i) as time response logs. *See County of York v. Office of Open Records*, 13 A.3d 594, 602 (Pa. Commw. Ct. 2011) (The requirements for the contents of a time response log under Section 708(b)(18) of the RTKL must contain the time of the request for service, the address or cross-street information, and when the responder arrived at the scene.) With respect to the remaining Items, the Borough has not identified the responsive records and merely cited Section 708(b)(18) and 42 Pa.C.S. § 67A02(a)-(b). The Borough’s

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<sup>1</sup> The Borough sent correspondence on December 9, 2020, stating that it also intended to include Items 25-27 in this denial.

conclusory affidavit does not meet the burden of establishing that Section 708(b)(18) or that 42 Pa.C.S. § 67A02(a)-(b) applies to the remaining responsive records.

**3. The Borough may redact personal identifying information**

The Borough provided the employment application of Officer Etnoyer, but states that it redacted personal identifying information. Ms. Shambaugh attests that she has determined the following records are exempt as stated in the attached list. The list that Officer Etnoyer's employment application has been redacted pursuant to Section 708(b)(6)(i)(A). Although the Borough does not identify the exact information redacted from the application, Section 708(b)(6)(i)(A) allows an agency to withhold the following:

... a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number.

65 P.S. § 67.708(b)(6)(i)(A). Accordingly, the Borough may only redact that information that is identified in Section 708(b)(6) above.

**4. The OOR does not have jurisdiction over Item 13**

The Borough is a local law enforcement agency, and the OOR has no jurisdiction over appeals related to criminal investigative records held by local law enforcement agencies. *See* 65 P.S. § 503(d). Instead, such appeals are to be heard by an appeals officer designated by the local district attorney. *See id.* However, a local agency claiming that records are exempt under Section 708(b)(16) does not automatically divest the OOR of jurisdiction. Section 503(d) creates a two-step analysis for determining when cases should be heard by the OOR and when they should be heard by the appeals officer appointed by a District Attorney. First, jurisdiction is properly transferred from the OOR to the District Attorney's Office when an appeal on its face involves records that relate to a criminal investigation (*e.g.*, search warrants, witness statements, etc.). *See,*

*e.g., Steinheiser v. Falls Twp.*, OOR Dkt. AP 2015-0323, 2015 PA O.O.R.D. LEXIS 378 (holding that where the plain language of a request sought a police report and there was evidence of a criminal investigation, the criminal investigative exemption applied).

Second, when it is unclear whether the requested records relate to a criminal investigation, the local agency must provide some evidence showing how the records relate to a specific criminal investigation. While a low threshold for transferring a case is needed, an agency must provide more than a conclusory affidavit that merely repeats the language of Sections 503(d) and 708(b)(16). *See Bush v. Westtown-East Goshen Police Dep't*, OOR Dkt. AP 2016-1869; 2016 PA O.O.R.D. LEXIS 1708 (finding that an affidavit demonstrated how the requested records related to a specific criminal investigation).

Here, Ms. Shambaugh attests that she determined that the following records are exempt for reasons identified in the attached list. The attached list identified Item 13 as being exempt under Section 708(b)(16)(i)— complaints of potential criminal conduct. Further, the Requester does not contest the Borough's assertion that the complaints of "use of excessive force, unlawful force by Officer Arthur Etnoyer..." relate to alleged criminal conduct. *See Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal filing when construing exemptions). Accordingly, the OOR lacks jurisdiction and the appeal is hereby transferred to the appeals officer appointed by the Dauphin County District Attorney.

### CONCLUSION

For the foregoing reasons, Requester's appeal is **granted in part, denied in part, dismissed as moot in part and transferred in part**, and, except for the records responsive to the portion of the appeal being transferred to the Appeals Officer for the Dauphin County District

Attorney's Office, the Borough is required to provide records to the Requester as stated herein within thirty days. 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 Erie 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. 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>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: January 5, 2021**

*/s/ Jill S. Wolfe*

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APPEALS OFFICER  
JILL S. WOLFE, ESQ.

Sent via email to: Matthew Devine;  
David Wion, Esq.;  
Anne Shambaugh

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<sup>2</sup> See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

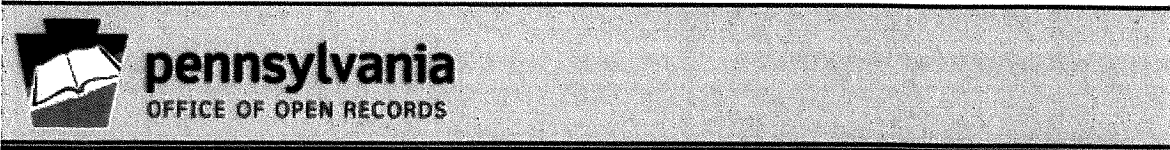




**From:** no-reply@openrecordspennsylvania.com  
**To:** [mdevine89@hotmail.com](mailto:mdevine89@hotmail.com)  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation  
**Date:** Tuesday, October 27, 2020 12:31:16 PM  
**Attachments:** [oor\\_logo\\_email.png](#)

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**ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to [CWOPA\\_SPAM@pa.gov](mailto:CWOPA_SPAM@pa.gov).



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

<b>Name:</b>	Matthew Devine
<b>Company:</b>	
<b>Address 1:</b>	98 Lake Drive
<b>Address 2:</b>	
<b>City:</b>	Middletown
<b>State:</b>	Pennsylvania
<b>Zip:</b>	17057
<b>Phone:</b>	717-756-4154
<b>Email:</b>	<a href="mailto:mdevine89@hotmail.com">mdevine89@hotmail.com</a>
<b>Agency (list):</b>	Steelton Borough
<b>Agency Address 1:</b>	123 North Front Street
<b>Agency Address 2:</b>	
<b>Agency City:</b>	Steelton
<b>Agency State:</b>	Pennsylvania
<b>Agency Zip:</b>	17113

<b>Agency Phone:</b>	717-939-9841
<b>Agency Email:</b>	ashambaugh@steeltonpa.com
<b>Records at Issue in this Appeal:</b>	Please see attached
<b>Request Submitted to Agency Via:</b>	mail
<b>Request Date:</b>	09/16/2020
<b>Response Date:</b>	09/17/2020
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	Anne Shambaugh
<b>Attached a copy of my request for records:</b>	Yes
<b>Attached a copy of all responses from the Agency regarding my request:</b>	Yes
<b>Attached any letters or notices extending the Agency's time to respond to my request:</b>	Yes
<b>Agree to permit the OOR additional time to issue a final determination:</b>	30 Days
<b>Interested in resolving this issue through OOR mediation:</b>	Yes
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>• Matthew Devine RTK Response.pdf</li> <li>• Mdevinertk.pdf</li> <li>• righttoknow.docx</li> </ul>

**I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.**

The **Pennsylvania Right to Know Law** defines records as, "information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency." Any United States citizen may request public records and no statement of purpose is required. There is no restriction on the use of records and five days is the limit for responses to requested documents.

**Under the Pennsylvania Right to Know Law, 65 §66.1 et seq.**, I am requesting an opportunity to inspect or obtain copies of the following public records:

Steelton Police Department hiring and background check policy and procedure.

Steelton Police Department Formal/Non formal Complaint Policy and procedure.

Steelton Police Department use of force continuum guidelines and policies.

Steelton Police Department Officer guidelines/Policy on dealing with domestic violence victims.

Steelton Police Department Body Cam and Vehicle dash cam use and video retention policy.

Steelton Police Department internal disciplinary procedures and policy guidelines.

Steelton Police Department application for Arthur Etnoyer

Steelton Police Department application for Bret Palmer

Verbal or written disciplinary records for Officer Athur Etnoyer ***that involve a final action that resulted in demotion or discharge***

Verbal or written disciplinary and or termination records for Officer Brett Palmer ***that involve a final action that resulted in demotion or discharge***

Citizen complaint records made against Officer Arthur Etnoyer either formally or informally ***that involve a final action that resulted in demotion or discharge***

Citizen complaint records made against Officer Brett Palmer either formally or informally ***that involve a final action that resulted in demotion or discharge***

Any and all records of complaints filed formally or informally pertaining to the use of excessive force , unlawful force by Officer Arthur Etnoyer ***in the interest of the public***

Steelton Police Officer schedules for all months of 2018 and 2019

Steelton Police vehicle sign out/operator logs for all months of 2018 and 2019

Steelton Police Department officer Over-time logs from 2018 and 2019

Police request for services/call logs and or records for 911 calls labeled as domestic violence for all months of 2018 and 2019

All Itemized Cell phone bill records from 2018 and 2019 from officer Arthur Etnoyer's assigned department phone.

All Itemized Cell phone bill records from 2018 and 2019 from Officer Brett Palmer's assigned department phone.

All itemized agency expense records assigned to and made by Officer Arthur Etnoyer from 2018 and 2019.

Any and all records pertaining to settlement agreements made to any party in a civil or criminal action against any current or former Steelton police officer or the Steelton police department.

Any and all records pertaining to settlement agreements made to any party by Steelton Borough.

Full name, title and salary information of Officer Arthur Etnoyer.

Full name, title, current status and salary information of Officer Brett Palmer.

Any and all records relating to the recordings and or transcripts of a 911 call made by the requestor Matthew Devine for Steelton police services ***In the interest of the public***

And/or

records/logs relating to the names of the officers who responded to said call ***In the interest of the public***

and/or

logs/records relating to the police response time to call.

Any and all records relating to, any current or former Steelton Police officer having their act 120 revoked at any time during their course of employment with the Steelton police or following a termination from the Steelton police and the reason and cause of termination also resulted in the revocation of the license.

If there are any fees for searching or copying these records, please inform me if the cost will exceed **\$100.00**. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the **Steelton Police Department** and **potential bad actors within**. This information is not being sought for commercial purposes but may be circulated online on various media and social platforms.

The Pennsylvania Right to Know Law requires a response time within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

Electronic Copies are preferred.

If you deny any or all of this request, please cite each specific exemption as required by law that you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you.

**Matthew Devine**

**717-756-4154**

All records requested in this right to know should have the following redacted instead of denying a record:

**Home address of Law Enforcement Officers**

**Social Security Numbers**

**Personal and Private Telephone information**

**Personal and Private E-mail addresses**

**Identifiable health information**

**Drivers License numbers**

**Employees numbers**

**Other confidential employee identification numbers**

**Personal bank information, credit rating information and credit card numbers/pins**

**Marital status, benefit information and or spouses name/dependent information**

**Information that contains the name of confidential informants**

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial.

The law states that the agency has the burden of proving why it is withholding or can't provide a record. Stating that records do not exist or making other factual assertions isn't enough for an agency to meet its burden of proof under the Right-to-Know Law.

If an agency denies a record in bad faith, a court may impose a civil penalty of up to \$1,500 per record. If the agency still refuses to disclose the record, a court may impose a penalty of up to \$500 per day until the record is disclosed.

If a court holds that records were denied based on an unreasonable interpretation of the law, or in bad faith, an agency can be required to pay attorney's fees.

A policy or regulation adopted under this act may not include any of the following: (1) A limitation on the number of records which may be requested or made available for inspection or duplication. (2) A requirement to disclose the purpose or motive in requesting access to records.

Nothing in act 22 of 2017 precludes a law enforcement agency from choosing to release an audio or video recording with or without written request. (concerning any audio/video request.)

Section 506 of the Right to know law makes it clear that “an agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying” if all of the following apply: • Disclosure of the record is not prohibited by federal or state law or regulation, judicial order or decree; • The record is not protected by a privilege; and • The agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

This right to know request has been copied to the following:

STEELTON POLICE CHIEF

STEELTON OPEN RECORDS OFFICER

STEELTON MAYOR

REQUESTOR

PRIVATE ATTORNEY

INTERESTED PARTY #1, #2 and #3





# Steelton Borough Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

Date of Request: 9-16-20 Submitted via:  Email  U.S. Mail  Fax  In Person

### PERSON MAKING REQUEST:

Name: Matthew M Devine Company (if applicable): \_\_\_\_\_

Mailing Address: 98 Lake Drive

City: Middletown State: PA Zip: 17057 Email: mdevine89@hotmail.com

Telephone: 717-756-4154 Fax: \_\_\_\_\_

How do you prefer to be contacted if the agency has questions?  Telephone  Email  U.S. Mail

**RECORDS REQUESTED:** Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.

**Please see additional attached pages.**

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**DO YOU WANT COPIES?**  Yes, electronic copies preferred if available  
 Yes, printed copies preferred (paper copies cost \$.25 per page)  
 No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies?  Yes (*may be subject to additional costs*)  No  
*RTKL requests may require payment or prepayment of fees.*

Please notify me if fees associated with this request will be more than  \$100 (or)  \$ \_\_\_\_\_.

### ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: \_\_\_\_\_ Date Received: \_\_\_\_\_ Response Due (5 bus. days): \_\_\_\_\_

30-Day Ext.?  Yes  No (If Yes, Final Due Date: \_\_\_\_\_) Actual Response Date: \_\_\_\_\_

Request was:  Granted  Partially Granted & Denied  Denied Cost to Requester: \$ \_\_\_\_\_

Appropriate third parties notified and given an opportunity to object to the release of requested records.



## BOROUGH OF STEELTON, PENNSYLVANIA

Office of Right-to-Know Officer  
Frederick Douglas Municipal Building  
123 North Front Street, Steelton, Pennsylvania 17113

(717) 939-9842; Fax (717) 986-9084; email: [www.steeltonpa.com](http://www.steeltonpa.com)

Honorable Maria Marcinko, Mayor  
Brian Proctor, Council President

Anne Shambaugh, Borough Manager  
Rosemarie Paul, Assistant Secretary/Treasurer

### RE: Right-to-Know Law Request

September 17, 2020

Mr. Matthew M. Devine  
98 Lake Drive  
Middletown, PA 17057

Dear Mr. Devine:

Thank you for writing to Steelton Borough ("Agency") with your request for information pursuant to the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. 67.101, *et. seq.* The request, which was received in our office September 17, 2020 included a copy of the attached information.

Pursuant to Section 902(a) of the Right to Know Law, the OOR requires an additional 30 days to respond because (check all that apply):

- The request for access requires redaction of a record in accordance with Section 706 of the RTKL;
- The request for access requires the retrieval of a record stored in a remote location;
- A timely response to the request for access cannot be accomplished due to bona fide and specific staffing limitations;
- A legal review is necessary to determine whether the record is a record subject to access under the RTKL;
- The requester has not complied with the Agency's policies regarding access to records;
- The requester refuses to pay applicable fees authorized by the RTKL;
- The extent or nature of the request precludes a response within the required time period.

The Agency expects to respond to your request on or before October 17, 2020. Once the records are assembled, please be prepared to pay \$.25 per page hard copy. There is no cost for the electronic transfer of records.

Sincerely,

AGENCY OPEN RECORDS OFFICER'S NAME: *Anne Shambaugh*

TITLE: *Right to Know Officer*

BUSINESS ADDRESS: *123 North Front Street, Steelton, PA 17113*

BUSINESS TELEPHONE: *(717)939-9842*

Signature

The **Pennsylvania Right to Know Law** defines records as, "information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency." Any United States citizen may request public records and no statement of purpose is required. There is no restriction on the use of records and five days is the limit for responses to requested documents.

Under the **Pennsylvania Right to Know Law, 65 §66.1 et seq.**, I am requesting an opportunity to inspect or obtain copies of the following public records:

Steelton Police Department hiring and background check policy and procedure.

Steelton Police Department Formal/Non formal Complaint Policy and procedure.

Steelton Police Department use of force continuum guidelines and policies.

Steelton Police Department Officer guidelines/Policy on dealing with domestic violence victims.

Steelton Police Department Body Cam and Vehicle dash cam use and video retention policy.

Steelton Police Department internal disciplinary procedures and policy guidelines.

Steelton Police Department application for Arthur Etnoyer

Steelton Police Department application for Bret Palmer

Verbal or written disciplinary records for Officer Athur Etnoyer *that involve a final action that resulted in demotion or discharge*

Verbal or written disciplinary and or termination records for Officer Brett Palmer *that involve a final action that resulted in demotion or discharge*

Citizen complaint records made against Officer Arthur Etnoyer either formally or informally *that involve a final action that resulted in demotion or discharge*

Citizen complaint records made against Officer Brett Palmer either formally or informally *that involve a final action that resulted in demotion or discharge*

Any and all records of complaints filed formally or informally pertaining to the use of excessive force , unlawful force by Officer Arthur Etnoyer *in the interest of the public*

Steelton Police Officer schedules for all months of 2018 and 2019

Steelton Police vehicle sign out/operator logs for all months of 2018 and 2019

Steelton Police Department officer Over-time logs from 2018 and 2019

Police request for services/call logs and or records for 911 calls labeled as domestic violence for all months of 2018 and 2019

All Itemized Cell phone bill records from 2018 and 2019 from officer Arthur Etnoyer's assigned department phone.

All Itemized Cell phone bill records from 2018 and 2019 from Officer Brett Palmer's assigned department phone.

All itemized agency expense records assigned to and made by Officer Arthur Etnoyer from 2018 and 2019.

Any and all records pertaining to settlement agreements made to any party in a civil or criminal action against any current or former Steelton police officer or the Steelton police department.

Any and all records pertaining to settlement agreements made to any party by Steelton Borough.

Full name, title and salary information of Officer Arthur Etnoyer.

Full name, title, current status and salary information of Officer Brett Palmer.

Any and all records relating to the recordings and or transcripts of a 911 call made by the requestor Matthew Devine for Steelton police services *In the interest of the public*

And/or

records/logs relating to the names of the officers who responded to said call *In the interest of the public*

and/or

logs/records relating to the police response time to call.

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STEELTON POLICE CHIEF

STEELTON OPEN RECORDS OFFICER

STEELTON MAYOR

REQUESTOR

PRIVATE ATTORNEY

INTERESTED PARTY #1, #2 and #3

## **APPENDIX "B"**





## Borough of Steelton

FRED DOUGLAS MUNICIPAL BUILDING

123 N Front Street

Steelton, PA 17113

717-939-9842

[www.steeltonpa.com](http://www.steeltonpa.com)

Honorable Maria R. Marcinko, Mayor  
Honorable Brian D. Proctor, Council President

Anne Shambaugh, Borough Manager  
Rosemarie Paul, Asst. Secretary-Treasurer

### ATTESTATION REGARDING AGENCY POSSESSION OF RECORDS

Name of Requestor: MATTHEW DEVINE

Records Requested: Any and all records of complaints filed formally or informally pertaining to the use of excessive force, unlawful force by Officer Arthur Etnoyer in the interest of the public

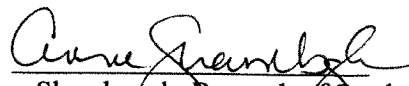
Appeal Caption: Final Determination – Docket #AP 2020-2172

I, Anne Shambaugh, hereby declare, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

1. I serve as the Open Records Officer for the Borough of Steelton (“Agency”) and am responsible for responding to Right-to-Know requests filed with the Agency.
2. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.
3. Upon receipt of the request, I conducted a thorough examination of files in the possession, custody and control of the Agency for records responsive to the request underlying this appeal, specifically I met with the Chief of Police to review the original request, what was sent and what additional documentation and records could be provided in response to your request.
4. Additionally, I have searched through the Agency’s personnel files to determine if the requested records exist.
5. Based upon the above-described search of the Agency’s files and inquiries with relevant Agency personnel, I have made the determination that the records requested are not within the Agency’s possession, custody or control.

Date: February 5, 2021

Signature:

  
Anne Shambaugh, Borough of Steelton  
Open Records Officer

**Many Countries One People; Our Renaissance Starts Now**