



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**BENNETT ROMANO,
Complainant**

v.

**CHALFONT BOROUGH,
Respondent**

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Docket No. AP 2010-0007

INTRODUCTION

Bennett Romano (the “Requester”) submitted a request to Chalfont Borough (the “Borough”) seeking a police commission financial analysis pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The Borough denied access under Section 708(b)(10). The Requester timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the Requester’s appeal is **denied**, and the Borough is not required to take further action.

FACTUAL BACKGROUND

On December 23, 2009, the Requester submitted a right-to-know request seeking “all minutes of the Police Commission, all reports, budget etc, charter draft” (the “Request”).

On December 29th, Melissa Shafer, the Borough Open Records Officer (ORO), provided the minutes and denied the request for the charter draft under Section 708(b)(9) and the budget under Section 708(b)(10) “as no cost comparisons were ever made public” (the “Denial”).¹

¹ The Denial improperly directed the Requester to appeal to the Borough *or* the OOR, rather than solely to the OOR.

The Requester timely appealed on January 5, 2010. He explains that the requested records were presented at a public meeting in November 2008. He attached the November 10, 2008 meeting minutes (“Minutes”) to show how the material was presented. The Minutes state that

[the Analysis] allows for a 50/50 split of income and expense for both boroughs. The department will be financed by grants, entitlements, fines, county overtime revenue, interest and accident report income, the balance from the two respective boroughs’ general funds. In addition, start up costs of approximately \$100,000 and mortgage expense for a new facility was included in the [Analysis] with an estimated expenditure of \$140,000 less per year as a combined force versus continuing as two independent police departments.

Because he obtained the charter from a neighboring municipality, he only appeals the denial of the police commission budget (“Appeal”). He also submitted minutes of the Police Regionalization Committee that were provided in response to his Request.

The Borough clarified on appeal that there is not a “budget” *per se*, rather the record is a “five year projected financial analysis” as referenced in the Minutes (“Analysis”). The ORO explains she created the record to show the projected differences between regionalizing the Borough police department and not regionalizing. The numbers used are estimates from other regional police departments to show initial costs and potential cost savings. The Borough argues that the fact the Analysis was referenced at a public meeting does not mean that the record was “presented” at a public meeting. She notes there were no discussions on the Analysis as per the Minutes and cites *Ford v. Northampton Area School District*, OOR Dkt. AP 2009-0123 in support.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The Borough is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. §67.302. Records of a local agency are presumed to be “public” unless: (1) the record is exempt under Section 708(b); (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other Federal or State law or regulation or

judicial order or decree. 65 P.S. §67.305. The Borough withholds the Analysis as a record reflecting predecisional deliberations, which is protected by Section 708(b)(10)(A)(i).

Pursuant to Section 708(b)(10)(i)(A), a record *reflecting* the “internal, predecisional deliberations of an agency... or predecisional deliberations between agency members, employees or officials...including predecisional deliberations relating to a ...contemplated or proposed policy or course of action” are protected from disclosure. 65 P.S. §67.708(b)(10)(i)(A). The Borough bears the burden of proving each exceptions’ application by a preponderance of the evidence, 65 P.S. §67.708(a), meaning “greater weight of the evidence.” *Com. v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001). There is no dispute that the record is internal, pre-dates a decision, and reflects deliberations about whether the Borough should regionalize its police department.

The minutes of the Police Regionalization Committee (“Committee”) show that the record at issue is to compare costs of regionalization. Minutes from the summer of 2008 show that the “draft budget” should include five year projections and comparisons. In all the records submitted, the Analysis is referred to as a “draft budget” or “budget projections.” Section 708(b)(10)(A)(i) expressly protects recommendations regarding a budget as is the case here. According to the Minutes of the November 10, 2008 meeting, what the Committee presented was “regionalization,” not the Analysis itself. The Analysis, as described, was one of the elements the Committee considered when it recommended regionalization to the Borough Council. The Analysis represented the research the Borough Manager/Treasurer/ORO performed in comparing the cost of regionalization from other departments that regionalized and projected savings to the Borough based upon the research and comparisons gathered.

The Requester argued that the Analysis was presented for action at the November 10, 2008 public meeting, and thus became ‘public’ under Section 708(b)(10)(ii). However, the

Minutes he relies upon to show that the Analysis was presented to a quorum for deliberation do not reflect that the Analysis was “presented” at the public meeting for action, only that the recommendations within it were discussed. The Charter creating the regionalized police force was presented for action by the Borough, but the Analysis itself was not presented for action. Rather, the Analysis was used internally as a basis for recommending regionalization and approving the Charter. The Minutes do not show discussion or deliberation of the Analysis as is required to trigger subsection (ii). As a record reflecting the deliberations and recommendations made internally, the Analysis was properly protected under this exception.

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied**.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal to the Bucks 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. This Final Determination shall be posted at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: February 3, 2010



LUCINDA GLINN, ESQ.
APPEALS OFFICER

Sent to: Ben Romano; Melissa Shafer, ORO for Borough