



Susan Adam, ORO for the Township, denied access to all law enforcement policy statements based upon Section 708(b)(1)(ii), personal security and (b)(2), public safety and denied the video under Section 708(b)(16) (“Denial”). The Denial did not inform the Requester regarding his appeal rights.

The Requester timely appealed the denial of the Policy Statements to the OOR arguing that the records describe a procedure and so do not jeopardize personal or public safety (“Appeal”).

The OOR advised the parties that to the extent the Appeal related to the video, it was dismissed because it was denied under Section 708(b)(16), and beyond the OOR’s jurisdiction under Section 503(d)(2). Thus, only the Policy Statements are addressed in this determination.

The Township supplemented the record with a letter from its counsel stating that the Policy Statements, if disclosed, could expose sensitive information and would allow criminals to predict an officer’s next move. Counsel notes that a policy regarding the video camera is still being developed and so is not available. No affidavits were submitted as substantiation.

### **LEGAL ANALYSIS**

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The Township is a local agency subject to the RTKL required to disclose public records. 65 P.S. §67.302. A record in possession of a local agency is presumed to be public unless it is exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305. Here, the Township asserted the personal security, Section 708(b)(1)(ii), and public safety, Section 708(b)(2), exceptions to all of the Policy Statements. Under Section 708(a), the Township bears the burden of proving its exceptions by a preponderance of the evidence, meaning the “greater weight” of the evidence. *See Com. v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001). The Township did not substantiate any facts to prove either exception.

To establish that personal security or public safety is implicated by disclosure of Policy Statements the Township must submit facts to demonstrate the reasonable likelihood of jeopardy to public safety or risk to physical harm or personal security. The Township failed to submit any facts. Because the Township failed to meet its burden of proof, the OOR is compelled to direct disclosure of the Policy Statements.

To the extent a policy statement has not yet been drafted, the OOR notes that an agency cannot be compelled to provide a record that does not exist. However, in this case, the Township did not substantiate the non-existence of the video camera policy.

The OOR also notes that the Township did not comply with Section 903 of the RTKL because it did not provide the procedure to appeal the denial of access, which should have included instructions to appeal to the Appeals Officer for the Columbia County District Attorney's Office for the video requested, and the process/address for the OOR for the Policy Statements.

### CONCLUSION

For the foregoing reasons, the Requester's Appeal is **granted** and the Township is directed to release the existing responsive Policy Statements within thirty (30) days.

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 Columbia 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. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: June 7, 2010**

  
**LUCINDA GLINN, ESQ.**  
**APPEALS OFFICER**

Sent to: David Lynch; Todd Kerstetter, Esq. for Township