



pennsylvania
OFFICE OF OPEN RECORDS

AMENDED FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
GEORGE CASS,	:	
Complainant	:	
	:	Docket No.: AP 2010-1076
v.	:	
	:	
BUTLER COUNTY INDUSTRIAL	:	
DEVELOPMENT AUTHORITY,	:	
Respondent	:	

INTRODUCTION

George Cass (the “Requester”) submitted a request (the “Request”) to the Butler County Industrial Development Authority (“Authority”) seeking records related to Vogel Disposal Services, Inc. (“Vogel”) with information related to its employees pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”). The Authority 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** and the Authority is required to take further action as set forth herein.

FACTUAL BACKGROUND

On October 13, 2010, the Request was filed, seeking

The following records relating to the ... Authority First Mortgage Revenue Bonds Series of 1994 (Vogel ... Municipal Solids Waste Landfill Project):

1. All records relating to fees or expenses charges by the ... Authority to Vogel ... which were not paid in full prior to February 1, 2003.
2. Any “Letter of Instructions as to Requirements of Section 148 of the Internal Revenue Code of 1986, as amended” the ... Authority may have issued to Vogel...

The Authority did not respond to the Request, and the Request was therefore deemed denied. *See* 65 P.S. § 67.901.

On November 9, 2010, the Requester appealed to the OOR. The OOR invited both parties to supplement the record. On November 15, 2010, attorney Douglas Linn provided a letter stating that he is the Solicitor for the Authority, but noted that he possesses a conflict of interest with respect to processing the Request. As a result, Mr. Linn stated that the Authority authorized attorney Michael Pawk to service as special counsel with respect to the Request. The OOR sent correspondence to Mr. Pawk, inviting him to supplement the record on behalf of the Authority. By e-mail dated November 19, 2010, the Requester agreed to allow the OOR an extension of time for the issuance of a Final Determination pursuant to 65 P.S. § 67.1101(b). No further information was provided.

LEGAL ANALYSIS

The RTKL 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. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). 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.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a

hearing is discretionary and non-appealable. *Id.* 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.* Here, neither party requested a hearing and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Authority is a local agency required to disclose public records. *See* 65 P.S. § 67.302. Records in possession, custody, or control 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. 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 clearly 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 “evidence which as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW DICTIONARY 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

In the present case, the Authority did not comply with the RTKL by timely responding to the Request, nor did it provide any factual or legal support for denying access to responsive records. Based on the Authority’s failure to comply with the statutory requirements of the RTKL or provide any evidentiary basis in support of an

exemption under the RTKL, the OOR finds that the Authority did not meet its burden under the RTKL. *See* 65 P.S. § 67.305.

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted** and the Authority 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 to the Butler 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. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: January 3, 2011



APPEALS OFFICER
J. CHADWICK SCHNEE, ESQ.

Sent to: George Cass, Esq.; Douglas Linn, Esq.; Michael Pawk, Esq.



February 8, 2011

George Cass, Esq.
Buchanan Ingersoll & Rooney
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410

Michael Pawk, Esq.
On behalf of the Butler County Industrial
Development Authority
101 E. Diamond Street
Butler, PA 16001

RE: *Cass v. Butler County Industrial Development Authority*,
OOR Dkt. AP 2010-1076

Dear Parties:

Enclosed please find an Amended Final Determination in the above matter correcting the year in which the Final Determination was issued. The only change to the Final Determination is replacing "2010" with "2011" on the last page.

This change does not affect the time frame for appeal of the Final Determination.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Schnee", is written over a horizontal line.

Appeals Officer
J. Chadwick Schnee, Esq.
jschnee@state.pa.us

cc: Douglas Linn, Esq.

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