



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION ON RECONSIDERATION

IN THE MATTER OF	:	
	:	
TRISHA FRASETTO AND	:	
SIGNATURE INFORMATION	:	
SOLUTIONS, LLC,	:	
Complainant	:	
	:	
v.	:	Docket No.: AP 2011-1258
	:	
RADNOR TOWNSHIP,	:	
Respondent	:	

INTRODUCTION

Trisha Frassetto, on behalf of Signature Information Solutions, LLC, (the “Requester”) submitted a request (the “Request”) to Radnor Township (“Township”) seeking monthly tax collector reports pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”). The Township denied the Request, citing a Commonwealth Court case. The Requester appealed to the Office of Open Records (“OOR”). The OOR issued a Final Determination granting the appeal on October 14, 2011.

On October 26, 2011, the Township’s Treasurer and Tax Collector (“Treasurer”)¹ filed a Petition for Reconsideration, asserting that his submission was timely filed. The OOR granted the Petition on October 27, 2011. For the reasons set forth in this Final

¹ The Treasurer participated in the underlying appeal as a party with a direct interest pursuant to 65 P.S. § 67.1101(c).

Determination on Reconsideration, the appeal is **granted** and the Township is required to take further action as directed.

FACTUAL BACKGROUND

On August 16, 2011, the Request was filed, seeking

[T]he detailed real estate tax collector's monthly report to taxing district submitted to the Township pursuant to 72 P.S. §5511.25 for the months of April and May of the current year. This is the Department of Community and Economic Development (DCED) report, as stated in the Tax Collector's Manual:

“The monthly statement must list all taxes collected for the taxing district for the reporting period. This report must list the names of taxpayers and amount collected from each, including discounts and penalties and must carry a total of all taxes collected with discounts and penalties for the reporting period.”

On August 19, 2011, the Township invoked a thirty-day extension to respond pursuant to 65 P.S. § 67.902(b). On September 13, 2011, the Township denied the Request, stating

There is a Pennsylvania Commonwealth Court case from January 2011 that specifically found that if the tax reports being sought are not in the possession of the Township, they are not public records subject to the [RTKL]. The citation for that case is Honaman v. Township of Lower Merion, 13 A.3d 1014 (Pa.Comm. 2011).

The Township's elected Treasurer has objected to the ... [R]equest and believes these records are not subject to the [RTKL].

On September 22, 2011, the Requester appealed to the OOR, arguing that *Honaman* is distinguishable and stating grounds for disclosure. The OOR invited both parties to supplement the record. On September 29, 2011, the Treasurer sought to participate in the appeal as a party with a direct interest pursuant to 65 P.S. § 67.1101(c) and additional time to submit materials. On October 3, 2011, the OOR granted the Treasurer's request and allowed the parties additional time to make additional submissions. On October 10, 2011, the Township submitted a position statement in

support of its denial. In the underlying Final Determination, the OOR concluded that the Treasurer submitted additional materials after the record closed, and, accordingly, did not consider these materials.

On October 14, 2011, the OOR issued a Final Determination granting the appeal, and finding that the Township “fail[ed] to offer any evidentiary support that the requested records do not exist within the Township’s possession, despite the Requester’s assertion that the Township is required to retain such reports pursuant to 72 P.S. § 5511.25.” On October 26, 2011, the Treasurer filed a Petition for Reconsideration, alleging that the OOR erred by not considering his October 10, 2011 submission because that date fell on a legal holiday. On October 27, 2011, the OOR granted the Petition for Reconsideration, and invited the Requester to file a response within fifteen days. The Requester did not make any substantive submissions.

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. Ct. 2010), *appeal granted* 15 A.3d 427 (Pa. 2011). 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 decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Dep’t of Gen. Servs.*, 20 A.3d 613,

617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Township is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in 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.

In the present case, the Treasurer submitted a position statement, affirmed by a notarized affidavit, on October 10, 2011, along with other attachments. Pursuant to 44 P.S. § 11, Columbus Day was observed on October 10, 2011. Consequently, because the October 10, 2011 was a legal holiday, the OOR finds that the Treasurer's submission received on October 11, 2011 was timely.

The sole issue on appeal is whether the *Honaman* case serves to exempt the requested records from public access. In *Honaman*, the Commonwealth Court affirmed a lower court decision holding that certain tax records in the possession of a tax collector and outside the physical possession of an agency were not subject to public access under the RTKL. *See* 13 A.3d at 1018-25. In its denial, the Township correctly interprets this decision as holding that "if the tax reports being sought are not in the possession of the Township, they are not public records."

In his notarized position statement, the Treasurer affirms, among other things, that

I have been the Treasurer and therefore the Tax Collector of Radnor Township since August of 2004 ... To my knowledge, the reports of my

predecessor had never included the taxpayer details the requestor is seeking, and I have never included them in my monthly report to the Board.

....

[I]t is my position as tax collector that the real estate tax records of Radnor Township are in my possession, under my custody and in my control. I create or supervise the creation of the records by my designee, I use the records for official duties, I manage, add to and correct the records, I take official action based on the records, I issue certifications of tax payment based on the records, I am responsible and bonded for errors that could occur, and the records are essential to my performance of duty. The records are separately maintained and segregated in a computer module purchased for the tax collection process.

....

I have never included taxpayer information in monthly reports ...

Under the RTKL, an affidavit may serve as sufficient evidence in support of an assertion.

See 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). Based on the information

provided, the OOR finds that the Treasurer established that the Township receives

monthly reports omitting the level of detail sought in the Request. In other words, the

Treasurer established that “real estate tax records” other than the monthly reports are not

in the Township’s possession.

The LTCL provides that a tax collector must provide “a reconciled monthly tax collector’s report for each type of tax collected for each taxing district” and that a “taxing district may require the elected tax collector to provide it with additional information supplementing that set forth on the form approved by the Department of Community and Economic Development.” *See* 72 P.S. § 5511.25. The Treasurer affirms that he provides monthly statements, but that these monthly statements do not include any taxpayer information. Because the Request specifically sought “the tax collector’s monthly report

to taxing district submitted to the Township pursuant to 72 P.S. § 5511.25,”² the OOR finds that these monthly reports are responsive to the Request.

As the Township has not alleged that these reports do not constitute public records in its possession, the OOR holds that the responsive records are subject to public access. *See* 65 P.S. § 67.305. Although the responsive records may not contain all of the information sought, the RTKL provides that an agency is not required to create or compile a record that does not currently exist. *See* 65 P.S. § 67.705. Whether the monthly reports filed pursuant to 72 P.S. § 5511.25 should contain additional information lies outside of the OOR’s jurisdiction. *Signature Information Solutions LLC v. Northampton Township*, OOR Dkt. AP 2010-0945, 2010 PA O.O.R.D. LEXIS 902; *see also Troupe v. Borough of Punxsutawney*, OOR Dkt. AP 2010-0743, 2010 PA O.O.R.D. LEXIS 731.

CONCLUSION

For the foregoing reasons, Requester’s appeal is **granted** and the Township is required to provide all responsive records existing within its physical possession 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 Delaware 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

² The Treasurer argues that, as the Township meets the definition of a First Class Township, it is not required to provide monthly statements with the level of detail envisioned by the Request. This argument, however, does not allege that the Township does not have possession of either of the monthly reports sought, regardless of the information contained therein.

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

FINAL DETERMINATION ISSUED AND MAILED: November 22, 2011



APPEALS OFFICER
J. CHADWICK SCHNEE, ESQ.

Sent to: Richard Honaman; John Rice, Esq; John Osborne