



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
CHARLES ZURAT, Complainant	:	
	:	
v.	:	Docket No. AP 2009-0039
	:	
NORWEGIAN TOWNSHIP,	:	
Respondent	:	

INTRODUCTION

Pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”), Mr. Charles Zurat submitted a right-to-know request to Norwegian Township (“Township”) seeking Payroll Summaries for 2008 for three township Supervisors. The Township supplied documents to Mr. Zurat in response, which did not appear complete based upon prior requests. Mr. Zurat filed a timely appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, Mr. Zurat’s appeal is **granted**.

FACTUAL BACKGROUND

On January 12, 2009, Mr. Zurat submitted his right-to-know request to the Township seeking the Payroll Summary, January through December 2008, including all Employer Taxes and Contributions, for Supervisors: Stan Petchulis, Robert Kirwan, and Leo Grace, (“Request”). On or about January 20, 2009, the Township provided the 2008 Payroll Summary for the three named Supervisors which included only the Gross Pay without any notation upon the documents that they had been redacted. In particular, the

document, entitled "Payroll Summary" states the Supervisor name at the top and below states "Employee Wages, Taxes and Adjustments" and has columns for: Hours, Rate, and Jan-Dec. 2008. The Township did not provide a written response to Mr. Zurat to explain the reason the "Employer Taxes and Contributions" that he had expressly asked for in his Request were not provided to him. However, Mr. Zurat represents that Mr. Stanley Petchulis, the Chairman and Open Records Officer, verbally asserted Section 708(b)(6)(i), 65 P.S. §67.708(b)(6)(i), as its grounds for withholding that information.

On February 2, 2009, the OOR received an appeal from Mr. Zurat alleging that the Request had not been fulfilled completely and attached to his appeal the 2007 Payroll Summaries he had requested and been provided under the old Right-to-Know Law, 65 P.S. §§66.1 *et seq.* ("old Law") which included the "Employer Taxes and Contributions." He asserted the records are public because they represent "taxpayer dollars!" ("Appeal").

The OOR asked the Township to confirm its assertion of that exception in writing and set forth legal and factual grounds in support. In response, the Township submitted a letter dated February 19, 2009, ("Letter"), stating that "our legal basis for not giving out the tax information is that they expose the amount of dependents and/or partners that a person claims under the Social Security withholding tax. We consider this to be personal financial information." The Township did not supply any legal citation for its conclusion. The Township also stated in its Letter that for "someone [] trying to find out information on who a person claims as a dependent, that is a violation of that person's personal freedom of choice and that information can do harm to someone's reputation." No documentary evidence was submitted by the Township to support its statement that, due to employee complaints this year, "the Township changed the Payroll Summary Report."

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The Township qualifies as a local agency subject to the RTKL and its obligations of mandatory disclosure. *See* 65 P.S. §67.102 and §67.302. The records in possession of a local agency are presumed to be a public record unless: (1) the record is exempt under Section 708; (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. *See* 65 P.S. §67.305. Accordingly, the records sought in the Request are presumed by law to be public unless the Township asserts one of these three grounds for withholding the record. In this case, at issue are the “Employer Taxes and Contributions” which were not included with the 2008 Payroll Summaries provided to Mr. Zurat without any indication of redaction, and without a written denial. Verbally, the Township asserted a single exception as its grounds for not releasing the records: Section 708(b)(6)(i).

The Township disregarded RTKL requirements by failing to do the following: provide public records (65 P.S. §67.302(a)); submit a proper written denial, (65 P.S. §67.903); support the reasons for its denial with legal citation; (65 P.S. §67.903(2)), and satisfy its burden of proving that the requested information, *i.e.*, “Employer Taxes and Contributions,” are not public (65 P.S. §67.305, §67.708(a)) under one of the exemptions. Each of these instances of non-compliance shall be addressed in turn.

According to Section 903, in response to Mr. Zurat’s written request for records, submitted on the Norwegian Township Record Request Form, the Township was required to issue its denial in writing. 65 P.S. §67.903. The Township failed to do so, and no written denial was presented to Mr. Zurat prior to his appeal. That denial was then

required to include “the specific reasons for the denial, including a citation of supporting legal authority.” 65 P.S. §67.903(2). In presenting its legal argument to the OOR in support of its denial, the Township asserts that the “Employer Taxes and Contributions” are protected from disclosure as “personal financial information.” [See *Letter*.] Notably, the Township failed to cite the specific exception to support its assertion, namely, 65 P.S. §708(b)(6)(i).¹ Neither the verbal denial, nor the Letter supplied to the OOR contain any legal citation to authority for the Township’s conclusion that “Employer Taxes and Contributions” constitute “personal financial information.”

To interpret whether the claimed exception applies here, the OOR interpreted the defined terms in accordance with the principles of statutory construction, starting with the RTKL itself. The RTKL defines “personal financial information” in its definitions as: “An individual’s personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account of PIN numbers and other information relating to an individual’s personal finances.” 65 P.S. §67.102. Nowhere in this definition do the phrases “Social Security information withholding” or “Employer Taxes and Contributions” appear. Absent any legal support for applying this exception to these types of information, which are not listed in the RTKL definition of the term, the OOR declines to construe the term “personal financial information” so expansively.

Moreover, the Township neglects to consider the remainder of the exception in subpart (ii), which states that “Noting in this paragraph shall preclude the release of the name, position, salary, actual compensation or *other payments or expenses* ... of a public official...” 65 P.S. §67.708(b)(6)(ii) (emphasis added). The payments that the Township

¹ Although the Township did not specifically cite to Section 708(b)(6)(i), since the term “personal financial information” appears within that section, and Mr. Zurat was on notice at the time he filed his appeal of the precise exception asserted, the OOR deems the Township’s exception sufficiently asserted and not waived.

makes for “Employer Taxes and Contributions” constitute *other payments or expenses* of the Township relative to the three named Supervisors. The Township does not dispute Mr. Zurat’s statement in his appeal that the Employer Taxes and Contributions are paid with tax dollars.

Based on the documents submitted with the appeal, including the 2007 Payroll Summary for the same Supervisors, which are an admission of the Township previously supplied by the Township as a “public record,” the “Employer Taxes and Contributions” include only the following information: Federal Unemployment, Medicare Company, Social Security Company, and PA Unemployment Company.² These are not elected but required taxes paid by the Township which do not reveal personal information about the Supervisors. Nor did the Township explain the reason that the 2007 Payroll Summary for the three named Supervisors furnished to Mr. Zurat under the old Law included Employer Taxes and Contributions as a category, and yet became “personal” information under the new RTKL. The Township did not establish that this financial information is “personal.”

The RTKL is clear that “the burden of proving that a record of a ...local agency is exempt from public access shall be on the ... local agency receiving a request by a preponderance of the evidence.” 65 P.S. §67.708(a). To prove by “preponderance of the evidence” means to prove by the “greater weight of the evidence.” *Com. v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001); *Com. v. Williams*, 557 Pa. 207, 731 A.2d 1167 (1999). Here, the Township submitted no evidence to support its exception. Since the Township did not provide adequate legal or factual grounds to show that employer taxes and contributions are “personal financial information” the Township failed to meet its burden.

² Not requested by Mr. Zurat here, but provided with the 2007 Payroll Summary, were Deductions from Gross Pay and Net pay, which include disability income, savings, vision, dental and medical insurance.

CONCLUSION

For the foregoing reasons, Mr. Charles Zurat’s appeal **is granted**. The OOR concludes the Township did not support its assertion of the “personal financial information” exception, and therefore is required to produce the 2008 Payroll Summary for each of the three named Supervisors to Mr. Zurat, including the “Employer Taxes and Contributions” that are paid by the Township. The OOR concludes that the Township is required to completely fulfill Mr. Zurat’s Request 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 Schuylkill County Court of Common Pleas. 65 P.S. §67.1302(a). All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. This Final Determination shall be made available to the public and placed on the website: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED: March 3, 2009



**APPEALS OFFICER
LUCINDA GLINN, ESQ.**