

The Board did not respond within five-business days, and therefore, the Request was deemed denied. The Requester appealed the deemed denial to the OOR on July 20, 2009.

In his appeal, the Requester explained that the Codified Ordinances of the City of Johnstown require the Board to keep the minutes and annual reports to the City Council (the "Appeal"). With regard to the minutes, he cites Ordinance 270.09 as requiring minutes and records of its official actions to be maintained in accordance with its Retention and Disposition schedule. Ordinance 270.09 also states that "a certified copy of all meetings and action taken shall be filed in the City Clerk's office within fifteen days of said meeting." With regard to the annual reports, he cites Ordinance 270.12, which states "the Civil Service Board shall make an annual report to the City Council containing a brief summary of its work during the year. The annual report shall be available for public inspection."

The OOR requested the Board to supplement the record to explain its reasons for withholding the minutes and annual reports. John Deardorff, Chairman of the Board, advised that the Board did not deny the Request, but needed additional time in order to assemble and possibly redact personal information because it is an entirely volunteer board. He also noted that certain audio tapes had not yet been transcribed. He requested a 30-day extension to compile responsive records. The Requester extended the Final Determination date to September 14th.

On August 28th, the Board advised the Requester that he could pick-up the meeting minutes for the following dates: 2-28-06; 4-18-06; 9-25-08; 2-24-09; 3-31-09; and 6-2-09. The Board advised that there were no meetings in 2007, and that transcripts for 2005 could not be found. The Board also explained that appeal transcripts could be reviewed at any time at the law offices of counsel. In addition, the Board explained that it was unable to locate any meeting minutes regarding City Firefighters, and believed the Requester was more concerned with Police Civil Service meetings (the "Response").

The Requester advised that the records made available to him were not fully responsive to his Request, and he pursued a Final Determination regarding the annual reports and remaining minutes. He asserted that the explanation for the Board's inability to locate responsive records on Fire Civil Service and records believed to be in storage was of concern in light of local and state mandates regarding the maintenance of such records.

As there is no objection to provision of the documents, this Final Determination issues to formalize the timeframe within which responsive records must be produced, and offers the Requester a means of appeal if they are not.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The Board 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 like the Board are presumed "public" unless the record is: (1) exempt under Section 708(b); (2) protected by a privilege; or (3) exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. §67.305. The Board does not dispute that the minutes and annual reports are public. Rather, the Board has claimed difficulty in responding to the Request because it is a "volunteer board." Generally, minutes and reports to public bodies are public records. Here, there are codified ordinances that provide such records are to be available for public inspection. As there is no dispute that the records requested are public, to the extent that records exist and within the Board's control, the Board has a duty under the RTKL to provide access to them.

In this case, the Board failed to comply with several requirements of the RTKL. Upon the receipt of the Requester's written request, the Board was required to make a "good faith effort to determine if the record requested is a public record... and whether the agency has possession, custody or control of the identified record, and to respond **as promptly as possible**

under the circumstances existing at the time of the request.” 65 P.S. §67.901 (emphasis supplied). Since the Request was made on July 7th, more than sixty-five (65) days have elapsed to date, and the Request remains unfulfilled. In addition, no response from the Board was supplied to the Requester regarding his Request until August 14th.

The RTKL requires an agency to issue a written response to the Citizen within five (5) business days of receipt of the Request. 65 P.S. §67.901. Here, based upon the circumstances alleged, the Board could have invoked the 30-day extension for bona fide staffing limitations within the five business days under Section 902(a)(3).

In the event that no responsive records exist for parts of the Request, that should be communicated to the Requester. To the extent that no meetings were held in 2007, such that there were no meeting minutes, the Board has no obligation to create a record in response to a right-to-know request, and need only submit those records that already exist. *See* 65 P.S. §67.705. Thus, the Board does not need to transcribe audio tapes and create minutes to fulfill the Request. However, the fact that minutes for 2005 are “in an old storage room among hundreds of boxes,” does not excuse the Board from reviewing its records, in whatever manner they are maintained, and compiling responsive records.

In its Response, the Board did not indicate that any of the minutes contained information protected from disclosure. Nor had the Board raised any exemption to protect the annual reports, which are required to be provided to the City Council, and to be available to the public for inspection. The Board did not deny possession or control of the requested records. To the extent that records are within the physical possession of its legal counsel, they are within the Board’s control and the Board is required to provide access to them. As the records are presumed public, the requested minutes, including those for 2005, that exist, and the annual reports are public records required to be disclosed under the RTKL.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**. The Board is directed to provide access to the records sought in the Request that are within its possession or control 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 Cambria 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 posted at <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: September 14, 2009



**LUCINDA GLINN, ESQ.
APPEALS OFFICER**

Sent to: John Jack Williams; John Deardorff, Chairman Civil Service Board