



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

|                              |   |                                 |
|------------------------------|---|---------------------------------|
| <b>IN THE MATTER OF:</b>     | : |                                 |
|                              | : |                                 |
| <b>SIGNATURE INFORMATION</b> | : |                                 |
| <b>SOLUTIONS, LLC,</b>       | : |                                 |
| <b>Complainant</b>           | : |                                 |
|                              | : |                                 |
| <b>v.</b>                    | : | <b>Docket No.: AP 2009-0544</b> |
|                              | : |                                 |
| <b>WARMINSTER</b>            | : |                                 |
| <b>TOWNSHIP</b>              | : |                                 |
| <b>Respondent</b>            | : |                                 |

## INTRODUCTION

Signature Information Solutions, LLC (“Signature”) filed a right-to-know request with Warminster Township (“Township”), seeking copies of real-estate tax billing and payment status information related to an identified property pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. The Township timely responded by denying the request stating that no records existed at the Township or through any “governmental function pursuant to contract.” Signature timely appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted** and the Township is required to take further action as outlined below.

## FACTUAL BACKGROUND

On June 9, 2009, Signature submitted a right-to-know request to the Township seeking “copies/printouts [of] current year real estate tax billing and payment status,

please include payment dates and homestead rebate amounts where applicable for the listed properties.” Signature listed one property and checked off the box indicating that it wanted copies, but did not request certified copies. On June 17, 2009, Mr. Robert V. Tate, Jr., Township Manager, responded as follows:

My assistant responded to your request noting that the information is available from the tax collector for this municipality. During that conversation, you mentioned that we have the burden to respond to your request purportedly because of section 506(d)(1)( of the open records law.

Your request is denied as there are no records responsive to your request at the Township or through any “governmental function pursuant to contract.” The tax collector for our Township is an elected official and does not provide service to the Township pursuant to a contract.

(“Denial”). The Township properly advised Signature of its right to appeal.

On behalf of Signature, Mr. Richard K. Honaman, Jr., filed a timely appeal on June 24, 2009. Signature used the standard OOR appeals form and attached a copy of the original request and the Township’s denial. The parties were invited to submit supplemental information to the OOR in support of their position and in light of the numerous OOR Final Determination’s that have been issued on this or a similar matter. On July 10, 2009, Ms. Barbara R. Merlie, Esquire, on behalf of the Township, provided additional support for the Township’s position. On July 24, 2009, after seeking additional time to respond and granting an extension for the deadline to issue the Final Determination, Signature provided additional information in support of its position and in response to the Township’s position. The Township was invited to provide a subsequent response but it did not do so. The positions of the Township and Signature are summarized below.

**A. The Township’s position:** The Township stated that it relies on third parties to collect real estate taxes, through the Tax Collector, and collects other taxes through an

independent, privately operated tax collection agency pursuant to the Local Tax Enabling Act, 53 P.S. § 6924.101 *et seq.* It argued that it, therefore, does not receive or retain any records responsive to the request. The Township asserted that the “sole information provided to the Township with respect to the collection of real estate taxes is the amount of tax revenue deposited to the Township’s accounts by the Tax Collector.” It further stated that it does not “‘contract’ with the elected Tax Collector within the meaning of Section 506(d) of the [RTKL].” It advised that the Tax Collector’s obligations arise from the Local Tax Collection Law, 72 P.S. § 5511.1 *et seq.* (“LTCL”).

The Township stated that it “receives certain information from the elected Tax Collector, [but] the information provided to the Township by the Tax Collector does not delineate the tax billing and payment status of individual properties.” The Township attached the affidavits of the Township’s Manager, Robert V. Tate, Jr. and its Tax Collector, Barbara Loftus which declared that the monthly statements provided by the Tax Collector “contain only an aggregate total of all taxes collected and deposited on behalf of the Township rather than any detail or delineation as to the sources of those taxes collected.” See Tate Affidavit, ¶2; Loftus Affidavit, ¶2. The Township supplied an example of the type of report supplied by the Tax Collector.

The Township advised that in order to fulfill the request it would be required to obtain the record from the Township who would be required to create the record. *See also* Loftus Affidavit. Creation of a record is not required under the RTKL pursuant to section 705. The Township cited the Court of Common Pleas of Delaware County’s decision in *Aston Township v. Signature Solutions*, No. 4852 of 2009 (May 27, 2009) as support for its position. The Township further advised that the request was unnecessary

because Signature already was in possession of the requested record in the form of a certified tax record that it had requested and was provided on the same day as it made the RTKL request. The Township argued that the appeal was “duplicative and moot,” citing *Newspaper Holdings, Inc. v. New Castle Area School District*, 911 A.2d 644, 648, n. 10 (Pa. Cmwlth. 2006) and “an admission by [Signature] that the Request itself is unnecessary and constitutes merely an exercise in challenging the statutory framework within which elected tax collectors perform their functions pursuant to the LTCL.” The Township disagreed with the prior OOR decisions on this matter as follows:

The Township respectfully submits that it is contrary to the very statutory framework for the [OOR] to provide a means for entities such as the Requester to sidestep the legislative determination that tax collection records are not subject to the requirements fo the [RTKL]. Rather, the legislature clearly expressed its intent that tax collection records would NOT be subject to public access pursuant to the Right to Know La. Section 4.(c) of the LTCL, 72 P.S. § 5511.4.(c), sets apart such records as a class of records protected from public access. In placing “legal custody” of such records in the hands of the tax collector, the legislature plainly determined that tax collection records are intended only for the use of the tax collector in the course of carrying out his or her obligations under the LTCL. The [RTKL], moreover, recognizes that records that are “exempt from disclosure under any other Federal or State law or regulation or judicial order or decree” are presumptively not public records. 65 P.S. § 67.305(a)(3). Preceding decisions issued by the [OOR] that reach a contrary conclusion fail to recognize, or misinterpret, the legislative intent articulated in the LTCL with regard to access to tax collection records. There is no reference to such records in the listing of exemptions in the [RTKL] precisely because the determination has already been made in the LTCL that such records are not subject to public access.

The Township further asserted that the RTKL’s underlying policy is to allow access, “but not at the price of increasing the cost to local government in providing such access.” It argued that providing the requested records would require the expenditure of “staff time and other Township resources” to create a record that does not exist which is “antithetical to the stated purpose of the [RTKL].” Finally, the Township declared that

“the notion that local taxpayer who are already paying for municipal services through the assessment of real estate and other forms of taxation must also underwrite the cost of making records of those very tax payments to commercial businesses – who have access to such records outside the context of the [RTKL’s] policy of open access for the general public – amounts to turning that policy on its head.”

**B. Signature’s Position:** Mr. Craig J. Staudenmaier, Esquire, on behalf of Signature, argued that none of the Township’s arguments “provide a legal basis for a denial” as they have “been raised previously and found to be without merit by both the [ORO] and the Courts, but they also fundamentally misunderstand and/or misstate the law with regard to tax records and the manner in which the real estate tax collection system within the commonwealth of Pennsylvania actually works.” Signature noted that the instant appeal and one involving Middletown Township, docketed to No. AP-2009-0521, are similar in request and denial and supplied the Memorandum filed in the Middletown Township appeal and incorporated by reference the arguments it raised therein.

Signature first asserted that there is no dispute that the records requested are “public records,” citing *Westmoreland county Bd. of Assessment Appeals v. Montgomery*, 14 Pa. Comm. Ct. 50, 321 A.2d 660 (1974); *Dooley v. Luzern County Bd. of Assessment Appeals*, 168 Pa. Comm. Ct. 242, 649 A.2d 728 (1994). Then, in regard to the Townships’ assertion that the request requires the creation of a record, Signature stated that “it is surprising that the tax collector is admitting that he/she does not possess a record which would show the real estate taxes assessed on a property and whether or not those taxes had been paid and in what amount.” Signature noted that the Township and Tax Collector attached documents showing “reports of the aggregate amounts of tax

monies paid to the Township, but does not attach the ‘multiple documents and/or sources’ from which they both claim it would be necessary ‘to assemble’ the information responsive to the request,” citing to the tax collector’s Affidavit, ¶1.

Signature then provided its analysis of the interplay between the LTCL and the RTKL. It stated that when “any duplicate<sup>1</sup> of taxes assessed is issued and delivered by any taxing district to the tax collector . . . .” (emphasis supplied) the tax collector must then issue tax notices or bills to the various property owners for whom he/she collects taxes. 72 P.S. §5511.6.” Signature argued that a “taxing district” includes townships and school districts. Signature advised that “it is the taxing district that supplies to the tax collector the necessary information so that the tax collector may then send the notices/bills to the various property owners for payment of their taxes.” Further, Signature declared that “[i]t must be remembered that all of this information derives from the public county tax assessment records.” Signature argued that pursuant to § 5511.25 of the LTCL the tax collector is required to exhibit “on demand” of any district “any duplicate in his possession showing the uncollected taxes as of any date.” Further, stated Signature, an earlier portion of the same section requires tax collectors to “keep a correct amount of all monies collected by him as taxes under the authority of any duplicate or duplicates in his possession. He shall mark ‘paid’ on each duplicate, at the name of each taxable, the amount of taxes paid and the date on which payment was made.” *Id.*

Signature discussed the monthly reports the Township acknowledged that it had asserting that the report must be ‘reconciled from the tax duplicates to the amount of

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<sup>1</sup> Signature advised that “[a] ‘duplicate’ is a listing of the property valuations within a certain taxing district for a certain year which is derived from the county assessment rolls and once it is “certified as accurate by the taxing district” is used by the tax collector to send bills for real estate taxes after the mathematical calculation of the assessment rate or millage is applied to the valuation to arrive at the actual taxes owed. See 72 P.S. §5511.2.”

taxes remaining to be collected.” *Id.* Signature further noted that the LTCL provides that “a taxing district may require the elected tax collector to provide it with additional information supplementing that set forth on the [report] form approved by the Department of Community and Economic Development. *Id.*, (emphasis supplied).” Signature asserted that this provision supported its argument that the Township could demand the copies of the underlying records from the tax collector and thus “exercises full control over the records of the tax collectors or, the very records which Signature has requested here.

In regard to the Township’s reliance on §5511.4c(c) of the LTCL as support “that the tax collector is not an agency under the RTKL nor can one make Right to Know requests to the tax collector” Signature stated that this is not argued by Signature “which is precisely why the request was made by Signature to the Township who is actually the agency in control of the records.”<sup>2</sup> Signature referred to recent caselaw established by *Lukes, et al. v. Dep’t Pub. Welfare*, 2009 Pa. Crnmw. LEXIS 452 (June 3, 2009), “where the Commonwealth Court addressed this very argument.”<sup>3</sup> Signature pointed out that “the analysis or test ‘is not whether an agency has actual, physical possession of a document at a particular moment in time, but rather whether the agency has access and can exert control over such records.’” *Id.* at \*27-28. Signature asserted that “[a] clearer case of control over records by the Township in this case could not be made.” Signature pointed to the statutory provisions that provide the Township with the “right to exert

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<sup>2</sup> Signature noted that “§5511.4c(c) does nothing more than indicate that the tax collector himself/herself is not an agency and that requests cannot be made to them and does not state that the records of the tax collector cannot be acquired by a RTKL request to the taxing district itself.”

<sup>3</sup> Signature asserted that “[e]ven though this decision interprets the immediately prior version of the RTKL, the analysis is equally applicable under the new law since the definitions and analysis relied upon have not substantially changed under the new law.” Signature further noted the OOR’s “endorsement” of this case in *Mollick v. Worcester Township*, Docket AP 2009-0438 (issued July 8, 2009).

control over the records of the tax collector which would show, for the properties within its jurisdiction, taxes assessed, paid and unpaid.”

Signature then discussed the Tax Collector’s argument that it responding to the request required reviews of “multiple documents and/or sources” as “simply not factually nor legally correct.” In support, Signature attached the Affidavit of Richard A. Honaman as evidence that the Township “maintains its records on computer and that such records are easily available by print screens or printouts.” As proof, Signature attached copies of “actual records acquired from the tax collector which set forth all of the information which Signature has requested.” Signature added that “the Township has not supplied any case law which supports its argument that just because the tax collector may have to produce several documents (which may include the redaction of non-public information, if any) that the tax collector is relieved from supplying the record to the Township.”

Signature further stated:

Perhaps most telling as to why this argument has been raised by the Township is the admission by the Township and, more importantly its Tax Collector, that it will provide the information if a "tax certification" is requested from the Tax Collector with payment of the requisite fee. It is obvious that it is not the protection of "the price of increasing the cost to local government in providing such access" that concerns the Township or its Tax Collector, but merely the protection of the payment of fees to the Tax Collector. The Township and its collector deride Signature's "commercial enterprise" while attempting to protect their own. The Tax Collector's fees which are higher than the cost of merely obtaining copies of the applicable records in a RTKL request are paid by its "taxpayers" as part of closing costs as fees in real estate settlements. Such a "fee" is unnecessary and is most clearly "antithetical" to the stated purpose of the RTKL.

Finally, Signature addressed the Township’s assertion that the appeal was moot because Signature was already in possession of the requested information. Signature stated that this fact “merely points out the abuse of the system by the Township and/or its

tax collector . . . . [because] the tax collector seems willing to "create" a document which does not exist for payment of his/her appropriate fee but not subject to the RTKL." Signature added that its "action in this matter demonstrates its frustration over being unable to obtain the documents through the Township which it should be able to do easily and less expensively under the new law." In conclusion, Signature noted:

[T]he information requested is necessary for the transfer of real estate within the Commonwealth of Pennsylvania and each impediment and additional cost to such transfer of real estate, particularly in these tough economic times, thwarts the efficient and cost-effective transfer of real estate which will continue as long as unnecessary, archaic fees are demanded for merely pushing a button to produce a record which contains clear financial information regarding the assessment and collection of taxes. It is precisely these types of abuses that the new RTKL was enacted to prevent and which the Opens Records Office here must not allow to occur.

### **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 as such term is defined in the RTKL. *See*, 65 P.S. § 67.301. As such, the Township is subject to the disclosure requirement of the RTKL.

Section 102 of the RTKL, defines the term "record" as:

"Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document."

Records in possession of a local agency are presumed to be "public" 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, regulation or judicial order or decree. 65 P.S. §67.305.

The RTKL does not require the creation of records that do not exist:

“When responding to a request for access, an agency **shall not be required** to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.”

65 P.S. §67.705 (*emphasis added*).

However, 65 P.S. 67.506(d) requires an agency to produce a public record that while not in its possession is in its control. Section 506(d) states:

(d) Agency possession. —

(1) A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency for purposes of this act.

(2) Nothing in this act shall be construed to require access to any other record of the party in possession of the public record.

(3) A request for a public record in possession of a party other than the agency shall be submitted to the open records officer of the agency. Upon a determination that the record is subject to access under this act, the open records officer shall assess the duplication fee established under section 1307(b) and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record.

The Township argues that the records are not in its possession because they are in the possession and sole control of the tax collector who operates pursuant to the LTCL and not pursuant to a “contract” with the Township. However, whether or not a contract exists between the Township and its tax collector is not determinative of whether the Township must provide the record because the issue is control. See *Lukes, et al. v. Dep't Pub. Welfare*, 2009 Pa. Crimw. LEXIS 452 (June 3, 2009). The Local Tax Collection Law, 72 Pa.C.S. §§5511.1-5511.42 (“LTCL”) governs tax collectors. The LTCL is clear that tax collectors are not subject to the RTKL, and are, therefore, not required to respond

to direct requests made pursuant to the RTKL. However, while tax collectors are not considered “agencies” under the RTKL, the taxing districts on whose behalf they collect are agencies required to produce public records in response to a proper request. *Current Status, Inc. v. Hykel*, 778 A.2d 781 (Pa. Commw. 2001).

The LTCL requires tax collectors to furnish information to taxing districts like the Township. *See* 72 P.S. §5511.25. As such, the records are Township records to which it has access and control over at any time. Section 506(d) evidences the clear legislative intent to require an agency to obtain its records being held by third parties. Section 506(d)(3) provides that a request for a public record in possession of a party other than the agency shall be submitted to the Open Records Officer of the agency. Accordingly, Signature correctly presented the Request to the Township in order to access public records in possession of the Tax Collector. *See also, Honaman v. Lower Merion Township*, OOR Dkt. AP 2009-0053.

The OOR has issued numerous Final Determinations that analyze the provision of records in possession of a tax collector. *See, Signature Information Solutions v. Nether Providence Township*, OOR Dkt. AP 2009-0299 (“while the Agency is not required to produce a report if no report currently exists, it must provide printouts of screens or documents, if any, that contain the information requested.”); *Signature Solutions, Inc. v. Montgomery Township*, OOR Dkt. AP 2009-0294 (finding “that Tax Collector has physical possession of [tax information] records does not alter their public status— not under the Old [Right-to-Know] Law, the RTKL or the LTCL.”); *Signature Solutions, Inc. v. Aston Township*, OOR Dkt. AP 2009-0072 (finding a certification fee cannot be charged for mere assembly of records from multiple sources. Unless certification is

*requested*, it cannot be charged); *Signature Solutions, Inc. v. Springfield Township*, OOR Dkt. AP 2009-0021 (denying appeal because request as written seeks the creation and compilation of a record, but acknowledging that printouts of screens in multiple databases did not constitute creating a record.); *Signature Solutions, Inc. v. Penn Township*, OOR Dkt. AP 2009-0020 (finding the LTCL did not conflict with the RTKL to supersede the presumed public nature of a taxing authority's records. The taxing authority had the right to request tax duplicate information from the tax collector at any time, without waiting for the monthly statement certification.).<sup>4</sup>

The Township relies upon the Court of Common Pleas opinion rendered in Delaware County in *Aston Township v. Signature* for its position that the printout from multiple screens qualifies as "creation" of a record. As the Court's review was in its appellate jurisdiction, it accepted the facts as found by the OOR. In the instant case, there has been no evidence submitted "that the records requested do not exist in a form that can be a "printout" of a screen" as found in *Aston*, and relied upon by the Court of Common Pleas. Second, Section 705 must be construed on its terms in accordance with case law and the OOR's interpretations in Final Determinations. The OOR concludes, based upon the evidence presented, that the Township has not demonstrated that the public records requested by Signature do not exist in a format that may be duplicated, such as with a "print screen" function. In fact, the Tax Collector admits that she has the documents that evidence the billing and payments made in that she attests that she must compile those records to provide the information requested.

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<sup>4</sup> In *Penn Township* the OOR expressly did *not* decide that the tax certification fee was appropriate to be charged; rather the OOR recognized that the reported willful refusal of Penn's tax collector to comply with the LTCL is beyond the OOR's jurisdiction, as was the tax collector's alleged refusal to supply the taxing authority its own records without payment of a fee.

Therefore, as we stated in *Nether Providence*, p. 9 “[w]hile the Township is not required to produce a report if no report currently exists, it must provide printouts of screens or documents, if any, that contain the information requested.” This is true, even if the report is easily generated by the “push of a button.” The fact that Signature has a computer generated report that it obtained outside of its RTKL request does not mandate that the Township is required to create that same report within the context of a RTKL request. However, the Township may choose to create a record, ie. generate a report, if it desires to do so and is certainly encouraged to do so if creation of a computer generated record is less time consuming and costly for the agency than finding and printing individual screens containing the desired information. However, as we also noted in *Nether Providence*, p. 8, Signature is advised that “the mere printouts of screens does not provide the same assurance of accuracy of the information as the report and certification the tax collector issues when responding to a request for Certified Reports.” Likewise, generation of a report, should the Township direct its Tax Collector to do so in response to the RTKL request, does not provide the same assurance of accuracy that certification provides. The tax collector is not required to earlier update his or her records in order to provide the taxing district with the payment information comprised within Section 25 of the LTCL.

Finally, as we said in *Montgomery Township*, “[o]n a separate, but important note, the OOR recognizes the frustration expressed by Tax Collectors statewide that any requester, including a for-profit company, can request public records and use those records for its own commercial gain after an agency expends time and resources to gather them. The Legislature considered and addressed this concern; the law clearly provides that a requester “need not include any explanation of [its] reason for requesting or intended use of the records unless otherwise required by law” in Section 703, and clearly

prohibits an agency from denying access to a public record based on the intended use in Section 302(b).”

### **CONCLUSION**

For the foregoing reasons, Signature’s appeal is **granted**. The OOR finds that the Request sought public information that must be disclosed under the RTKL. The OOR concludes that creation of a record was not requested, but rather printouts of records containing the requested information. Accordingly, the Township must release the records within thirty (30) days. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the court of Common Pleas of Bucks County. 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. 65 P.S. §67.1301. The parties are further advised that a copy of this Final Determination will appear on the OOR website, <http://openrecords.state.pa.us>

**FINAL DETERMINATION ISSUED AND MAILED: August 7, 2009.**



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AUDREY BUGLIONE, Esquire  
APPEALS OFFICER

Sent to: Craig J. Staudenmaier, Esquire (Counsel for Complainant)  
Barbara R. Merlie, Esquire (Counsel for Township)