

PENNSYLVANIA
OFFICE OF OPEN RECORDS

IN THE MATTER OF :
SIGNATURE SOLUTIONS INC., :
Petitioner :
 :
v. :
 :
UPPER DUBLIN TOWNSHIP :
Respondent :

Docket No. AP 2009-0643

**PETITION OF SIGNATURE INFORMATION SOLUTIONS, LLC,
FOR RECONSIDERATION OF THE OFFICE OF OPEN RECORDS FINAL
DETERMINATION DATED AUGUST 24, 2009**

AND NOW comes SIGNATURE INFORMATION SOLUTIONS, LLC, designated as Signature Solutions Inc. (hereinafter "Signature"), Petitioner, by its attorneys, NAUMAN, SMITH, SHISSLER & HALL, LLP and petitions the Office of Open Records ("hereinafter "OOR") pursuant to 1 Pa. Code 35.241 and OOR Interim Guidelines for reconsideration of its Final Determination of August 24, 2009, representing in support thereof the following:

1. On August 24, 2009, the OOR issued a Final Determination by Appeals Officer Dena Lefkowitz, Esquire, denying Signature's appeal from the denial of Signature's request for public records by Upper Dublin Township by requiring the payment of a fee beyond normal copying charges.

2. Despite the existence of numerous prior decisions of the OOR holding that identical requests of Signature had to be granted by municipalities (i.e. townships) for public records regarding the real estate taxes of various properties within those municipalities for only

photocopying charges, the OOR asserted in their Determination that, despite the fact that the records requested were public records and financial records, Signature was required to pay a fee demanded by the tax collector here as the fee demanded by the tax collector for these public records was “necessarily incurred” and thus may be passed on to Signature in accordance with 65 P.S. §67.1307(g).

3. The Final Determination of the Appeals Officer is in error and should be reconsidered by the OOR because (1) the Determination fails to properly examine all of the applicable law concerning real estate tax records and who is in “control” of those records, see Lukes v. DPW, 976 A.2d 609 (Pa. Cmwlth. 2009), (2) fails to examine the relevant portions of the Local Tax Collection Law (“LTCL”) which pertain to a municipality’s ability to obtain and control the types of records requested by Signature herein, (3) ignores prior numerous OOR Determinations and (4) misinterprets or misapplies the law pertaining to the ability of a tax collector to charge a fee or a “necessarily incurred” fee under the facts of this case.

4. In Lukes v. DPW, *supra*¹, the Commonwealth Court clearly held that it was not “possession or custody” of records which is determinative of an agency’s duty to acquire and turn over public records but whether the agency ultimately “controls” the records, which the municipality here clearly controls under applicable provisions of the LTCL.

5. The Final Determination erroneously holds that, although the LTCL requires the tax collector to “exhibit any duplicate in his possession showing the uncollected taxes of any date” there is no corresponding duty to provide a copy to the municipality unless the municipality

¹Although decided under the prior version of the Right-to-Know Law, the holding is still applicable under the current law.

pays the \$20 fee demanded by the tax collector. This fee is nothing more than a disguised certification fee as evidenced by the Township's response cited in the Final Determination on page 2 wherein the Appeals Officer quotes a communication of July 10, 2009 to Signature the following: "The Tax Collector has agreed to exhibit her records to the Township, but will not provide a copy to the Township except upon payment of a fee of \$20 for each property, **which is her normal fee for a tax certification.**" (emphasis supplied).

6. The Right-to-Know Law specifically states that a certification fee may not be charged to a requester absent a specific request for certification. 65 P.S. §67.1307(c). The Open Records Office has previously held that no such certification fee may be assessed unless specifically requested as set forth in the statute. See Signature Information Systems v. Nether Providence Township, OOR Dkt. AP 2009-0299. The Appeals Officer's Final Determination authorizing the payment of a fee which is clearly a "certification fee" is contrary to the prior decisions of the OOR and of the Right-to-Know Law itself.

7. The Tax Collector's Manual published by the Governor's Center for Local Government Services, 2007, p. 20, provides as follows: "In some counties, it is the practice of attorneys to request the local tax collector to provide a certification of taxes paid on real estate involved in a sale. There is no legal requirement for tax collectors to perform this service nor is there any statutory basis for them to charge a fee for these certifications."

8. The Final Determination of the Appeals Officer confuses the concept of possession of records with the concept of control which is the deciding factor in whether a public record must be turned over to an agency even though in the possession of a third party, including a tax collector. 65 P.S. §67.506(d).

9. 65 P.S. §67.506(d)(3) specifically provides as follows:

. . . Upon a determination that the record is subject to access under this act, the open records officer shall assess the duplication fee established under §1307(b) and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record. (emphasis supplied).

10. The Appeals Officer erred in the Final Determination in failing to consider all of the applicable statutory language under the LTCL regarding the ability of the municipality to demand production of documents from the tax collector. Section 506(d)(3) makes no provision for the charging of any other fee. Furthermore, the Appeals Officer specifically found the records requested here are clearly “financial records” and thus “public records.” p. 6. Thus, no additional fee may be charged by the Township for acquiring these records.

11. The Appeals Officer attempts to distinguish the prior OOR Determination in Signature Solutions, Inc. v. Nether Providence Twp., OOR Dkt. AP 2009-0299, which held no certification fee could be charged by the tax collector for public records in her possession despite the existence of an ordinance permitting it. Here, no justification nor basis for the certification fee is set forth other than the tax collector’s bare refusal to turn over the copies without payment. Such cannot be a basis for finding the fee unjustifiably demanded as necessarily incurred.

12. 72 P.S. §5511.25 in addition to requiring the tax collector to provide tax duplicates showing paid and uncollected taxes, the provision also provides as follows:

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. (emphasis supplied).

13. The law does not provide nor envision that the taxing district must take on face value only the monthly reports provided by the tax collector but permits the taxing district to

demand supporting documentation in the form of tax duplicates marked paid or unpaid and “additional information” to support collections, delinquent accounts, etc. 72 P.S. §5511.25.

These records are the very ones requested by Signature which are in the “control” of the taxing district and must be turned over by its collector who merely has possession. 65 P.S. §507(d), Lukes, supra, see also, Tribune Review Publishing v. Westmoreland County Housing Auth., 574 Pa. 551, 672, 833 A.2d 112, 118 (2003).

14. The Appeals Officer erred in the Final Determination by holding that merely because the tax collector herself is not an agency under the Right-to-Know Law as set forth in 72 P.S. §5511.4c(c), that the records in her possession cannot be produced absent payment of the demanded fee. Said section merely indicates that the tax collector himself/herself is not an agency under the Act and that requests may not directed to the tax collector under the Right-to-Know Law, however, the statute no where states that the records within the tax collector’s possession are not subject to the Right-to-Know Law through §506(d).

15. In addition to being contrary to numerous prior decisions of the Open Records Office², the Appeals Officer’s decision is contrary to the holdings of two recent Right-to-Know requests by Signature for identical records which held in favor of Signature, Signature Solutions, Inc. v. Middletown Township, OOR Dkt. AP 2009-0521, and Signature Information Solutions,

²Signature Information Solutions v. Penn Township, OOR Dkt. AP 2009-020, Signature Information Solutions v. Lower Merion Township, OOR Dkt. AP 2009-0053, Signature Information Solutions, Inc. v. Bradford County Tax Claim Bureau, OOR Dkt. AP 2009-0071, Signature Information Solutions, Inc. v. Montgomery Township, OOR Dkt. AP 2009-0289, Signature Information Solutions, Inc. v. Nether Providence Township, OOR Dkt. AP 2009-0299, Signature Information Solutions, LLC v. Peters Creek Sanitary Authority, OOR Dkt. AP 2009-0392, Signature Information Solutions, LLC v. Springfield Township, OOR Dkt. AP 2009-0439, Signature Information Solutions, LLC v. Springfield School District, OOR Dkt. AP 2009-0435.

LLC v. Warminster Township, OOR Dkt. AP 2009-0544 in the following respects: (a) the OOR's holding in Signature Solutions, Inc. v. Penn Township, OOR Dkt. AP 2009-0020, did not hold that the payment of a certification fee was appropriate or necessarily incurred but that the willful failure of the tax collector to comply with the LTCL was beyond the OOR's jurisdiction. Warminster, p. 12, fnt. 4; (b) that the Lukes v. DPW case is applicable to the current law and clearly supports the proposition that the tax collector's records, although in the custody of the tax collector, are really under the control of the taxing authority under applicable provisions of the LTCL; (c) whether or not a "contract" exists between the township and its tax collector is not determinative of whether the township must provide the records because the issue is control, Warminster, p. 10; (d) records of a tax collector to perform the collection functions required on behalf of a taxing district are records "of" the taxing district as the taxing district remains responsible for its records, despite their custody residing in a third party. Middletown, p. 8; (e) 72 P.S. §5511.4c "does not prohibit the release of the information nor alter its public nature nor preclude a taxing district from providing the public information response to a proper right-to-know request, therefore, this provision does not govern the provision of public records and cannot be used as a defense." Middletown, p. 9; and (f) citing Current Status Inc. v. Hykel, 778 A.2d 791 (Pa. Cmwlth. 2001), and 72 Pa. C.S. §5511.25, the OOR concluded that "the records that the tax collector maintains are also to be found with the taxing authority." Middletown, p. 10.

WHEREFORE, Signature Information Solutions, LLC, Petitioner, respectfully requests that the Office of Open Records grant reconsideration of its Final Determination in the above matter dated August 24, 2009, and thereafter, vacate the August 24, 2009 Final Determination

and grant the Right-to-Know Request of Signature Information Solutions, LLC to Upper Dublin Township for public records at authorized duplication fees only.

NAUMAN, SMITH, SHISSLER & HALL, LLP

BY: 

Craig J. Staudenmaier, Esquire
Supreme Court ID# 34995
Joshua D. Bonn, Esquire
Supreme Court ID# 9396

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Counsel for Signature Information
Solutions, LLC

Date: September 8, 2009

CERTIFICATE OF SERVICE

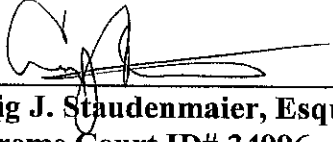
AND NOW, on the date stated below, I, **Craig J. Staudenmaier, Esquire**, of the firm of Nauman, Smith, Shissler & Hall, hereby certify that I this day served the foregoing Petition of Signature Information Solutions, LLC, For Reconsideration of the Office of Open Records Final Determination Dated August 24, 2009 addressed as follows:

Gilbert P. High, Jr., Esquire
HighSwartz LLP
40 East Airy Street
Norristown, PA 19404
Via e-mail to www.@highswartz.com

Dena Lefkowitz
Appeals Officer
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Commonwealth Keystone Building
400 North Street, 4th Floor
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NAUMAN, SMITH, SHISLER & HALL, LLP

BY:



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Counsel for Signature Information
Solutions, LLC, Petitioner

Date: September 8, 2009



VIA EMAIL AND FIRST CLASS US MAIL

September 22, 2009

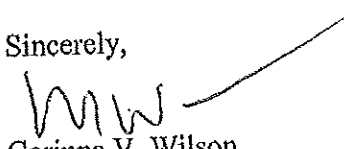
Craig J. Staudenmaier
Nauman Smith
P.O. Box 840
Harrisburg, PA 17018-0840

RE: Petition for Reconsideration dated September 8 / OOR Dkt. AP 2009-0643

Dear Craig:

We are in receipt of your Petition for Reconsideration dated September 8 in connection with the Office of Open Records Final Determination in *Signature Information Solutions, Inc., v. Upper Dublin Township*, OOR Dkt. AP 2009-0643. We hereby deny your Petition.

Sincerely,



Corinna V. Wilson
Chief Counsel

cc: Terry Mutchler, Executive Director, Office of Open Records
Gilbert P. High, Jr., Esq.