

FACTUAL BACKGROUND

On October 19, 2009 the Requester submitted the following request to the County, requesting information from what he identified as “Data Exchange of Pennsylvania (J-NET) Justice Network.” He sought:

“Any and all information within Steven Paul Addlespurger/Steven Addlespurger’s name as recorded, but not limited to all Identifying information, all Birth Dates{s}, all SS Number{s}, address{es}, all recording, all credit reports, all incident reports, all sheriffs reports, all police reports, all domestic relations officials, all court officials reports, all Allegheny County Officials reports, all State Officials reports, all Department of Transportation records, all Allegheny County Jail sentences – to include charges, dates of intake and releases, all Bail Bonds, all commitment records, all monetary amounts paid for release, all 6-a forms, all warrants issued prior, all notes, all messages, all information as inputted must be supplied with dates, and individual names with agency names.

(the “Request”). There is no evidence in the record that the County responded to the October 19, 2009 request. The Requester filed a timely appeal to the OOR on November 3, 2009. On the same day the OOR sent a copy of the appeal to the County and advised that the OOR would accept unsolicited information from either party in support of their positions. The County did not provide any information. The OOR informed the parties of the date the record would close and the County failed to respond. On the evening before the Final Determination was due to be issued, the County submitted a letter, stating they had responded to the Requester the first time he made the request in August.

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LEGAL ANALYSIS

The County is a local agency subject to the RTKL. *See* 65 P.S. § 67.302. The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a).

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.”

The RTKL provides further clarity in defining a “public record” as:

“A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege.”

65 P.S. §67.102.

The RTKL states that agencies bear the burden of proving the applicability of any exceptions. Specifically, § 708 in pertinent part states:

(a) Burden of proof. —

(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.

65. P.S. § 67.708. Preponderance of the evidence has been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (8th ed. West 2004). *See also Commonwealth v. Williams*, 615 A.2d 716 (PA. 1992).

Section 67.901 states: “[i]f the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.” No evidence of a response to the Request was provided by either party. Accordingly, the Request in this case was deemed denied. The Requester properly and timely appealed the deemed denial to the OOR. The County failed to timely respond during the appeal. Even if the OOR were to accept the late response, the submission lacked the necessary substance that would enable the County to meet its burden of proof as required by law.

The OOR recognizes that it is possible that the requested records may not be records of the County or that the records may be wholly or partially exempt from disclosure under the RTKL or other law. However, the County failed to timely respond and therefore fails to meet its burden of overcoming the presumption that the records are public records of the County. Therefore, the County is required to release the requested records subject to redaction of any information that is exempt from disclosure under the RTKL. 65 P.S. §67.706.

CONCLUSION

For the foregoing reasons, this appeal is **granted** and the County is required to provide the requested records within thirty (30) days. The parties are advised that this is a Final Determination and is binding on the parties. Within thirty (30) days of the mailing date of this determination, either party may appeal to the Allegheny County Court of Common Pleas. 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. 65 P.S. §67.1302.

FINAL DETERMINATION ISSUED AND MAILED: December 3, 2009

A handwritten signature in black ink, appearing to read 'Audrey Buglione', written in a cursive style.

APPEALS OFFICER
AUDREY BUGLIONE, Esq.

Sent to: Steve Addlespurger, Timothy Johnson