



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

STEVEN MAHL :
Complainant :
 :
v. : **Docket No. AP 2009-0634**
 :
SPRINGFIELD TOWNSHIP :
Respondent :

INTRODUCTION

Mr. Steven Mahl (the “Requester”) submitted a request to Springfield Township (the “Township”) for records related to zoning enforcement proceedings pursuant to the Right to Know Law, 65 P.S. §§67.101 *et seq.* (“RTKL”). The Township granted the request in part and denied it in part, denying access to the complaints regarding the Requester’s use of his property pursuant to section 67.708(b)(17). The Requester timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **denied**, and the Township is not required to provide anything further.

FACTUAL BACKGROUND

On July 1, 2009, the Requester, through his attorney, David M. MacFarlan, Esquire, submitted a right-to-know request via facsimile to the Township seeking:

[C]opies of all records and documents in possession of [the Township] relating to [the Requester], including but not limited to the records and documents concerning [the Requester] with Township Manager, Building

inspector, and other Township officers and officials, neighbors (3) including records of electronic and telephone communications with anyone concerning [the Requester]. This request is limited to records post 1/1/06 and does not include those related to [the Requester's] subdivision applications or those related to the [the Requester's] zoning appeal.

(the "Request") On July 8, 2009, Richard Schilling, Township Public Records Officer, responded on behalf of the Township granting the request in part and denying it in part. The Township enclosed a facsimile from the Township to its former solicitor whose subject was "Recycling Lien" as well as the Board of Supervisors Minutes dated June 17, 2008 with notation as to where the reference to the Requester could be found. The Township advised the Requester that it possessed other documents responsive to the request which related to the "investigation of certain zoning violations." However, the Township asserted that those records were exempt from disclosure pursuant to Section 708(b)(17) of the RTKL. (the "Denial").

On July 22, 2009 the Requester timely appealed to the OOR. In support of his appeal the Requester stated that he sought "communications and correspondence between the Township and individuals concerning [the Requester's] conduct at his residence and his land use activities at his residence . . ." The Requester stated that he was entitled to the records as "they are not exempt under the [RTKL]." He asserted that he "is entitled due process under the State and Federal Constitution, thus being able to confront hostile witnesses and persons who are affecting his ownership and use of his residential property." He added that denial of access "is to his irreparable loss and injury."

On July 29, 2009, Scott A. MacNair, Esquire, responded on behalf of the Township and reiterated its position that Section 708(b)(17) applies and cited *Stein v. Plymouth Township*, OOR Dkt. AP 2009-0161 (issued April 3, 2009) and *Dreyer v. Pa. Dept. of Env. Protection*, OOR Dkt. AP 2009-0450 (issued July 20, 2009). The Township asserted that *Stein* is

indistinguishable from the instant matter because both appeals related to records regarding zoning enforcement issues. The Township contended that the Requester had “verbally reduced his request to documents related to the zoning enforcement issues . . . and even more specifically, to the names of those individuals who complained of his zoning violations.” The Township advised that “[t]he only records that [it] has not released that relate to [the Requester] or his property concern the investigations of zoning violations.” The OOR asked the Requester to confirm whether he had reduced his appeal to focus only on the denial of names.

The Requester extended the deadline for issuance of the determination in order to have additional time to provide information in support of his appeal. On September 4, 2009 the Requester supplemented his response stating that he requested “records and documents of communications by person[s] with agency officials” and not records relating to a noncriminal investigation. He asserted that “the fact that [he] is requesting to see documents indicating what may have been complaints by individuals to the township does not render that request an exempt one.”

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, §67.302.

The RTKL defines a “record” as follows: “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.” 65 P.S. § 67.102.

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. Section 67.708 of the RTKL clearly states that the burden of proof rests with the public body to demonstrate that the record is exempt. In pertinent part, section 67.708 states:

“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.”

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.). *See also Commonwealth v. Williams*, 615 A.2d 716 (Pa. 1992).

Section 67.708(b)(17) of the RTKL exempts the following from disclosure:

“(17) A record of an agency relating to a noncriminal investigation, including:

(i) **Complaints submitted to an agency.**

(ii) **Investigative materials, notes, correspondence and reports.**

(iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law....

(vi) A record that, if disclosed, would do any of the following:

(A) **Reveal the institution, progress or result of an agency investigation**, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court...”

The Township asserts that the withheld records are related to a noncriminal investigation including complaints. The Requester states in his appeal that he “desires to review the Township[‘]s public record indicating communication and correspondence . . . concerning [the

Requester's] conduct at his residence and his land use activities at his residence. . . ." He argues that he is entitled to "confront hostile witnesses and persons who are affecting his ownership and use of his residential property." There appears to be no dispute that the records sought are those of complaints against the Requester to the Township regarding his use of his property. In fact, the Requester acknowledges that he seeks complaints when he states "the fact that [the Requester] is requesting to see documents indicating what may have been complaints by individuals to the township does not render that request an exempt one." However, complaints and the investigative records related to the complaints are specifically exempt by section 708(b)(17) of the RTKL.

CONCLUSION

The Appeal is **denied** and the Township is not required to take any further action.

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 Bucks 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 placed on the website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED ON: October 16, 2009



APPEALS OFFICER
AUDREY BUGLIONE, ESQ.

Sent to: David M. MacFarlan, Esquire (Counsel for Complainant)
Scott MacNair, Esquire (Counsel for Township)