



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF:	:	
	:	
CHARLES SCHILLINGER	:	
Complainant	:	
	:	
v.	:	Docket No.: AP 2009-1059
	:	
LACKAWANNA COUNTY	:	
Respondent	:	

INTRODUCTION

Charles Schillinger (the “Requester”) filed a right-to-know request (the “Request”) with Lackawanna County (the “County”) seeking financial records, invoices, and receipts. The County granted the Request, but was unable to provide all the requested records because a third party contractor has refused to provide them to the County. The Requester appealed to the Office of Open Records (the “OOR”).

For the reasons set forth in this Final Determination, the appeal is **granted** and the County is required to obtain and provide the records requested.

FACTUAL BACKGROUND

In a request dated November 9, 2009, the Requester sought the following records from the County:

Financial records, invoices, and receipts to back up payments made to the Correctional Care Inc. between Nov. 2004 and Nov. 2009

The County provided the Requester with some of the requested records. However, in a letter dated November 19, 2009, the County while agreeing that the reports would be public records denied the Request stating that the County has not received the requested information from Correctional Care Inc. (CCI) other than the records previously provided. The County indicated that it would provide the Requester with any additional documents it received from CCI.

The Requester filed a timely appeal with the OOR on November 30, 2009. In response to the appeal, the County stated that it has provided the Requester with “all records we have been provided to back up payments made to Correctional Care, Inc.” This included a balance sheet, statements of income and retained earnings, detailed listings of payments that were listed in the statements of earnings and reconciliation of money owed to the County. In addition, the Requester was granted access to a binder of supporting information provided by CCI.

The County also stated that a Complaint has been filed asking the Lackawanna Court of Common Pleas to compel CCI to provide the County with among other things a detailed financial accounting of CCI and any reconciliations submitted by CCI to the County in connection with all healthcare services provided by CCI to inmates at the Lackawanna County Prison. The Complaint is currently pending. The County has stated that it will stipulate that it will grant access to Mr. Schillinger to any information it obtains from CCI that is not otherwise protected by law. The County argues that for this reason it believes it has complied with the law.

In response to this letter, the Requester states that while the County is seeking all financial records from CCI in the suit and has agreed to provide them if obtained, there is

no OOR mandate directing release of those records. The Requester then lists specific types of records he is seeking, including tax documents:

- Form 941, employer's quarterly federal tax return related to employees working at the prison
- Invoices for all payments for medical care for county prison inmates
- Invoices for all pharmacy costs related to prison inmates
- Payments to insurances carried by the vendor (CCI) for the purposes of providing medical care to the prison
- Invoices for all dental expenses of county prison inmates
- Form U/C-2
- All invoices from sub-vendors of CCI related to services provided to county prison inmates.

In response, the County states that the list delineating what types of specific records is a new request and should be filed as a separate request. It argues that the Request was for the backup for the invoices and that information was provided. The County contends that if this is now the Request, it should be permitted to go back to CCI and raise all defenses including the onerous nature of the Request.

LEGAL ANALYSIS

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

Section 708 of the law states that the burden of proof rests with the public body to demonstrate that the record is exempt. In pertinent part, section 708 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.

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).

Here, the County argues that it has satisfied the Request for "all records we have been provided to back up payments made to Correctional Care, Inc." However, the Request on its face is for "[f]inancial records, invoices, and receipts to back up payments" to CCI. The Request does not limit the records to those received by the County. The Requester asserts that he has not been provided with copies of all financial records or invoices and tax records. The County concedes in its denial letter that CCI has declined to provide it with any additional financial records.

While the County attempts to argue that the list provided by the Requester should qualify as a new request, the OOR disagrees. The items listed in the Requester's submission are all items that are included in the original Request and should have been obtained from CCI and provided to the Requester in response to the Request. Further, the fact that CCI has refused to provide the County with the records does not excuse the County from obtaining those records pursuant to 65 P.S. § 67.506(d).

The County implies that its agreement to provide the Requester with any additional records obtained either from CCI directly or as part of the pending legal action satisfies its obligations under the RTKL. This is incorrect. While the County has taken the appropriate steps to attempt to comply with the RTKL, the plain language of the

RTKL requires an agency to provide copies of or access to public records. The RTKL does not permit an agency to satisfy its responsibilities for providing such access by promising future access absent a written extension from the Requester. *See* 65 P.S. § 67.902(b)(2). Therefore, the County is required to continue its efforts to obtain copies of the requested records from CCI and provide them to the Requester.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted** and the County is required to provide copies of the requested records to the Requester within thirty (30) days. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the Court of Common Pleas, Lackawanna County. 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. §67.1301. The parties are further advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

FINAL DETERMINATION ISSUED AND MAILED January 8, 2010



APPEALS OFFICER
NATHANAEL J. BYERLY, Esquire

Final Determination Sent To:
Charles Schillinger
John O'Brien, Esquire