



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**RICHARD MYCHAK,
Complainant**

v.

**MT. CARMEL TOWNSHIP,
Respondent**

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Docket No. AP 2009-1106

INTRODUCTION

Richard Mychak (the “Requester”) submitted a request to Mt. Carmel Township (“Township”) seeking minutes and meeting tapes pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The Township did not substantively respond. The Requester timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the Requester’s appeal is **granted**, and the Township is required to take further action.

FACTUAL BACKGROUND

On October 28, 2009, the Requester submitted a request to the Township seeking “copies of [Township] meeting minutes, and Treasurers’ reports and copies of [Township] meeting tapes for the months of July, August and September 2009” (the “Request”).

Samuel Scicchitano, Chairman of the Board of Township Supervisors, timely invoked the thirty-day extension, and advised that a response would be provided by December 9th. The Township provided no further response, so the Request was deemed denied.

The Requester timely appealed on December 14th. In his appeal, he advised that the records are public and how taxpayer's money is being used is public ("Appeal").

Upon receipt of the Appeal and the OOR's correspondence seeking details, the Township did not supplement the record or explain its grounds for withholding the records.

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 subject to the RTKL that is required to disclose public records. 65 P.S. §67.302. Records of a local agency are presumed "public" unless the record is: (1) exempt under Section 708(b); (2) protected by a privilege; or (3) exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. §67.305. The Township did not dispute the public nature of the records requested, *i.e.*, meeting minutes and audiotapes and Treasurers' Reports for public meetings, and did not overcome the presumption of openness.

The three types of records sought have been determined to be public records. *See Demski v. Peters Creek Sanitary Authority*, OOR Dkt. AP 2009-1065 (audiotapes of public meetings, not in executive session, are public and must be provided absent an affidavit as to their non-existence); *Williams v. Johnstown Civil Service Board*, OOR Dkt. AP 2009-0619 (minutes are public records); *accord Mychak v. Mt. Carmel Tp.*, OOR Dkt. AP 2009-0570 (audit report presented at public meeting is public). The Township presented no evidence that the records requested do not exist, and supplied no ground for withholding them. As there were no grounds presented for withholding them, and these types of records are part of the record of public meetings, the Township must disclose them.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Township is directed to provide the 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 Final Determination, either party may appeal to the Northumberland 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 AND MAILED: January 12, 2010



LUCINDA GLINN, ESQ.
APPEALS OFFICER

Sent to: Richard Mychak; Samuel Scicchitano for Township