



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

DOUGLAS HANES	:	
Complainant	:	
	:	
v.	:	Docket No. AP 2009-1147
	:	
SUGAR GROVE VOLUNTEER	:	
FIRE DEPARTMENT	:	
Respondent	:	

INTRODUCTION

Mr. Douglas Hanes (the “Requester”) submitted a request to the Sugar Grove Volunteer Fire Department (the “Fire Department”) for meeting minutes, bids for snow removal, guidelines pertaining to the bid awards process, election vote counts, and a roster of current members with addresses pursuant to the Right to Know Law, 65 P.S. §§67.101 *et seq.* (“RTKL”). The Fire Department did not respond to the request and the Requester timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **granted**.

FACTUAL BACKGROUND

On December 16, 2009, the Requester mailed a right-to-know request to the Fire Department seeking:

1. All meeting minutes for all meetings held on December 14, 2009;
2. All bids for snow removal and copies of bid specifications for snow removal that were used in the bidding process;
3. Guidelines that pertain to awarding of bids and the process used;

4. Copy of the election results with vote counts, if not included in the minutes requested above;
5. A roster of all current members with members address to be included.

(the "Request") There is no evidence in the record indicating that the Fire Department responded. On December 30, 2010 the Requester timely appealed the deemed denial. In support of his appeal he provided a copy of the certified mail receipt evidencing mailing of the request by certified mail and receipt by Tom Braloz on December 16, 2009. On December 30, 2010 the OOR and the undersigned appeals officer each sent correspondence to the Fire Department notifying the Fire Department of the appeal. The Fire Department was informed that a failure to respond to a request is a denial and that it bears the burden of proving its denial. It was invited to provide information in support of its position. No response was received by the Fire Department.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The Fire Department qualifies as a local agency subject to the RTKL and its obligations of mandatory disclosure. *See* 65 P.S. §67.102, §67.302. *See also Pierce v. Morris Township Fire Dept.*, OOR Dkt. No. AP 2009-0116. The rationale and holding in *Pierce* are incorporated by reference herein.

The Fire Department has not distinguished itself from *Pierce* or demonstrated any reason that it is not subject to the RTKL. A record in the possession of a Commonwealth or local agency is presumed to be a public record 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 or regulation or judicial order or decree, 65 P.S. 67.305. The agency bears the burden of proof to demonstrate by a preponderance of the evidence that the record is not

subject to disclosure. 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.). *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."

The Request was submitted via certified mail on December 16, 2009 using the OOR's Standard Right-to-Know Request Form. The Requester indicated that he wanted copies and chose email as the delivery method. It was received on the same day as indicated on the Certified Mail Receipt. The Fire Department was required to respond no later than December 23, 2009. The Requester timely appealed on December 30, 2009. No evidence of a response by the Fire Department was provided. Accordingly, the Request in this case was deemed denied. The Fire Department failed to provide any basis, even upon invitation by the OOR, for withholding requested records. It has therefore failed to meet its burden of overcoming the presumption that records in the possession or control of an agency are public. The OOR has no alternative under the law but to order release of the requested records subject to redaction of any information that is nonpublic under the RTKL.

CONCLUSION

The Appeal is **granted** and Fire Department is required to take further action as set forth above. 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 Warren 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 27, 2010

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

APPEALS OFFICER
AUDREY BUGLIONE, ESQ.

Sent to: Douglas Hanes; Sugar Grove Volunteer Fire Department Open Records Officer