



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**In the Matter of  
PATRICIA KUPETZ,  
Complainant**

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v.

**Docket No. AP 2009-0925**

**JENKINS TOWNSHIP,  
Respondent**

### INTRODUCTION

Patricia Kupetz (the “Requester”) submitted a request to Jenkins Township (“Township”) seeking minutes and permit information relating to zoning for three companies pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The Township did not timely 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 in part and denied in part**, and the Township is required to take further action as directed.

### FACTUAL BACKGROUND

On October 1, 2009, the Requester submitted a right-to-know request to the Township seeking the following records with regard to:

- a. Acton Associates- 100 Thompson Street, Jenkins Township (‘80s pesticide plant)
- b. Acton Technologies- 100 Thompson Street, Jenkins Township
- c. Flontech USA – 100 Thompson Street, Jenkins Township

(1) Copies of all minutes to the Supervisor’s meetings held which discussed the zoning of land, and/or changes to the zoning of the land which holds or held the [above] companies from 1980 to present (“Minutes”);

(2) Copies of all information pertaining to any zoning permits issued for the [above] companies from 1980 to present (“Permit Information”);

(3) Copies of all minutes for Zoning Hearing Board Meetings which pertained to the following companies from 1980 to present (“ZHB Minutes”); and

(4) A complete copy of the current Township Zoning Ordinance (“Ordinance”).

(the “Request”).

Robert Jones, the Open Records Officer (ORO) for the Township, responded by invoking the thirty-day extension due to the voluminous nature of the material. The Township’s response was untimely, and the Request had been deemed denied as of October 12<sup>th</sup>. Accordingly, to preserve her timely appeal, the Requester appealed within fifteen business days of the deemed denial on October 27<sup>th</sup>.

In her appeal, the Requester advised that there are several families being exposed to “noxious odors” that she asserts emanate from the companies named in her Request. She states there is a community and voter interest in how the companies named were permitted to expand (the “Appeal”).

During the pendency of the Appeal, the Township provided responsive records. The Requester agreed to extend the due date for the Final Determination to December 18<sup>th</sup> to enable her to review the records provided and note which records remained outstanding. After reviewing the record, the Requester noted that they consisted solely of records dating from 2000 to the present. The Requester explained that she advised the Township that the material from 1980 to 2000 had not been provided. In response, the Township ORO supplied a verification pursuant to 18 Pa. C.S. §4904, in which he certified that the Zoning Officer had been instructed to review all minutes from 1980 to the present regarding Acton Technologies (“ORO Verification”). The Township ORO certified that “whatever was found concerning Acton Technologies was provided to Ms. Kupetz.” [See *ORO Verification*, at B.] The ORO Verification also provides that the “[Zoning Officer] was unable to locate any Planning and Zoning Minutes referencing any action taken on Acton Technologies from 1980 through 1999.” *Id.* at C.

## LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The Township is a local agency subject to the RTKL required to disclose public records. 65 P.S. §67.302. Records of a local agency are presumed to be “public” unless the record is: (1) exempt under Section 708(b); (2) protected by a legal 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 cite any exemptions to providing responsive records, and indeed, a copy of the current Zoning Ordinance and Minutes are public records. However, the Township contends that responsive records pre-dating 2000 cannot be located and the records that could be found regarding Acton Technologies had been provided to the Requester.

The records at issue in this appeal are the records pre-dating 2000 with regard to Part 1 (Minutes), 2 (Permit Information) and 3 (ZHB Minutes) of the Request. The Township submitted a single affidavit from its Township Manager/ORO certifying that a search of its records had been conducted. Specifically, the ORO Verification certifies that Township records had been searched for minutes and “whatever was found concerning Acton Technologies was provided to Ms. Kupetz.” However, the ORO Verification does not discuss whether records had been searched pertaining to Acton Associates, a 1980s pesticide plant/company, or Flontech USA. Further, the ORO Verification does not address whether all records were searched for any and all responsive “Permit Information” as sought in Part 2 of the Request. Nor does the verification state that records pre-dating 2000 no longer exist. The ORO Verification only establishes that a search was conducted and all minutes that were located pertaining to Acton Technologies had been provided.

The Request sought documents that are not addressed in the ORO Verification, and the Township did not provide any legal grounds for their non-production in response to the Request.

The OOR recognizes that thirty-year old records may be difficult to compile, but the RTKL offers no relief from disclosure based upon age. Therefore, since minutes are public records, the Township is directed to produce any existing Minutes and ZHB Minutes pertaining to the three companies that pre-date 2000 to the Requester. The Township is further directed to produce any and all responsive Permit Information to the Requester because such records may be presumed public, and the agency here provided no reason (*i.e.*, exemption, privilege or RTKL exception) for not disclosing such records.

### CONCLUSION

For the foregoing reasons, the Requester' Appeal is **granted in part and denied in part**. The Township established that it provided all minutes regarding Acton Technologies to the Requester. However, the Township did not establish that all Permit Information or Minutes/ ZHB Minutes relating to Acton Associates and Flontech USA pre-dating 2000 were no longer within its possession or control, and did not address its reasons for withholding these minutes and permit information. Therefore, the Appeal is granted as to the Permit Information for the three companies pre-dating 2000 and all minutes pre-dating 2000 for Acton Associates and Flontech USA, and the Township is directed to disclose these records 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 Luzerne County Court of Common Pleas. 65 P.S. §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 OOR website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: December 18, 2009**



**LUCINDA GLINN, ESQ.**  
**APPEALS OFFICER**

Sent to: Patricia Kupetz; Robert E. Jones, ORO for Township