



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

<b>In the Matter of</b>	:	
<b>PORTER-TOWER JOINT MUNICIPAL</b>	:	
<b>AUTHORITY, Complainant</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. AP 2010-0002</b>
	:	
<b>TOWER CITY WATER AUTHORITY,</b>	:	
<b>Respondent</b>	:	

### INTRODUCTION

Porter-Tower Joint Municipal Authority (the “Requester”) submitted a request to the Tower City Water Authority (“Authority”) seeking water meter readings for customers pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The Authority did not 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 Authority is required to take further action as directed.

### FACTUAL BACKGROUND

On December 16, 2009, the Requester submitted a right-to-know request seeking “all customer water readings in the current quarter” (“Request”). The Authority did not respond. The Requester timely appealed the deemed denial and argues that water meter readings are a record under the RTKL to which no exception applies.

On appeal, the Authority’s Solicitor submitted a memorandum and records to show its associated costs for meter reading. The Authority argued that water usage of its 1,200 customers, individuals and businesses, should not be available under the RTKL and notes

the information is provided to Requester for a fee of \$600 per year. The Authority argues that it spent approximately \$100,000 over the past 5 years for water meter readings, equipment, computer software and labor to develop a system for individual water usage.

The Authority also asserted that personal water usage rate may fit under the personal security exceptions, may indicate medical or disability status, and could fit under (b)(3) as it “could create vulnerability to that building through disclosure of critical water systems including suppression systems.” The Authority did not submit any evidence to substantiate these asserted possibilities.

### **LEGAL ANALYSIS**

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The Authority 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 Authority did not assert any specific exception regarding the public nature of the records, and did not submit any evidence to protect the customer water meter readings at issue. The Authority also failed to explain how any of the exceptions it noted as “possible” were implicated in this case.

*Mazzarese v. Conemaugh Township Municipal Authority*, OOR Dkt. AP 2009-0293, held that customer minimum water meter readings are not protected absent a showing that an exception protects specific information. As in *Mazzarese*, the agency here failed to submit any evidence regarding the nonpublic nature of the records at issue and thus failed to establish any exemptions. Therefore, the OOR has no alternative but to direct the release of the customer water meter reading records with nonpublic information redacted.

The OOR notes that the Authority did not substantiate that the \$600 fee for the records at issue warrants an exemption from the OOR Fee Schedule. The Authority did not show that its fee was based upon any statute or were necessarily incurred as a cost for compliance with the Request to trigger Section 1307(g). “Necessarily incurred costs” would be related to the cost of “complying with the request,” meaning the duplication of the record for a requester, not to the gathering of the information at issue. Costs related to the gathering of the information, such as recording the water meter readings here, are costs that the agency incurs as part of doing business regardless of whether a right-to-know request is made for it.

### CONCLUSION

For the foregoing reasons, the Requester’ Appeal is **granted**. The Authority is required to release customer meter readings with nonpublic information redacted 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 Schuylkill 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: February 1, 2010**



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

Sent to: Gretchen Sterns, Esq. (Porter-Tower Joint Municipal Authority); Joseph Kerwin, Esq. for Authority