



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
SIGNATURE SOLUTIONS INC.,	:	
Complainant	:	
	:	
v.	:	Docket No. AP 2009-0643
	:	
UPPER DUBLIN TOWNSHIP	:	
Respondent	:	

INTRODUCTION

Signature Solutions Inc., submitted a Right-to-Know request (the “Request”) to Upper Dublin Township (the “Township”) for current year real estate tax billing and payment status for 16 properties pursuant to the Right to Know Law, 65 P.S. §§67.101 *et seq.* (“RTKL”). The Township denied the Request stating that the records are in the legal custody of the Tax Collector. Signature Solutions, Inc. (“Signature”) timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, this appeal is **denied**, and the Township may proceed as set forth below.

FACTUAL BACKGROUND

On June 25, 2009, Signature filed the Request which states: “Please provide copies/printouts of records for current year real estate tax billing and payment status for the listed properties, copies/printouts of records for any interim billing and payment status for the listed

properties. Please include copies of records for any other open balances the township collects that would be a lien against any of the following listed properties.” A List of 16 properties followed including parcel number, owner and address. Certified copies were not requested.

Deb Ritter, Open Records Officer for the Township responded on June 26, 2009. There were apparently discussions and emails between the parties and the Township wrote to Signature again on July 10, 2009 stating as follows:

The records requested for items 1 and 2 with respect to real estate tax information are records maintained by the Township Tax Collector. The Tax Collector is not an agency and the records in her possession are not subject to a Right To Know request. (See §4c(c) of the Local Tax Collection Law (LCTL), 72 P.S. §§511.4c(C)). However, pursuant to §25 of the LCTL the Township has requested that the Tax Collector exhibit tax duplicates showing the uncollected Township real estate taxes for these properties as of the current date and provide the Township with a copy of that information, The Tax Collector has agreed to exhibit her records to the Township, but will not provide a copy to the Township except upon payment of a fee of \$20 for each property, which is her normal fee for a tax certification, The Township will have to pay this fee in advance. Thus your request is granted. However, please remit prepayment in the amount \$20.25 for each property tax record requested, or a total of \$324, payable to Upper Dublin Township. We will then secure the Township real estate tax information from the Tax Collector and provide copies to you. Note that the Township only has the right to request access to Township real estate tax records, Real estate tax records for the County and School District must be sought through a request to those agencies.

Signature considered this to be a denial and timely appealed to the OOR stating in part as follows:

“The OOR has held in several prior decisions, 1) even though a tax collector is not itself an agency under the RTKL, requests for records in their possession, which document agency taxes, should be made to the taxing authority, 2) tax duplicate information must be provided to the taxing authority at any time when requested, and 3) no certification fee may be charged for "compiling" such information from the sources needed to do so, especially where no such certification has been requested. Signature Information Solutions, Inc. v. Montgomery Township, AP 2009-0294 and the OOR decisions cited therein. Furthermore, OOR has held that records of the type sought by Signature here "are properly deemed records 'of the Agency' which document the transaction of its business and activity”

The Township supplemented the record, providing a letter brief and two affidavits. The Township argues, in part, as follows:

3. The Township has no access to the Tax Collector's records apart from her statutory obligation under the Local Tax Collection Law (LTCL) to provide monthly reports on forms approved by the Pennsylvania Department of Revenue and to display (but not provide copies of) unpaid tax duplicates to the Township on demand. There is nothing in the LTCL to suggest that the Township would have access under the provisions of the statute to the Tax Collector's records regarding the payment of County or School District taxes.

4. The Tax Collector has declined to provide copies of her records relating to the payment of real estate taxes to the Township except upon payment of a fee of \$20.00 for each requested record. The Township's Open Records Officer's affidavit confirming that is attached and incorporated by reference.

5. The records of the Tax Collector, in the hands of the Tax Collector, are neither "records" nor "public records" as those terms are defined in the Right-To-Know Law because the Tax Collector is not an "agency." To the extent that the OOR has previously construed the decision of the Commonwealth Court in Current Status, Inc. v. Hykel, 778 A.2d 781 (Pa. Cmmw. 2001) to hold that the Township has "control" of the Tax Collector's records or that those records, in the hands of the Tax Collector, are "public records," the OOR has misconstrued or misinterpreted that decision.

6. Because the Township does not have possession of the tax records requested nor does it have the right to obtain copies of those records without charge, it cannot supply them. The Township has stated that it can secure copies of the records based on the offer of the Tax Collector to supply copies at a charge of \$20 each, but Signature has not accepted that invitation.

The tax collector in a First Class Township is an elected official. The tax collector is required under the First Class Township Code to collect all Township taxes. Thus the tax collector operates by virtue of a statutorily imposed legal responsibility, not by contract with the Township. The tax collector is not an agent of the Township and the Township has no ability to control the manner in which the tax collector performs his/her duties...

...The Tax Collector's duties with respect to the "on demand" production of her records is set forth in the last paragraph of Section 25 of the LTCL which provides as follows: The tax collector shall, at any time on demand of any taxing district, exhibit any duplicate in his possession showing the uncollected taxes as of any date. Thus, vis-à-vis the Township, the Tax Collector's only duty on request of the Township for "on demand" information is to display unpaid Township tax duplicates. The Tax Collector has no duty to copy those records or

to provide anything in writing with respect to those records. In the instant case, as the Affidavit of Leslie Nylund sets forth, she recognizes her obligation to display an unpaid tax duplicate to the Township "on demand". However, she has declined to make a copy of that record or to set forth in writing what that record contains, except upon payment of a fee.

The Township provided a sworn statement of its tax collector, Leslie Nylund, who states as

Follows:

1. I am the duly elected tax collector for Upper Dublin Township.
2. It is my duty as tax collector for Upper Dublin Township to collect Township taxes as set forth on tax duplicates presented to me by the Board of Assessment Appeals.
3. I maintain my own office, maintain my own tax records and store those records in files on a computer using software which I maintain. I report to Upper Dublin Township as required by law. Monthly I report to the Township the total amount of taxes collected. I deposit those monies in my tax collector's account, remitting collections to the Township as required.
4. My tax records are not available to or accessible by anyone other than myself and my office staff. I understand that the Local Tax Collection Law requires that I display to the Township upon request those tax duplicates for Township tax which remain unpaid. I know of no authority which would require me to display to the Township unpaid tax duplicates for County or Upper Dublin School District taxes, which I also collect.
5. The Local Tax Collection Law does not require me to provide copies of my records to the Township. I do provide tax information to third parties upon request and upon the payment of a fee. When asked for this tax information, I gather and confirm it from various records and prepare the record individually.
6. I was requested by Deb Ritter, Upper Dublin Township Open Records Officer, to provide her with a written record regarding Township taxes paid on a number of properties. I was advised that she was making this request because Signature Information Solutions, LLC had requested the information from her. I told Ms. Ritter that I would provide a written record showing Township tax information for the identified properties, but only upon payment of a \$20.00 fee for each record.

The affidavit of Open Records Officer Deb Ritter was also supplied. She states that she attempted to acquire the information requested and attested to the position of the tax collector as set forth above.

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, 65 P.S. §67.302.

The RTKL defines a “record” as follows: “Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document,” 65 P.S. §67.102.

Records in possession of a local agency are presumed to be “public” 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, regulation or judicial order or decree, 65 P.S. §67.305.

The Township argues that the Local Tax Collection Law (“LTCL”) specifically exempts tax collectors from the RTKL as they are not “agencies” as defined therein. It further argues that the records requested are not in its possession, nor is it required to obtain them under section 67.506 as it does not have a contract with the tax collector, who operates under statutory authority to maintain and display her records.

Both parties refer to prior decisions of the OOR regarding tax information, many involving Signature. It is noted that, although there are similarities among prior appeals, the requests and bases for denial are different. Signature argues that the OOR’s decision in *Signature Information Systems v. Montgomery Twp*, OOR Dkt. AP 2009-0294 supports the conclusion that the Township is precluded from passing the cost of obtaining the records on to

the requester. The facts and arguments advanced by the agency in that case are distinguishable from this Appeal. That request was not denied on its merits and the Agency argued on appeal that only certified statements of accounts issued pursuant to the LTCL are accessible under the RTKL. No evidence of the taxing authority's inability to obtain the requested information was offered or discussed. Similarly, in *Signature Solutions, Inc v. Nether Providence Twp*, OOR Dkt. AP 2009-0299, the agency had a contract with the tax collector and enacted a local ordinance allowing the tax collector "to charge and retain tax certification and other fees."

Factually, this case is most similar to *Signature Solutions, Inc. v. Penn Township*, OOR Dkt. 2009-0020, which includes a detailed explanation of the requirements of the LTCL as they pertain to the RTKL. In that case, the Township provided an affidavit attesting that it does not issue interim tax bills, has no legal obligation to provide interim tax bills outside of the reports legally required on a monthly basis by the LTCL, 72 P.S. §5511.25 and included a letter from the tax collector stating that he was unwilling to provide the records without payment of a fee. The OOR concluded that the agency did not comply with the RTKL because it had not furnished the tax information that was within its control, i.e. the tax duplicate showing uncollected taxes as of any date. The OOR concluded regarding interim tax bills that [i]n the event that payment of the certification is required by the Tax Collector, it may qualify as a necessarily incurred cost of the Township in obtaining the record which cost may be passed on to the requester. 65 P.S. §67.1307(g)."

Tax records fall under the definition of "financial records" in the RTKL as they demonstrate "the receipt or disbursement of funds by an agency... (section 67.102). In the instant Appeal, the Township is in a statutory conundrum, required by the RTKL to provide copies of financial records and prohibited by the LTCL from requiring the tax collector, the only

entity with custody of the records, to comply. The LTCL establishes the tax collector as a “person duly elected or appointed to collect all taxes” (72 P.S. §5511.2) who “shall maintain and have legal custody of tax collection records that are not in the custody of a taxing district” (§5511.4c) and whose reporting duty is to monthly “provide a true, verified statement, in writing ... of accounts and finance for all taxes collected for such taxing district during the previous month or period...” (§5511.25). Regarding access to records, the LTCL states: “[t]he tax collector shall, at any time on demand of any taxing district, exhibit any duplicate in his possession showing the uncollected taxes as of any date,” (§5511.25). Regarding tax collection records, the LTCL states at section 5511.4c: “(c) This section shall not be construed to do any of the following: (1) Make a tax collector an “agency” or authorize requests of the tax collector for records pursuant to the act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law.”

The tax collector, in a sworn statement, declared her refusal to provide copies of tax records without payment and no legal authority has been offered requiring her to provide copies. The tax collector is exempt from the RTKL. It is established as a matter of record that the Township cannot get anything other than the statutorily required monthly reports without paying the tax collector a fee (see Affidavits of Leslie Nylund and Deb Ritter). Accordingly, we must answer the question of what an agency is to do when it has no authority to command anything other than the display of a record and the custodian of the record is permitted by statute to withhold it. The Township cannot comply with the Request without incurring the tax collector’s fee. This payment is therefore “necessarily incurred” and, as we said in *Signature Information Solutions, Inc. v. Penn Township*, OOR Dkt. 2009-0020, may be passed on to the requester in accordance with section 67.1307(g).

This decision does not conflict with the OOR's holding in *Wright v. DOC*, OOR Dkt. AP 2009-0174 where an agency voluntarily entered into a contract to store its records and sought to impose a retrieval fee to recoup the vendor's charges. In that case, the arrangement was voluntary and here it is statutory. See also *Signature Information Systems v. Nether Providence Twp*, OOR Dkt. 2009-0299 (the OOR held that where an agency that entered into a contract and enacted an ordinance allowing the tax collector to charge certification and other fees, the fees are not necessarily incurred).

CONCLUSION

For the foregoing reasons, this appeal is **denied** and the Township is permitted to charge the requester the actual cost of procuring and copying the records requested.

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 Montgomery 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 ON: August 24, 2009



APPEALS OFFICER
DENA LEFKOWITZ, Esq.

Sent to: Signature Information Systems, Inc.
Gilbert P. High, Jr., Esquire