



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

**IN THE MATTER OF**

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**DAVID NAJARIAN,  
Complainant**

**v.**

**Docket No.: AP 2009-0916**

**NORTH WHITEHALL TOWNSHIP  
Respondent**

**INTRODUCTION**

David Najarian (the “Requester”) filed a right-to-know request (the “Request”) with the North Whitehall Township (the “Township”), pursuant to the Right to Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. He sought copies of a copyrighted map submitted as part of a zoning hearing. The Township denied the Request. The Requester filed a timely appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **denied** and the Township is not required to provide the records sought.

## **FACTUAL BACKGROUND**

The Requester filed the Request with the Township on September 30, 2009. Specifically, he sought copies of the application and map depicting the layout of a proposed Wal-Mart (September 4, 2009 supplement to Application) related to zoning appeal 2009-9. He indicated verbally that black and white copies were sufficient.

In an October 5, 2009, the Township partially granted the Request and provided the Requester with certain documents. However, the Township denied his Request with respect to the map. The Township stated that due to the proprietary (copyrighted) nature of the map, it would not copy the map. The Township stated that a copy of the map could be purchased from the author of the map at the cost of \$65.70.

In an October 8, 2009 letter to the Township, the Requester stated that he had previously indicated that a black and white copy was sufficient. He also asserted that copyright law was inapplicable in the instant Request. He stated that the United States Copyright Act (“Copyright Act”) does not preempt state law with respect to statutes of any state with respect to zoning, or building codes relating to architectural works and that the Act preserves state remedies. 17 U.S.C. § 301(4). He indicated that the Copyright Act could not be used to deny his Request. He argued in the alternative, that even if the Copyright Act was applicable, it allowed reproduction for fair use including for purposes such as criticism, comment, news reporting, teaching scholarship, or research. 17 U.S.C. § 107. The Requester argues that such use is not an infringement of copyright. While the Requester implies that the map will be used for criticism and comment, he never expressly states his intended use within the Request or appeal.

The Requester filed a timely appeal with the OOR on October 23, 2009. The Requester granted the OOR additional time to issue a final determination. The Requester raised two issues. First, whether copyright law applies. Second, whether the actual cost is that charged by the copyright owner or the Township's actual cost to photocopy the item.

In support of the appeal, the Requester contends that the copyright is inapplicable and may not be a basis in calculating the cost of reproduction. He argues that the Copyright Act does not preempt state law as it pertains to the "statutes of any State with respect to...zoning, or building codes, relating to architectural works" 17 U.S.C. § 301(4). He asserts that the map may be copied directly by the Township and that the price cannot exceed the Township's actual cost to copy the map. He cites *Lindberg v. Kitsap*, 948 P.2d 805 (Wash. 1997) and *Polascuk v. Patz*, 143 Md.App. 741 (2002) cert denied, 369 Md. 573 (Md. 2002). He claims that the cost of reproducing the map is \$50-\$58 and substantially less if black and white. He asserts that cost is also lessened when the Township reproduces the item on multiple standard sizes pages. He points out that the cost to copy should not be set by the copyright holder but should be the Township's actual cost to copy or the amount charged by a copying firm. He argues that the Township may not charge \$65.70 for a copy of the map where the price exceeds their actual cost to copy.

In response to the appeal, the Township contends that the map is copyrighted and they are precluded from making copies of the map under the Copyright Act pursuant to 65 P.S. § 67.305. The Township cites the OOR's determination in *Dickerson v. Department of Corrections*, OOR Dkt. 2009-0621 and also states that the map is exempt

under 65 P.S. § 67.708(b)(11). The Township asserts that the map is a specialized document under 65 P.S. § 67.307 because it is a color print, non-standard in size measuring 29 inches by 40 inches. The Township argues that requiring it to make black and white “panels” from the map is requesting the Township to create new records. In regards to the cost of reproduction, the Township contends that the price to fill the request is the actual cost the Township must pay to reproduce the specialized record. Finally, the Township argues that the Requester’s use of the material is not for nonprofit, educational or teaching and scholarship.

In support of its response, the Township provided the sworn affidavit of Harold H. Newton, Jr. PE, PLS, President of the Newtown Engineering Group, PC. Mr. Newton affirmed that the Newtown Engineering Group, PC holds the copyright of the map/plans that have been submitted to the Township for approval. Mr. Newton said that no copies shall be made without the written consent of the Newton Engineering Group, PC.

In support of its claim that disclosure is precluded under 65 P.S. § 67.305, the Township argues that federal law protects the rights of owners in copyrighted materials, the violation of which is infringement. *See* 17 U.S.C. § 102. The Township cited *Newton v. Voris*, 364 F.Supp. 562 (1973) where a federal district court, finding it had exclusive jurisdiction pursuant to 28 U.S.C. §1338(a), held that maps are a specific class of material recognized as subject to copyright, 17 U.S.C. § 5(f). The court opined that “Maps are subject to copyright protection...The fact that the source of the material for the map is in the public domain does not void the copyright....” *Id.* at 563-64.

The Township argues alternatively that creating separate smaller copies of portions of the map is creating the record in a format in which it does not exist. The

Township argues that reproducing the full color map in black and white 8.5 x 11 portions would require the Township to compile, format, or organize a new records from the large map maintained by the Township.

In response, the Requester argues that by its nature, a copyrighted work cannot comprise a trade secret or confidential information because it is deposited with the Library of Congress. This registration requires public disclosure. He reasons that if publicly disclosed, it cannot be considered confidential. He also argues that the release of the map to a number of third parties destroys any confidential privilege. Finally, he argues that following the Township's logic, no document authored outside the agency of the Township could be copied as a public document regardless of the existence of a little. He claims the Township's interpretation would eviscerate the RTKL. He states that the marking itself (©) does not provide protection, only notice of protection, which goes to the willfulness of the infringement. 17 U.S.C. § 401(c).

After filing the appeal, the Requester was provided with a copy of the map by the copyright holder at a subsequent zoning hearing. The Requester argues that this does not moot his appeal.

### **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. See 65 P.S. § 67.302.

Section 102 of the RTKL, defines the term "record" as:

"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.”

The RTKL provides further clarity in defining a “public record” as:

“A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege.”

65 P.S. §67.102.

The RTKL is clear that agencies bear the burden of proving the applicability of any exceptions and it is not the role of the OOR to identify potential areas of exemption.

Specifically, § 708 in pertinent part states:

(a) Burden of proof. —

(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.

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. West 2004). *See also Commonwealth v. Williams*, 615 A.2d 716 (PA. 1992).

### **1. The appeal is not moot.**

The record shows that the Requester was provided with a copy of the requested map by the copyright holder after filing his appeal. However, the RTKL does not moot an appeal when records are provided to a requester by a third party or obtained by a requester from another source. The agency is still required to provide a requester with a response or the requested records absent a written agreement to the contrary between the agency and requester. There is no claim that any such agreement exists here. As such, this appeal is not moot.

**2. The map is not exempt from release under 65 P.S. § 708(b)(11).**

The Township initially argues that the requested map is exempted from public release under 65 P.S. § 67.708(b)(11) of the RTKL which exempts the following: “A record that constitutes or reveals a trade secret or confidential proprietary information.” A trade secret is defined in section 67.102 as follows:

Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Confidential proprietary information is defined in Section 67.102 as follows:

Commercial or financial information received by an agency: (1) which is privileged or confidential; and (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

Here, the map is not a trade secret because the information is not secret; in fact, the information is “readily ascertainable by proper means by other persons.” The map is not confidential proprietary information because the information is not privileged or confidential. Further, the copyright holder has already released a copy of the map to the Requester and will release additional copies, if he purchases the map. As such, the OOR rejects this argument.

**3. The map is copyrighted and exempt from release under the RTKL.**

Both parties agree that the map is copyrighted. The Township argues that since the map is copyrighted, it is precluded from releasing the map under the Federal Copyright Act. The Township contends that if it makes a copy of the map it will be

liable for infringement. The Township states that copies may be obtained from the copyright holder for \$65.70. The Requester counters arguing that copyright ownership is immaterial because his Request falls under exceptions within the Copyright Act. Specifically, he contends that he is entitled to the records under 17 U.S.C. § 301 and under the Fair Use Doctrine.

Under the RTKL, the OOR is precluded from ordering the release of records that would be exempt under any Federal law. *See* 65 P.S. § 67.305(a)(3). By creating exclusive rights in the copyright holder, the Copyright Act effectively precludes legal reproduction of any copyrighted work without the consent or permission of the copyright holder. *See* 17 U.S.C. § 106<sup>1</sup> and 17 U.S.C. §501<sup>2</sup>. The Copyright Act also contains

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<sup>1</sup> **§ 106. Exclusive rights in copyrighted works**

Subject to sections 107 through 122 [*17 USCS §§ 107 through 122*], the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

<sup>2</sup> **§ 501. Infringement of copyright**

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 [*17 USCS §§ 106-122*] or of the author as provided in section 106A(a) [*17 USCS § 106A(a)*], or who imports copies or phonorecords into the United States in violation of section 602 [*17 USCS § 602*], is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter [*17 USCS §§ 501 et seq.*] (other than section 506 [*17 USCS § 506*]), any reference to copyright shall be deemed to include the rights conferred by section 106A(a) [*17 USCS § 106A(a)*]. As used in this subsection, the term "anyone" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411 [*17 USCS § 411*], to institute an action for any infringement of

criminal penalties for copyright infringement.<sup>3</sup> In this case, Newtown Engineering

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that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111 [[17 USCS § 111](#)], a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3) [[17 USCS § 111\(c\)\(3\)](#)], the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 119(a)(5) [[17 USCS § 119\(a\)\(5\)](#)], a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(f) (1) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122 [[17 USCS § 122](#)], a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.

(2) A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2) [[17 USCS § 122\(a\)\(2\)](#)], to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934 [[47 USCS § 338\(a\)](#)].

## **§ 506. Criminal offenses**

### **(a) Criminal infringement.**

(1) In general. Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18 [[18 USCS § 2319](#)], if the infringement was committed--

(A) for purposes of commercial advantage or private financial gain;

(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$ 1,000; or

(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

(2) Evidence. For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement

Group, PC holds the copyright of the map/plans that have been submitted to the Township for approval and has stated that no copies shall be made without its written consent. The copyright holder has agreed to release the record for \$65.70. However, the Copyright Act creates exceptions which allow limited use of copyrighted material without requiring permission or consent from the copyright holder. The Requester cites two of these in support of his appeal.

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of a copyright.

(3) Definition. In this subsection, the term "work being prepared for commercial distribution" means--

(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized distribution--

(i) the copyright owner has a reasonable expectation of commercial distribution; and

(ii) the copies or phonorecords of the work have not been commercially distributed; or

(B) a motion picture, if, at the time of unauthorized distribution, the motion picture--

(i) has been made available for viewing in a motion picture exhibition facility;

And

(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.

(b) Forfeiture, destruction, and restitution. Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323 of title 18 [[18 USCS § 2323](#)], to the extent provided in that section, in addition to any other similar remedies provided by law.

(c) Fraudulent copyright notice. Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than \$ 2,500.

(d) Fraudulent removal of copyright notice. Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than \$ 2,500.

(e) False representation. Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409 [[17 USCS § 409](#)], or in any written statement filed in connection with the application, shall be fined not more than \$ 2,500.

(f) Rights of attribution and integrity. Nothing in this section applies to infringement of the rights conferred by section 106A(a) [[17 USCS § 106A\(a\)](#)].

First, the Requester argues that the Copyright Act does not preempt statutes of any state as they pertain to state laws relating to zoning or building codes that relate to architectural works. As support, he cites 17 U.S.C. § 301(b)(4). Section 301 provides:

**§ 301. Preemption with respect to other laws**

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 [[17 USCS § 106](#)] in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103 [[17 USCS §§ 102](#) and [103](#)], whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to--

(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103 [[17 USCS §§ 102](#) and [103](#)], including works of authorship not fixed in any tangible medium of expression; or

(2) any cause of action arising from undertakings commenced before January 1, 1978;

(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 [[17 USCS § 106](#)]; or

(4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(a)(8) [[17 USCS § 102\(a\)\(8\)](#)].

(c) With respect to sound recordings fixed before February 15, 1972, any rights or remedies under the common law or statutes of any State shall not be annulled or limited by this title until February 15, 2067. The preemptive provisions of subsection (a) shall apply to any such rights and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2067.

Notwithstanding the provisions of section 303 [[17 USCS § 303](#)], no sound recording fixed before February 15, 1972, shall be subject to copyright under this title before, on, or after February 15, 2067.

(d) Nothing in this title annuls or limits any rights or remedies under any other Federal statute.

(e) The scope of Federal preemption under this section is not affected

by the adherence of the United States to the Berne Convention or the satisfaction of obligations of the United States thereunder.

(f) (1) On or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990 [[17 USCS § 106A](#) note], all legal or equitable rights that are equivalent to any of the rights conferred by section 106A [[17 USCS § 106A](#)] with respect to works of visual art to which the rights conferred by section 106A [[17 USCS § 106A](#)] apply are governed exclusively by section 106A [[17 USCS § 106A](#)] and [section 113\(d\)](#) [[17 USCS § 113\(d\)](#)] and the provisions of this title relating to such sections. Thereafter, no person is entitled to any such right or equivalent right in any work of visual art under the common law or statutes of any State.

(2) Nothing in paragraph (1) annuls or limits any rights or remedies under the common law or statutes of any State with respect to—

(A) any cause of action from undertakings commenced before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990 [[17 USCS § 106A](#) note];

(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A [[17 USCS § 106A](#)] with respect to works of visual art; or

(C) activities violating legal or equitable rights which extend beyond the life of the author.

While §301 states that the Copyright Act will not preempt certain state statutes, it does not automatically entitle the Requester to all copyrighted materials that are part of zoning or building codes, nor does it specifically create a right to those materials. The Requester does not point to any specific Pennsylvania zoning or building code or statute that requires the Township to provide him with a copy of the map in either the zoning or RTKL context. In short, he cites no state law the Copyright Act would preempt in this appeal. Therefore, § 301 is inapplicable to the instant appeal.

The Requester also claims that he is entitled to a copy of the map under the Fair Use Doctrine. In support he cites *Lindberg v. Kitsap*, 948 P.2d 805 (Wash. 1997). It is important to note that this case has no precedential value whatsoever in Pennsylvania or the 3<sup>rd</sup> Circuit. However, the case includes the following passage:

The doctrine of fair use, originally created and explained in case law, permits courts to avoid rigid application of the copyright statute when such applications would stifle the creativity the copyright law is designed to foster. This protection has never afforded the copyright owner complete control over all possible uses of a work. Any person may reproduce a copyrighted work for "fair use." The copyright owner does not possess the exclusive right to such a use. The "fair use" doctrine is an equitable rule of reason and each case must be decided on its facts. A court must consider the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and the effect of the use on the potential market for or the value of the copyrighted work. The scope of the doctrine is wider when the use relates to issues of public concern. The public benefit resulting from the particular use of copyrighted work need not necessarily be direct or tangible, but may arise because the challenged use serves a public interest. The copyrighted work used for such purposes as criticism, news reporting, teaching, scholarship, or research are given more latitude

*Lindberg v. Kitsap*, 948 P.2d 805 (citations omitted)

Fair use is a defense to copyright infringement which involves a factual analysis to be conducted on an individual case by case basis. A finding of fair use in one factual context does not mean that fair use will apply in a different factual context. A logical application of the fair use doctrine in the RTKL context creates the likelihood of finding a specific record public for one requester while rendering the same record exempt for another requester. This is not an acceptable result under the RTKL. Under the RTKL, a record is either public or it is exempt. A record simply cannot be a public record for one requester and not public for another. Therefore, a fair use doctrine analysis is one to be conducted outside the RTKL context.

The OOR also notes that the Fair Use Doctrine requires, in part, a determination of how the record will be used. If an agency conducts such an analysis, it will deny a request based on a requester's intended use of the record in violation of 65 P.S. §

67.302(b). Such is the case here. The Township argues that the Requester's use of the material is not for nonprofit, educational or teaching and scholarship. However, under the RTKL the Township is precluded from denying a request on these grounds. This conflict of laws further exemplifies that the Fair Use Doctrine analysis should be conducted outside the RTKL context.

Additionally, the OOR has consistently held that even if a Requester has the proper authority or legal right to seek access to records on behalf of themselves or another, the RTKL may not be the proper vehicle for gaining access to those records. *See e.g. See Rothrock v. York County*, OOR Dkt. AP 2009-0767 (records exempt even if the Requester had the proper authority to seek access to medical records on the inmate's behalf); *Davila v. Dept. of Corrections*, OOR Dkt. AP 2009-0656 (inmate's own medical records exempt from public access); *Hicks v. Dept. of Corrections*, OOR Dkt. AP 2009-0516 (inmate's mental health records are exempt); *Rech v. Dept. of Education*, OOR Dkt. AP 2009-0034 (RTKL is not the proper vehicle for access to one's own employment records). Here, the Township is precluded from copying the map under the Copyright Act unless one of the exceptions within that Act apply. While the requested map may be available to the Requester under the Fair Use Doctrine outside the RTKL, it does not render the records publicly accessible to all. Therefore, the RTKL is not the proper vehicle for the Requester to obtain copies of the map.

To compensate, the Requester argues that the cost of reproducing the map in its color non-standard size (29" x 40") is \$50-\$58 and he should not be required to pay the \$65.70 the copyright holder will charge the Township to make the copy. It is established as a matter of record that the copyright holder has not granted the Township permission

to copy the copyrighted map unless it pays the copyright holder a fee of \$65.70. The Township cannot comply with the Request without incurring the fee, absent raising a fair use defense should it make a copy and face suit. This payment is therefore “necessarily incurred” and, as we said in *Signature Information Solutions, Inc. v. Penn Township*, OOR Dkt. 2009-0020 and *Signature Information Solutions, Inc. v. Upper Dublin Township*, OOR Dkt. 2009-0643, may be passed on to the Requester in accordance with section 67.1307(g). The OOR notes that this does not preclude the Requester from seeking copies under the fair use doctrine in the appropriate arena.

The OOR notes the significant public policy concern this raises with the RTKL and possession of registered copyrighted materials by agencies. However, this determination is limited to the specific facts in this case.

**CONCLUSION**

For the foregoing reasons, the appeal is **denied**. The Township is not required to provide a copy of the map. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the Common Pleas Court of Lehigh County. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S. §67.1301. The parties are further advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

**FINAL DETERMINATION ISSUED** December 30, 2009



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**APPEALS OFFICER  
NATHANAEL J. BYERLY, ESQUIRE**

**Sent to:  
David Najarian, Esquire  
Lisa Young, Esquire**