

FACTUAL BACKGROUND

On December 8, 2009, the Borough received several right-to-know requests from the Requester. The instant appeal regards the Request seeking an “up-to-date accurate map of all sewers in [the Borough], dated and signed by a licensed engineer and certified as to its accuracy by the engineer’s firm.” After receiving no response from the Borough within the five (5) business days permitted, the Requester timely appealed the deemed denial on December 22, 2009. On the same day the undersigned invited submission of information from both parties. On December 30, 2009 the Borough open records officer, Linda Salzmann, responded by enclosing a letter sent to the Requester on December 9, 2009 extending the deadline to respond (hereinafter, “Extension Letter”).

The Extension Letter stated “Please be advised that your requests for storm and sanitary sewers have been determined to require an extension of time to review and respond.” The OOR asked both parties to provide information as to whether the Extension Letter referred to all five of the requests now on appeal. The Requester responded that she had made a request for a “2002 video of the storm and sanitary sewers” that she did not appeal as she determined that the Extension Letter regarded this request. The Borough responded that the Extension Letter used the word “‘requests’ (plural)” thus referred to all of the December 8 requests filed by the Requester. The Borough advised that it used the phrase “storm and sanitary sewers because that has been her issue with the Borough.” The OOR determined that the Extension Letter referred only to a request not currently on appeal and continued to process this appeal. The Borough then sent correspondence stating that a DVD map was available in response to the Request.

On January 19, 2010, after extending the deadline to issue the final determination, the Requester asserted that DVD contains the same maps as provided a few months ago and that she “was told these maps were copied from a ‘sewer map book’ the borough engineer and other officials have described as old and inaccurate.” Therefore, she considered the DVD “not responsive” to her request. On January 20, 2010 the Borough provided the Affidavit of Linda Salzman signed subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsifications to authorities affirming that “the DVD of the sewer maps as provided by Boro Engineer Paul Gaus is the only record responsive to the request.”

LEGAL ANALYSIS

Pursuant to section 67.503(a), the OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The Borough is a local agency subject to the RTKL, 65 P.S. §67.3012.

An agency is required to produce public records; however, it is not required to produce records that do not exist as the OOR has held in numerous final determinations, *See Fugit v. Lancaster County Sheriff's Office*, OOR Dkt. AP 2009-0050; *Faust v. DOC*, OOR Dkt. AP 2009-0266; *Moore v. DOC*, OOR Dkt. AP 2009-0533; *Gaskins v. DOC*, OOR Dkt. AP 2009-0586; *Polite v. Pennsylvania Dept. of Probation and Parole*, OOR Dkt. AP 2009-0962. The legal analysis and holdings of those cases are incorporated herein by reference.

The Borough demonstrated, via Affidavit, that all existing records responsive to the request were provided.

CONCLUSION

For the foregoing reasons, this appeal is **denied**. The Borough is not required to take any further action. The parties are advised that this is a Final Determination. Within thirty (30) days of the mailing date of this determination, it may be appealed to the Allegheny County Court of Common Pleas. In the event of an appeal for judicial review, all parties must be served with notice of the appeal. The OOR shall be served notice in accordance with Section 1301 and have an opportunity to respond to any appeal for judicial review.

The parties are advised that this Final Determination will be posted on the Office of Open Records website at: <http://openrecords.state.pa.us>

FINAL DETERMINATION ISSUED AND MAILED: February 3, 2010



AUDREY BUGLIONE, ESQ.
Appeals Officer

Sent to: Heather Gross
Linda Salzmann