



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>KENNETH METZNER,</b>	:	
<b>Complainant</b>	:	
	:	<b>Docket No.: AP 2009-1043</b>
<b>v.</b>	:	
	:	
<b>CITY OF PHILADELPHIA</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

Mr. Kenneth Metzner (the “Requester”) filed right-to-know requests with the City of Philadelphia (the “City”) seeking access to records of the Bureau of Revision of Taxes (“BRT”). The City partially granted the request and provided access both electronically and by photocopy. The City partially denied the request as to records publicly available on the City or Commonwealth websites and directed the Requester to the websites. It also partially denied the request stating that certain records do not exist or that the request was not sufficiently specific. The Requester timely appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part and denied in part** and the City is required to take further action as directed below.

## **FACTUAL BACKGROUND**

On September 10, 2009, the Requester submitted multiple requests to the City for records of the BRT. The City sought an extension to respond by November 5, 2009, to which the Requester confirmed his consent in writing. On November 5, 2009 the City responded, providing responsive documents as email attachments, electronically on a CD, and a box of documents it asked the Requester to pick up. The City denied the request as insufficiently specific, asserted that many records are “readily available to the public on one of the City’s or state of Pennsylvania’s websites” and referred the Requester to the websites to assist him in describing the records sought. The City invited the Requester to bring to its attention “specific documents that are not included in the response” and advised that to the extent the documents are not exempt by the RTKL it was willing to work with the Requester to make them available. The Requester responded on November 8, 2009 requesting that the City convert those records responsive to the requests and accessible via the cited websites to paper within five days, as provided by 65 P.S. §67.704(b)(2). Finally, the City denied the request for records it advised do not exist.

On November 20, 2009 the Requester provided the City with search terms that he believed would provide email records responsive to his request. He also indicated that unless otherwise specified he sought documents created after January 1, 1998. He asked that the City provide a sworn statement as to the nonexistence of records and to set forth the legal grounds for denial of each request. The Requester then identified each request that he felt was not sufficiently responded to by the City.

On November 25, 2009 the City responded stating that it asked the BRT to conduct an additional search for records, but continued to assert that many of the requests

were not sufficiently specific. On the same day, the Requester timely filed five appeals with the OOR (Dkt Nos. AP 2009-1044,1045, 1046 and 1047) . Each of the five appeals related to a request for BRT records was consolidated by agreement of the parties. On January 20, 2010 the City provided an additional submission reasserting its prior positions; however it did not provide any affidavit supporting its asserted grounds for exemption of the records.

The City did note that that in response to the requests it “held two (2) conference calls with [the Requester] for purposes of clarification (and hopefully specifying the requests), exchanged several email communications regarding the requests, and provided [the Requester] over one thousand (1,000) pages of hard copy documents and twenty-five (25) separate electronic documents. The Requester does not dispute this; however, he asserts that additional records exist that are responsive to his requests.

The following requests (using the numbering from the originally submitted request on the designated date) were identified by the Requester as being insufficiently responded to and have been determined to be the only requests that are the subject of this consolidated appeal. If supplied, the Requester’s grounds for appeal follow each request. The agency’s position is set forth in the Legal Analysis section that follows.

**BRT Request made Sept. 10, 2009**

1. All documents constituting or relating in any way to any legal action or legal complaint (draft or actual) that was ever threatened against, supplied to, or discussed with the BRT wherein an assertion was made or threatened that the BRT ’s practices, actions or omissions violate or violated any provision of the Pennsylvania Constitution or U.S. Constitution including, without limitation, the draft complaint referred to by BRT Chairman Charlesretta Meade in her May 4, 2009 testimony before City Council.

**Appeal:** The Requester asserts that no documents were produced, not even the specific draft complaint referenced above or any related documents. He states that the City did

provide a CD of documents labeled "BRT Litigation & Claims," but that it contains no documents regarding litigation or claims but rather only a computer-generated list of appeals before the BRT from 2000 to 2009.

2. To the extent not produced in response to the request above, any document concerning or constituting any assertion, criticism or allegation that, or discussion or analysis whether, the BRT's practices, actions or omissions violate or violated any provision of the Pennsylvania Constitution or U.S. Constitution.

**Appeal:** The Requester asserts that no documents were produced. He contends that BRT Board member, Justice Nigro, has been quoted in the press as saying that for years he has heard appellants at BRT market value hearings decry the lack of constitutional uniformity.

3. To the extent not produced in response to any request above, all documents concerning or constituting any study, evaluation, report, research, policy paper or analysis of the assessment of property in Philadelphia generally or the fairness or uniformity or regressivity of current or past assessments of property in Philadelphia including, without limitation, any documents prepared by Kevin Gillen, Ph.D, Econsult or any other economist, statistician, researcher, consultant or expert.

**Appeal:** The Requester stated that he does not need either the 2003 report by Dr. Gillen or his 2008 update to that report. However, he asserts that other responsive documents exist, including, without limitation, a 1980 report by the Pennsylvania Economy League entitled "The Problems with Philadelphia Real Property Assessment Practices & Solutions."

4. To the extent not produced in response to any request above, all documents concerning any meeting of any agent, employee, BRT Board member or consultant for the BRT wherein uniformity, regressivity, progressivity or fairness of the BRT 's assessment system or practices were discussed, considered or reported on, including, without limitation, any minutes, agenda, outlines, notes or summaries.

**Appeal:** The Requester asserts that no documents were produced.

6. To the extent not produced in response to any request above, all documents that mention the Coefficient of Dispersion (COD) for Philadelphia .
7. To the extent not produced in response to any request above, all documents relating in any way to the Actual Value Initiative, including without limitation (1) any rationale for adopting or moving toward the Actual Value Initiative or any full value assessment initiative or project, (2) any potential or anticipated impact of implementing any full value or Actual Value Initiative, and (3) any testimony, analyses, exhibits, summaries, hand-outs, information packets or supporting

documentation that were provided or transmitted by the BRT to any member or employee of any legislative or governmental agency or body (or committee or task force thereof).

**Appeal:** The Requester identified the "black book" and other documents submitted or referenced by Mr. Glancey in connection with his Oct. 2002 testimony as having not been produced.

8. To the extent not produced in response to any request above, any document constituting a chronology, timeline or listing of dates or events that relate in any way to the BRT's study, analysis, consideration, adoption, move toward or implementation of the Actual Value Initiative or of any full value initiative.

**Appeal:** Requester asserts that no documents were produced.

9. To the extent not produced in response to any request above, all documents constituting, or relating in any way to, any recommendations, proposals or studies (whether implemented or not and whether in draft or final form) for improving Philadelphia's property assessment practices or system in any way including, without limitation, with respect to improved accuracy, uniformity, efficiency or fairness.
12. Any study, report or annual summary referring to the time period, or prepared on or after, January 1, 2000 that tracks or reports on any of the following statistics: (a) number of appeals filed before the BRT; (b) number of successful appeals vs. unsuccessful appeals or the rate of success of appeals; (c) number or rate of appeals withdrawn or settled; (d) number or rate of appeals filed by taxpayers vs. number or rate of appeals filed by attorneys on behalf of taxpayers; (e) the number of successful appeals or rate of success of appeals filed by taxpayers vs. those filed by attorneys on behalf of taxpayers; (f) number or rates appeals filed by any category such as, for example, non-uniformity; (g) number or rate of appellants who request oral hearings vs. those who do not; (h) the cost of maintaining the appeal process as a whole or of filing or maintaining an appeal; (i) the number or rate of complaints or property inquiries (short of a formal appeal); (j) the number or rate of complaints or property inquiries (short of a formal appeal) that result in an upward or downward adjustment in a property's valuation or assessment. For purposes of this request, "success" or "successful appeal" refer to any instances where the assessment or valuation of a property was lowered.

**Appeal:** Requester asserts that no documents were produced.

13. Any study, report or annual summary referring to the number or rate of properties assessed in Philadelphia during any annual period on or after January 1, 1995 to present.

**Appeal:** Requester asserts that no documents were produced.

14. All documents concerning the property known as 910 Kimball Street , Philadelphia , PA 19147 .

**Appeal:** The Requester asserts that only the manually-generated "Property Record Card" was produced. Other records produced relating to other properties as well as the pages from the produced manual that identifies the MULTIPLE available computer screens from the VSAM system demonstrate that there are more documents.

15. All documents concerning the property known as 1316-20 South Ninth St., Philadelphia , PA 19147 , with the exception of the application filed by Kenneth L. Metzner for a non-profit exemption.

**Appeal:** The Requester asserts that only the manually-generated "Property Record Card" was produced. Other records produced relating to other properties as well as the pages from the produced manual that identifies the MULTIPLE available computer screens from the VSAM system demonstrate that there are more documents.

**BRT Request made Sept. 12, 2009**

The Requester asserts that no documents were produced in response to the following requests:

1. To the extent not produced in response to the September 10 Request, all documents constituting or relating in any way to any assertion, concern, criticism or allegation that, or discussion or analysis whether, the omissions, practices or actions of the BRT (including, without limitation, its assessments) may fail to meet or may violate, or may have failed to meet or may have violated at any time, any standard of the International Association of Assessing Officers.

2. To the extent not produced in response to the request above or in response to the September 10 Request, all documents relating in any way to any criticism, discussion, review, evaluation, rebuttal or analysis of any work, research or services performed by Kevin Gillen Ph.D. or Econsult.

3. To the extent not produced in response to any request above or in response to the September 10 Request, copies of all agreements or contracts between the BRT and any economist, statistician, researcher, consultant or expert entered into at any time on or after January 1, 2006 including, without limitation, agreements or contracts with Kevin Gillen, Ph.D and Econsult.

5. To the extent not produced in response to any request above or in response to the September 10 Request, all documents constituting or relating in any way to

any estimates, forecasts, projections, budgeting or analysis of revenues from property taxes for any time period after January 1, 1999.

6. To the extent not produced in response to any request above or in response to the September 10 Request, all documents constituting or relating in any way to any plan for, or scheduling of, any Philadelphia citywide property assessment.

10. To the extent not produced in response to any request above or in response to the September 10 Request, all documents concerning any potential, actual or contemplated adjustment of the Philadelphia property tax rate or to any discussions or consideration of changes in the property tax rate.

11. To the extent not produced in response to any request above or in response to the September 10 Request, copies of pages and any entries from any calendar, agenda, day planner, PDA or similar tool used or maintained by any member of the Board of the BRT that refer or relate to any meetings or telephone calls in which any member of City Council, the Mayor or any employee of the Mayor's Office or of any Councilman's office participated at any time since January 1, 2008.

**BRT Request made Sept. 27, 2009:**

3. To the extent not produced in response to the Prior Requests or in response to the above Request, a document or documents sufficient to identify all training courses, training sessions, training modules, professional conferences or courses attended, completed or required to be attended or completed by (a) any assessor or (b) by any Board member of the BRT at any time since January 1, 2000.

**Appeal:** The Requester asserts that no documents were produced.

5. All documents concerning the education, experience, training, work history, qualifications, job performance and job evaluations (including, without limitation, the entire personnel/employee file) of each and every assessor who has valued or assessed at any time since January 1, 2000 any of the following properties: *[Note: The listed properties are not reproduced in this final determination; however, the parties shall consider the list included in the request as incorporated by reference herein].*

**Appeal:** The Requester asserts that no documents were produced. He asks that the records be provided even if redaction is required.

6. All documents concerning the assessment or valuation of any of the below listed properties (as determined by the BRT at any time since January 1, 1993) including, without limitation, (a) any documents considered or relied upon by the

BRT in arriving at any assessment or valuation of said properties, (b) any documents constituting or concerning any property inquiry or assessment appeal with respect to said properties and (c) any documents constituting or concerning any abatement application with respect to said properties): *[Note: The listed properties are not reproduced in this final determination; however, the parties shall consider the list included in the request as incorporated by reference herein].*

**Appeal:** The Requester asserts that the only the manually-generated "Property Record Cards" were produced for some of the identified properties. He contends that information from other records produced relating to other properties as well as the pages from the produced manual that identifies the MULTIPLE available computer screens from the VSAM system demonstrate that there are more responsive documents.

7. To the extent not produced in response to the Prior Requests, all documents constituting or concerning any non-disclosure or confidentiality agreements, undertakings, obligations or policies that bind, or that apply to, any individuals or persons who are, or who have been, employed or retained by the BRT for any purpose at any time since January 1, 2000, including, without limitation, any employee handbook provisions, employment agreement provisions or consulting agreement provisions that impose non-disclosure or confidentiality obligations.

**Appeal:** The Requester asserts that no documents were produced.

**BRT Request made Oct. 14, 2009:**

1. To the extent not produced in response to the Prior Requests, all documents concerning or constituting any "oaths" subscribed to, taken or administered by any BRT assessor or BRT Board member at any time since January 1, 1993. The term "oath" in this request refers to the oath described at page 1-59 of the BRT's manual titled "Annual Residential Valuation Program Prepared by Corin A. Greaves, Esquire Real Property Assessment Administrator June, 1993."

**Appeal:** The Requester asserts that no documents were produced.

3. To the extent not produced in response to the Prior Requests or in response to the above Requests, any documents constituting or concerning any directive, practice, policy, "rule of thumb" or program in existence at any time since January 1, 1995 to limit or "cap" upward assessments or upward valuations or real property.

**Appeal:** The Requester asserts that no documents were produced. He notes that in its response to the "Review of the Board of Revision of Taxes' Assessments" by the City Controller dated January 2009, the BRT responded via letter from C. Meade to A. Butkovitz dated 12/31/08 (at p.2) that the BRT follows a "rule of thumb" of 70% ratio of market value to "determined value."

## LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The City is a local agency subject to the RTKL. *See* 65 P.S. § 67.301.

The RTKL defines 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 provide exemptions. 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).

### I. **Specificity**

The City initially asserts that the Requests are not sufficiently specific as they seek “all records of the BRT.” It notes that the Requester submitted five requests to the BRT containing either 16, 11, 4, 7 (with 60 subparts), and 6 parts. It argues that “the manner in which each of the requests is connected to the former request with language

such as ‘to the extent not produced in response to prior requests,’ expands the scope and muddles any level of specificity that may have existed in the initial set of requests.” The City contends that “the cumulative effect of which is essentially a request for every BRT-related document and is similar in nature to a pre-litigation discovery request, which the [RTKL] is not intended to address.”

The OOR recognizes that determining whether a record request is specific enough under Section 703 is challenging for requesters and the agencies. “The determination of whether a request is specific enough is by a totality of the circumstances as it is entirely dependent upon the facts of any particular request and denial.” *See, Urbina v. Office of the Governor*, OOR Dkt. AP 2009-0972. The Legislature did not define specificity other than to guide that the records sought must be identified “with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. §67.703.

In *Associated Builders, supra*, the Commonwealth Court determined that “[w]here the request is not sufficiently specific, the agency has no obligation to comply with the request because the lack of specificity prevents the agency from determining whether to grant or deny the request,” citing *Nanayakkara v. Casella*, 681 A.2d 857, 860 (Pa. Cmwlth. 1996). The Court found requests for “any and all documents relating to [subject matter.]” (brackets in original) insufficiently specific because “[s]uch requests fail to provide sufficient facts to determine what type of record is being requested and whether, on review, any part of the request constitutes a public record requiring disclosure.” *Associated Builders*, 747 A.2d at 995.

In *Nanayakkara, supra* the Commonwealth Court considered a request by an individual for his “inmate records.” It found such a request insufficiently specific stating as follows:

A request for "inmate records" is not sufficiently specific so that the agency can determine whether to grant or deny the request. For example, any inmate psychological profiles are not public records, while any account of public funds to maintain the inmate would be. Because Nanayakkara's request does not request a "public record" because it does not provide additional facts from which we could determine what type of records he is requesting, the Department need not comply with that request. Moreover, such lack of specificity makes it difficult, if not impossible, for us to conduct meaningful review of whether any part of the request could constitute "public records".

*Id.* 681 at 860.

In *Alexander v. Sexual Offender Assessment Board*, OOR Dkt. AP 2009-0591 the requester sought “copies of all your Commonwealth agency’s records relating to me.” Like the request in *Naayakkara*, the request was so broad it did not allow the agency to even identify which type of record to review or where to begin the search. As in *Associated Builders, Naayakkara*, and *Alexander*, where “all documents” or “all records” was sought, in the instant matter many of the requests seek all documents related to [subject matter]. Unlike *Berman*, many of the requests are not narrowed to a particular segment of the larger body of records. In *Berman*, the design documents request was made specific by identifying that it was the floor plan design documents that were sought, not all design documents. In contrast, here, many of the requests seek all records of the agency of any type of a particular subject without limitation.

However, not all of the requests are insufficiently specific. The OOR finds that the City properly denied the following requests as insufficiently specific:

BRT Request made Sept. 10, 2009

1. All documents constituting or relating in any way to any legal action or legal complaint (draft or actual) ...
2. To the extent not produced in response to the request above, any document concerning or constituting any assertion, criticism or allegation that ...
3. To the extent not produced in response to the request above, all documents concerning or constituting any study, evaluation, report, research, policy paper or analysis of the assessment of property in Philadelphia generally . . .
4. To the extent not produced in response to any request above, all documents concerning any meeting of any agent, employee, BRT Board member or consultant for the BRT wherein uniformity . . .
6. To the extent not produced in response to any request above, all documents that mention the Coefficient of Dispersion (COD) for Philadelphia .
7. To the extent not produced in response to any request above, all documents relating in any way to the Actual Value Initiative, . . .
8. To the extent not produced in response to any request above, any document constituting a chronology, timeline or listing of dates or events that relate in any way to the BRT's study, analysis, consideration, adoption, move toward or implementation of the Actual Value Initiative or of any full value initiative.
9. To the extent not produced in response to any request above, all documents constituting, or relating in any way to, any recommendations, proposals or studies (whether implemented or not and whether in draft or final form) for improving Philadelphia's property assessment practices or system in any way including, without limitation, with respect to improved accuracy, uniformity, efficiency or fairness.
14. All documents concerning the property known as 910 Kimball Street , Philadelphia , PA 19147 .
15. All documents concerning the property known as 1316-20 South Ninth St., Philadelphia , PA 19147 ...

BRT Request made Sept. 12, 2009

1. To the extent not produced in response to the September 10 Request, all documents constituting or relating in any way to any assertion, concern, criticism or allegation that, . . .
2. To the extent not produced in response to the request above or in response to the September 10 Request, all documents relating in any way to any criticism, discussion, review, evaluation, rebuttal or analysis of any work, research or services performed by Kevin Gillen Ph.D. or Econsult.

3. To the extent not produced in response to any request above or in response to the September 10 Request, copies of all agreements or contracts between the BRT and any economist, statistician, researcher, consultant or expert entered into at any time on or after January 1, 2006 including, without limitation, agreements or contracts with Kevin Gillen, Ph.D and Econsult.
5. To the extent not produced in response to any request above or in response to the September 10 Request, all documents constituting or relating in any way to any estimates, forecasts, projections, budgeting or analysis of revenues from property taxes for any time period after January 1, 1999.
6. To the extent not produced in response to any request above or in response to the September 10 Request, all documents constituting or relating in any way to any plan for, or scheduling of, any Philadelphia citywide property assessment.
10. To the extent not produced in response to any request above or in response to the September 10 Request, all documents concerning any potential, actual or contemplated adjustment of the Philadelphia property tax rate or to any discussions or consideration of changes in the property tax rate.
11. To the extent not produced in response to any request above or in response to the September 10 Request, copies of pages and any entries from any calendar, agenda, day planner, PDA or similar tool used or maintained by any member of the Board of the BRT that refer or relate to any meetings or telephone calls ...

BRT Request made Sept. 27, 2009:

7. To the extent not produced in response to the Prior Requests, all documents constituting or concerning any non-disclosure or confidentiality agreements, undertakings, obligations or policies that bind, or that apply to, ...

BRT Request made Oct. 14, 2009:

1. To the extent not produced in response to the Prior Requests, all documents concerning or constituting any “oaths” subscribed to, taken or administered by any BRT assessor or BRT Board member at any time since January 1, 1993. . . .”
3. To the extent not produced in response to the Prior Requests or in response to the above Requests, any documents constituting or concerning any directive, practice, policy, “rule of thumb” or program in existence at any time since January 1, 1995 to limit or “cap” upward . . .

## II. Records available on the Identified Websites.

In its initial response dated November 5, 2009, in support of its contention that the Request is insufficiently specific, the City stated that it is not required to serve as an “information desk”<sup>1</sup> in order to respond to a request, citing *Dreyer v. Pennsylvania Department of Environmental Protection*, OOR Dkt. AP 2009-0453, and advised the Requester as follows:

For information requests relating to BRT bills, resolutions, and testimony, BRT contracts, BRT audits performed by the City Controller’s Office, litigation to which BRT is a party, and the Tax Commission Report please see [www.phila.gov/citycouncil](http://www.phila.gov/citycouncil), [EContracts@phila.gov](mailto:EContracts@phila.gov) or [eworks.phila.gov/econtractphilly](http://eworks.phila.gov/econtractphilly), [www.philadelphiacontroller.org/city-department-audits](http://www.philadelphiacontroller.org/city-department-audits), [www.courts.phila.gov](http://www.courts.phila.gov), [www.superior.court.state.pa.us](http://www.superior.court.state.pa.us), or [www.aopc.org/T/SupremeCourt/](http://www.aopc.org/T/SupremeCourt/), and [www.philadelphiataxreform.com](http://www.philadelphiataxreform.com).

Other than by broad reference, the City, through its Solicitors, Arris R. Murphy, Esquire and Christopher R. DiFusco, Esquire, did not identify to which requests this denial pertains.

As permitted by 65 P.S. §67.704(b)(2) the Requester properly asked the City to convert to paper any record responsive to the requests that was available on the websites identified by the City. Section 704(b)(2) states as follows:

If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the agency notification, submit a written request to the agency to have the record converted to paper. The agency shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper.

65 P.S. §67.704(b)(2). The City asserts that it provided the weblinks to the Requester so that he could identify documents that would be responsive to his requests and then make

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<sup>1</sup> In a footnote, the City stated that “referring the requester to websites for certain information may be construed as answering a question” and that in doing so it was “in no way waving our rights as an agency under 65 P.S. §67.705 whereby an agency is not required to create records, answer questions or serve as an ‘information desk’ in order to respond to a request.”

specific requests for those records. The City advised that it would then “retrieve, print and provide said documents to [the Requester], after the applicable fee was collected.” To the extent that the request is granted in this appeal, and a record responsive to that request is available on the noted websites, the City is required to retrieve, print and provide that record to the Requester as required under §704(b)(2). However, as to those requests that this Final Determination has identified as insufficiently specific, the City is not required to search the noted websites or take any further action in regard to those requests.

### **III. Other Grounds for Denial**

The following five requests are sufficiently specific and the City is required to meet its burden of proof to support its denial of access:

#### BRT Request made Sept. 10, 2009

12. Any study, report or annual summary referring to the time period, or prepared on or after, January 1, 2000 that tracks or reports on any of the following statistics: (a) number of appeals filed before the BRT; (b) number of successful appeals vs. unsuccessful appeals or the rate of success of appeals; (c) number or rate of appeals withdrawn or settled; (d) number or rate of appeals filed by taxpayers vs. number or rate of appeals filed by attorneys on behalf of taxpayers; (e) the number of successful appeals or rate of success of appeals filed by taxpayers vs. those filed by attorneys on behalf of taxpayers; (f) number or rates appeals filed by any category such as, for example, non-uniformity; (g) number or rate of appellants who request oral hearings vs. those who do not; (h) the cost of maintaining the appeal process as a whole or of filing or maintaining an appeal; (i) the number or rate of complaints or property inquiries (short of a formal appeal); (j) the number or rate of complaints or property inquiries (short of a formal appeal) that result in an upward or downward adjustment in a property’s valuation or assessment.
13. Any study, report or annual summary referring to the number or rate of properties assessed in Philadelphia during any annual period on or after January 1, 1995 to present.

#### BRT Request made Sept. 27, 2009:

3. To the extent not produced in response to the Prior Requests or in response to the above Request, a document or documents sufficient to identify all training courses, training sessions, training modules, professional conferences or courses attended, completed or required to be attended or completed by (a) any assessor or (b) by any Board member of the BRT at any time since January 1, 2000.
5. All documents concerning the education, experience, training, work history, qualifications, job performance and job evaluations (including, without limitation, the entire personnel/employee file) of each and every assessor who has valued or assessed at any time since January 1, 2000 any of the following properties: *[Note: The listed properties are not reproduced in this final determination; however, the parties shall consider the list included in the request as incorporated by reference herein].*
6. All documents concerning the assessment or valuation of any of the below listed properties (as determined by the BRT at any time since January 1, 1993) including, without limitation, (a) any documents considered or relied upon by the BRT in arriving at any assessment or valuation of said properties, (b) any documents constituting or concerning any property inquiry or assessment appeal with respect to said properties and (c) any documents constituting or concerning any abatement application with respect to said properties): *[Note: The listed properties are not reproduced in this final determination; however, the parties shall consider the list included in the request as incorporated by reference herein].*

The City asserted various grounds for its denial of access including that the requested records do not exist or are protected by the predecisional deliberation exemption at §708(b)(10). The City asserts that “in an effort to be as responsive as possible in light of the overly broad and expansive requests, [the City] provided what it believes are representative examples of the requests and detailed analysis and conclusion related to the applicable exemptions under the [RTKL].” However, it does not provide an affidavit to support any factual assertions. Therefore, the City is required to search its files to determine if records responsive to the above requests exist. If so, it is required to provide those records subject to redaction for any nonpublic information. To the extent that no responsive records exist in response to any or all of the above five requests, the City is required to provide an affidavit of nonexistence.

## CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part and denied in part** and the City is required to take further action in regard to the following requests:

September 10, 2009 Request numbers 12 and 13; and

September 27, 2009 Request numbers 3, 5, and 6.

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 Philadelphia County Court of Common Pleas. 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 AND MAILED: March 11, 2010**



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APPEALS OFFICER  
AUDREY BUGLIONE, ESQ.

Sent to: Kenneth Metzner, Arris Murphy, Esquire, Christopher DiFusco, Esquire