



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF:	:	
	:	
DAVID WARNER	:	
Complainant	:	
	:	
v.	:	Docket No.: AP 2009-1152
	:	
ANNVILLE TOWNSHIP,	:	
Respondent	:	

INTRODUCTION

David Warner (the “Requester”) filed a right-to-know request (the “Request”) with Annville Township (the “Township”) seeking the names and addresses of all landlords registered with the Township. The Township denied the Request. The Requester appealed to the Office of Open Records (the “OOR”).

For the reasons set forth in this Final Determination, the appeal is **granted** and the Township is required to proceed as set forth below.

FACTUAL BACKGROUND

On November 19, 2009, the Requester filed the Request which sought the names and address of all landlords registered with the Township as well as any additional contact information the Township may have. The Requester requested the information to be provided in Excel spreadsheet format if possible. The Township indicated that it would need an additional 30 days to respond as permitted under the RTKL.

On December 21, 2009, the Township denied the Request stating that personal information within the records is exempt under 65 P.S. § 67.708(b)(6)(i)(A). The Township also cited 65 P.S. § 67.708(b)(2) stating that the requested records were maintained in connection with public safety activity. The Township stated that the information is not maintained in Excel format and it is not required to produce it in that format pursuant to 65 P.S. § 67.705.

The Requester filed a timely appeal with the OOR on December 30, 2009. The Requester subsequently granted the OOR additional time to issue a Final Determination.

In support of the appeal, the Requester argues that he did not request any personal identification information and that the personal information can be redacted. He limits his appeal to his Request for mailing addresses of the registered landlords challenging the Township's argument that § 708(b)(2) applies. He asserts that if the names and addresses of registered landlords are released it will not threaten the public safety of the Township or the Commonwealth. Finally, he contends that even though the information is not available in Excel format, this is not a reasonable justification that the Township can refuse to provide the information in any form.

In response to the appeal, the Township points to the OOR's Advisory in which it states that it will not issue any final determinations ordering the release of public employee home addresses pending resolution of the public school employee appeal pending before the Commonwealth Court. *See also Rehbein v. Panther Valley School District*, OOR Dkt. 2009-0758.

The Township also cites *Bowling v. OOR*, 2010 Pa. Commw. LEXIS 57. The Township states that the Court directed that a reasonable effort be undertaken by PEMA

to differentiate between names/information reasonably likely to endanger public safety if released. The Township argues it has no information or knowledge that would allow it to identify owners or agents who are public employees or retired public employees. Therefore, it reasons that it has no reasonable means available to identify any owners or agents who are public employees and who are not. The Township contends that placing the burden on the Township to learn which are public employees, including those retired, puts it in an impossible position to respond to the Request.

LEGAL ANALYSIS

The Office of Open Records 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 708 of the RTKL states that the burden of proof rests with the public body to demonstrate by a preponderance of the evidence that the record is exempt. 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).

The OOR has issued multiple final determinations regarding whether home addresses constitute public records under the RTKL or may otherwise properly be withheld: *see e.g. Green v. Pocono Mountain School District*, OOR Dkt. AP 2009-0103 (rejecting arguments that Section 708(b)(1)(ii), (b)(6), and State or United States Constitution support redaction of third party contractors names, home addresses, and tax exemptions in request for certified payrolls); *Green v. Bethlehem Area School District*, OOR Dkt. AP 2009-0061 (discussing whether application of Section 708(b)(6) or the

State Constitution protects private employee home addresses and determining that neither support redaction); *Gribbin v. Pennsylvania Dept. of Conservation and Natural Resources*, OOR Dkt AP 2009-341 (home addresses of private employees of third party contractors are not exempt under 708(b)) (currently on appeal before the Commonwealth Court); and *Campbell v. Berwick*; OOR Dkt. AP 2009-221 The legal analysis and holdings in those cases, except as they relate to public school employees, are incorporated and adopted herein as OOR precedent.

The Commonwealth Court enjoined the OOR from directing release of public school employees' home addresses in the PSEA case. Accordingly, the OOR followed the Commonwealth Court order and a similar request for names and home addresses in *Marks v. Delaware County*, OOR Dkt. 2009-1146. The legal analysis and holdings of that decision are incorporated and adopted herein as OOR precedent.

To the extent the Township argues that it is impossible for it to identify what owners' or agents' addresses should be redacted, the OOR disagrees. The Township is in possession of a list of all the names and addresses of the individuals identified as landlords placing it in a position to confirm what addresses should be redacted. Further, the Township has not presented any evidence demonstrating that it has made any effort to confirm if any of the addresses at issue should be redacted.

CONCLUSION

For the foregoing reasons, the Requester's Appeal is **granted**, and the Township is directed to release the home addresses for all landlords registered with the Township, who are not public school employees. 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 Lebanon 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 February 19, 2010



APPEALS OFFICER
NATHANAEL J. BYERLY, Esquire

Final Determination Sent To:
David Warner, Esquire
Timothy Sheffey, Esquire