



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
SIGNATURE INFORMATION	:	
SOLUTIONS, LLC,	:	
	:	Docket No.: AP 2009-0439
v.	:	
	:	
	:	
SPRINGFIELD TOWNSHIP,	:	
Respondent	:	

INTRODUCTION

Mr. Don Braunstein filed a right-to-know request (the “Request”) on behalf of Signature Information Solutions, LLC (the “Citizen”) with Springfield Township (the “Township”) pursuant to the Right-to-Know Law, 65 P.S. § 67.101, *et. seq.* (the “RTKL”). The Citizen sought tax records for ten different properties. The Township denied the request for the records stating that the Township is not required to create a record under 65 P.S. 67.705, that the Township does not have authority to release the requested records and that the real estate tax records do not fall under the purview of the Township. The Citizen filed a timely appeal with the Office of Open Records (the “OOR”).

For the reasons set forth in this Final Determination, the Citizen’s appeal is **granted** and the Township is directed to provide the tax records requested.

FACTUAL BACKGROUND

On April 2, 2009, the Citizen filed a Request for copies of the following tax records for ten separate properties:

- Copies/printouts for current year real estate taxes and payment status for listed properties
- Copies/printouts of current sewer rent and payment status for the listed properties
- Copies/printouts of current year trash fees and payment status for the listed properties
- Copies/printouts of any interim tax bills and payment status for the listed properties

In an April 7, 2009 letter, Michael Lefevre, Township manager, indicated that the Township would require additional time to respond to the request. On May 7, 2009, the Township denied the Request stating that the request required creation of a record under 65 P.S. 67.705. The Township also stated that the real estate tax records did not fall under the purview of the Township and it lacked authority to release the information. Finally, the Township stated that the Tax Collector is not a municipal employee and her office is not classified as a municipal agency under the RTKL. The Citizen filed a timely appeal with the OOR on May 20, 2009. In response, the Township reiterates its argument that the Request requires the creation of a records. In addition, the Township also argues that the Citizen's frequent requests for records place an additional and unlawful burden on the Tax Collector.

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).

In its denial, the Township stated that the requested tax records did not fall under the purview of the Township and it lacked authority to release the information. However, 65 P.S. 67.506(d) requires an agency to produce public record that while not in its possession are in its control. Section 506(d)states:

(d) Agency possession. —

- (1) A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency for purposes of this act.
- (2) Nothing in this act shall be construed to require access to any other record of the party in possession of the public record.
- (3) A request for a public record in possession of a party other than the agency shall be submitted to the open records officer of the agency. Upon a determination that the record is subject to access under this act, the open records officer shall assess the duplication fee established under section 1307(b) and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record.

Section 506(d) evidences the clear legislative intent to require an agency to obtain its records being held by third parties. Section 506(d)(1) provides that records of any third party that provides a governmental function pursuant to contract are accessible, and places the burden upon an agency to obtain them from third parties. Section 506(d)(3) provides that a request for a public record in possession of a party other than the agency shall be submitted to the Open Records Officer of the agency. Accordingly, the Citizen correctly presented the Request to the Township in order to access public records in possession of the Tax Collector as the OOR ruled in *Honaman v. Lower Merion Township*, OOR Dkt. AP 2009-0053.

While the Township itself may not have possession of the records responsive to the Request, it does have the obligation to obtain the records from the Tax Collector and

determine whether the requested records are subject to access as a public record. While local tax collectors are not themselves an agency, the tax records that are maintained by that collector remain agency records, whether of the township, municipality or school district on whose behalf the tax collector collects. The OOR has previously held the records requested are public, and are to be obtained by the third party in possession in accordance with Section 506(d). *See Honaman v. Lower Merion Township*, Dkt. 2009-0053. Here again, the OOR makes that holding. As such, the records held by the Tax Collector are Township records subject to the RTKL.

In the denial and response to the appeal, the Township states that the request for printouts requires the Township to create records in violation of 65 P.S. § 67.705. We disagree. The OOR has previously ruled that the RTKL provides requesters with the right to inspect and duplicate. Duplication is a snapshot, a static record that cannot be altered or modified, in other words, a “copy.” *See Bowling v. PEMA*, OOR Dkt. AP 2009-0128. As such, the OOR holds that the Township is not being required to create a record in response to the Citizen’s request. Rather, the Township is being required to provide a copy of a record that exists within the tax collector’s computer/electronic files. While this may require record retrieval and extraction, it is not the creation of a new record. Here, retrieval of the record is possible and thus required under the RTKL. *See 65 P.S. 67.706*. An agency may not deny access to records merely because retrieval requires searching for or extracting those records from a large or voluminous source. *See Carter v. Philadelphia Sheriff’s Office*, OOR Dkt. AP 2009-0175.

The Township also alleges that the Citizen’s numerous requests place additional and unlawful burdens upon the Township Tax Collector. However, the Township makes

no argument that the Citizen is making duplicative requests in violation of 65 P.S. § 67.506(a). Further, the Township points to no law that is being violated or to any section within the RTKL that supports this argument. The RTKL does not set arbitrary limits on the number of non-duplicative requests that may be made by a single requester. *See Fischer v. Newtown Township*, OOR Dkt. AP 2009-0188. To do so, would violate both the letter and the spirit of the law. *Id.*

The OOR recognizes the potential burden, and sometimes significant burden, these types of numerous requests may place upon on an agency already struggling with heavy workloads. However, under this law, because retrieval is burdensome does not relieve the agency of its requirements to presume the records are open and available and respond in accordance with the RTKL. Moreover, the Legislature considered this balancing of a requestor's rights under the RTKL with an agency's ability to comply with the RTKL and determined that the law had a presumption of openness.

As a practical matter, the OOR encourages both parties to discuss and arrange mutually acceptable options that will allow the requestor to obtain the documents to which they are entitled while avoiding placing an undue burden on the agency, which, particularly in these difficult economic times, have to perform more functions with fewer resources.

The OOR notes that the Delaware Court of Common Pleas has issued an opinion regarding the creation of records. *See Aston Township v. Signature Solutions*, 4852 of 2009 (May 27, 2009). However, that case is distinguishable from the instant appeal. In *Aston Township*, the agency claimed that the requested information was not available in one document or printout and it must assemble the information from multiple documents

to respond to a request. The Court found that such assembly amounted to creation of a record. Here, the Township argues that a request for a printout requires the creation of a record. As demonstrated above, the RTKL does not support such a conclusion.

CONCLUSION

For the foregoing reasons, the Citizen's appeal is **granted** and the Township is required to provide access to the tax information requested with nonpublic information redacted. The parties are advised that this is a Final Determination. Within thirty (30) days of the mailing date of this determination, either party may appeal to the Court of Common Pleas in Delaware County. All parties must be served with notice of any appeal. In addition, the Office of Open Record shall be served notice of any appeal and have an opportunity to respond according to court rules. 65 P.S. §67.1302. Please also be advised that a copy of this Final Determination will appear on our website at <http://openrecords.state.pa.us>

FINAL DETERMINATION ISSUED: June 19, 2009



NATHANAEL J. BYERLY, Esq.
Appeals Officer