



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
SIGNATURE SOLUTIONS INC.,	:	
Complainant	:	
	:	
v.	:	Docket No. AP 2009-0737
	:	
CHESTER WATER AUTHORITY	:	
Respondent	:	

INTRODUCTION

Signature Solutions Inc., submitted a Right-to-Know request (the “Request”) to Chester Water Authority (the “Authority”) for billing and payment status, including delinquent water accounts, pursuant to the Right to Know Law, 65 P.S. §§67.101 *et seq.* (“RTKL”). The Authority granted the Request, but required that a “Certification” be completed prior to releasing the records. Signature Solutions, Inc. (the “Requester”) timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, this appeal is **granted**, and the Authority is directed to take further action as set forth below.

FACTUAL BACKGROUND

On June 23, 2009, the Request was submitted to the Authority, on the uniform form developed by the OOR, seeking: “...printouts/copies of billing & payment financial records of current & delinquent water account information. In addition to these, please include any other

records indicating amounts your utility authority collects which would act as a lien against the following properties...” A list of three properties followed including folio number, address and owner names.

The Authority responded, through its Open Records Officer Russell C. Williams, invoking a 30-day extension for legal review. A final response was sent on August 5, 2009. The Authority stated: “Since you requested information that concerns third parties (property owners) the Authority requires that a written representation in the form attached signed by either you or the property owner be provided to the Authority before the request can be acted upon.”

The Certification lists the property owner, address and folio number at the top and contains the following language:

“I, _____ on behalf of (property owner name) who owns the property at the above address, hereby certify to the Chester Water Authority that I have been directed by and/or have the consent and permission of (property owner name) to obtain from the Chester Water Authority the information requested on the attached letter.

I understand that the Chester Water Authority is relying on this certification to fulfill its obligations under the Pennsylvania Right-to-Know Law (Act 3 of 2008, 65 P.S. § 67.101, et seq.), consequently, I affirm that the information I have provided on this certification is true. I understand that if I make any false statements and thereby mislead the Chester Water Authority in performing its functions, I may be subject to punishment as provided in the Pennsylvania Crimes Code, 18 Pa. C.S. §§4902, 4903 or 4904.”

The Requester timely appealed stating that there is no dispute the records requested are public, but the Authority required a "Certification" form prior to releasing these public records:

This requirement is an impermissible "precondition" to the providing of public records and is improper and unsupported in law. 65 P.S. 67.302(a) provides that "A local agency shall provide public records in accordance with this act." 65 P.S. 67.701(8) further provides that " ... a public record ... shall be accessible for inspection and duplication in accordance with this act." The Authority has asserted no exemption or privilege applicable to the requested records and has set forth no Federal or State law, regulation or judicial order which would exempt the request from the mandatory provision of Section 302(a). Such a precondition is not authorized by the act and is nothing more than an attempt to block access to a public record. It also seeks to impose potential criminal penalties for the lawful exercise of a proper right to know request. The courts have held under identical language under the prior versions of the RTKL that such pre-conditions are not permitted since they are merely means to block access guaranteed under the RTKL. See Dooley v. Luzerne County Bd. Of Assessment Appeals, 168 Pa. Cmwlth. 242, 649 A.2d 728(1994)

The OOR acknowledged the appeal in writing to both parties on August 20, 2009 and established a schedule whereby either party could submit additional unsolicited information within seven business days. The undersigned wrote to both parties on August 21, 2009 to provide contact information and to request from the Authority the factual and legal basis for requiring a certification form prior to fulfilling a right-to-know request. Neither party submitted additional information and the Authority did not respond to the OOR's request to provide a basis for its certification requirement. The Authority did not challenge the status of the requested records as public.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The Authority is a local agency subject to the RTKL, 65 P.S. §67.302.

Section 67.505 requires agencies to accept the uniform right-to-know request form developed by the OOR and on its Web site: "The Office of Open Records shall develop a

uniform form which shall be accepted by all Commonwealth and local agencies in addition to any form used by the agency to file a request under this act. The uniform form shall be published in the Pennsylvania Bulletin and on the Office of Open Record's Internet website."

The Request was submitted on the uniform form, which agencies must accept pursuant to section 67.503. The Authority did not provide any basis for its additional requirement of a Certification form as requested by the OOR. Accordingly, the OOR finds that there is no legal basis for requiring any Certification prior to the release of public records.

CONCLUSION

For the foregoing reasons, this appeal is **granted** and the Authority is directed to provide the requested information within thirty (30) days without the additional requirement of a Certification. The Authority is cautioned to cease its use of a Certification as a precondition of releasing public records.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal to the Delaware County Court of Common Pleas. 65 P.S. §67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED ON: September 21, 2009



APPEALS OFFICER
DENA LEFKOWITZ, Esq.

Sent to: Signature Information Systems, Inc.;
Mr. Russell C. Williams, ORO