



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**JEFFREY WALLACK,
Complainant**

v.

**NARBERTH BOROUGH,
Respondent**

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Docket No. AP 2010-0228

INTRODUCTION

Jeffrey Wallack, Esq. (the “Requester”) submitted a request to Narberth Borough (the “Borough”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”), seeking records related to a specific property, including leases and improvements. The Borough invoked the thirty-day extension, but did not provide any further response. The Requester timely appealed to the Office of Open Records (“OOR”).

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

FACTUAL BACKGROUND

On January 21, 2010, the Requester submitted a right-to-know request seeking the following records related to a parcel located at Essex and Sabine Avenues in the Borough, Montgomery County Tax Map Parcel No. 120003214554 (“Property”):

1. Any and all leases or other agreements pursuant to which Narberth Borough currently leases, sub-leases or rents any part of the Property, including, without limitation, any part or parts of buildings on the Property, to any other person or entity.

2. Any and all leases or other agreements pursuant to which Narberth Borough has agreed to lease, sub-lease or rent any part of the Property, including, without limitation, any part or parts of buildings on the Property, to any other person or entity on or after January 1, 2010.

3. Any and all documents relating to Narberth Borough's leasing, sub-leasing or renting of any part of the Property, including, without limitation, any part or parts of buildings on the Property, to any other person or entity on or after January 1, 2010.

4. Any and all documents relating to any negotiations between Narberth Borough and any other person or entity with regard to leasing, sub-leasing or renting any part of the Property, including, without limitation, any part or parts of buildings on the Property, on or after January 1, 2010.

5. Any and all drawings or other documents relating to any capital improvements, repairs or replacements to the Property or any building, structure or improvement thereon from April 1, 2009 to the present.

6. Any and all correspondence or other communications between Narberth Borough and LH Holding Corp. from April 1, 2009 to the present, concerning the Property and/or leasing, sub-leasing or rental of any part thereof.

7. Any and all correspondence or other communications between Narberth Borough and the Day Care Association of Montgomery County, Inc. d/b/a Montgomery Early Learning Centers ("MELC") from April 1, 2009 to the present concerning leasing, sub-leasing or renting any part of the Property, including, without limitation, any part or parts of buildings on the Property.

8. Any and all correspondence or other communications between or among Narberth Borough, LH Holding Corp. and any tenant or sub-tenant on or of the Property (including, without limitation, MELC) from April 1, 2009 to the present concerning leasing, sub-leasing or renting any part of the Property, including, without limitation, any part or parts of buildings on the Property.

(the "Request"). On January 26th, William Martin, the Borough Manager timely invoked the thirty-day extension due to the voluminous nature of the records requested. The Borough provided no substantive response within the thirty days so the Request was deemed denied.

The Requester timely appealed, stating in support that the requested records are public and qualify as records of the Borough (the "Appeal"). The OOR asked the Borough to explain its reasons for withholding the requested records and advised that the agency would need to overcome the presumption of openness with an affidavit or other submission. The Borough did not respond.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The Borough is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. §67.302. Records in possession of a local agency are presumed to be public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305. In this case, the Borough did not overcome the presumption of openness that applies to all records within its possession, custody or control, so all of the requested records are presumed “public records” to which the Requester has a right of access, and the agency a corresponding duty to disclose. The OOR is compelled to grant the Appeal.

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted**. As no exemption has been asserted, and the records are presumed public, the Borough is required to provide records responsive to the Request within thirty (30) days.

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 Montgomery 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 as per Section 1303. This Final Determination shall be posted at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: April 14, 2010



LUCINDA GLINN, ESQ.
APPEALS OFFICER

Sent to: Jeffrey Wallack, Esq.; William Martin for Borough