



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

<b>IN THE MATTER OF</b>	:	
	:	
<b>NORA DELUCA,</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2010-0313</b>
	:	
<b>CONEMAUGH TOWNSHIP WATER</b>	:	
<b>AND SEWER AUTHORITY</b>	:	
<b>Respondent</b>	:	

### INTRODUCTION

Nora Deluca (the “Requester”) filed a right-to-know request (the “Request”) pursuant to the Right-to-Know Law (the “RTKL”), 65 P.S. §67.101, *et. seq.*, with the Conemaugh Township Water and Sewer Authority (the “Authority”) seeking billing records. The Authority denied the Request. 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 Authority is required to take further action as set forth below.

### FACTUAL BACKGROUND

The Requester filed the Request with the Authority on March 2, 2010. She sought:

1. The names and addresses of all delinquent accounts for the Conemaugh Township Municipal Water and Sewage Authority including the amounts of all such delinquent accounts

2. The names and addresses of all customers being charged for service by the Authority
3. Financial books and records of the Authority
4. All computer discs or other media showing the names and addresses of customers and the amount owed by each individual customer and the amounts charged to each individual customer.

The Requester indicated that she wished to inspect the records, no copies were requested. In a letter dated March 8, 2010, the Authority extended the deadline to respond to the Request to seek legal review. On March 29, 2010, the Authority partially granted and partially denied the Request. The Authority stated that the names, addresses, and the amounts that all customers are being charged are available for inspection. However the authority stated that all delinquent account information will be redacted pursuant to 65 P.S. § 67.708(b). The Authority also indicated that sub-request 4 was denied because no such media existed. However, the Authority provided paper copies.

On April 12, 2010, the Requester filed a timely appeal with the OOR challenging denial of the names and amounts of delinquent sewage customers. In response to the appeal, the Authority noted that this matter has been the subject of various legal proceedings before the Indiana County Court of Common Pleas. The Authority mentioned §67.708(b)(6)(i)(A), (b)(17) and (b)(28) but did not apply them to the facts in this appeal. In addition, the Authority noted that there are certain federal laws that deal with disclosure of information related to a financial transaction. The Authority did not indicate how those laws apply to the facts in this case. The Authority stated that the Fair Credit Extension Uniformity Act, 73 P.S. § 270.1 *et seq.* restricts information that creditors in the Commonwealth can disclose.

The Requester submitted supplemental information referencing the Mercer Court of Common Pleas order upholding the OOR's determination in *Anderson v. Sharon Sanitary Authority*, AP OOR Dkt. 2009-0502.

### **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 Authority is a local agency subject to the RTKL. See 65 P.S. § 67.302.

Section 708 of the RTKL clearly 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 previously determined that delinquent sewer account information is public record and subject to release. See *Anderson v. Sharon Sanitary Authority*, AP OOR Dkt. 2009-0502. The legal analysis and holding in that Final Determination is incorporated and adopted herein as OOR precedent.

**CONCLUSION**

For the foregoing reasons, this appeal is **granted**. The Authority shall provide access to the names and amounts of delinquent sewage customers. 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 Indiana 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** May 12, 2010



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**APPEALS OFFICER  
NATHANAEL J. BYERLY, ESQUIRE**

**Sent to:**  
Nora Deluca  
Ashley Harman