



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

JOSEPH KEATING,  
Complainant

v.

COVINGTON TOWNSHIP,  
Respondent

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Docket No. AP 2010-0457

### INTRODUCTION

Joseph Keating (the “Requester”) submitted a request to Covington Township (the “Township”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”), seeking plumbing inspections/compliance reports. The Township did not respond. 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 Township is required to take further action as directed.

### FACTUAL BACKGROUND

On April 27, 2010, the Requester submitted a right-to-know request seeking “plumbing Inspection/Compliance Reports for North Pocono High School...(1) plumbing inspection/compliance report for “Underground”; (2) plumbing inspection/compliance report for “Rough-in”; plumbing inspection/compliance report for “Final.” (the “Request”). He requested copies of the records. The Township did not timely respond, so the Request was deemed denied. The Requester timely appealed.

The Township supplemented the record with a notarized letter, made under penalty of perjury, relating to prior requests made by Matthew Pendrak for the same records. The Township attests that the email address used by Mr. Pendrak is the same as that used by the current Requester and assumes Mr. Pendrak is the source of the Request. The Township also submitted a notarized letter from its Building Inspector, David Lamm, previously submitted in response to Mr. Pendrak's appeals for similar records. Inspector Lamm attests that he met with Mr. Pendrak and explained that plumbing inspections are performed by a third-party inspection agency, Mid Atlantic Inspections, Inc., and offered their final plumbing approval letter but not the inspections themselves. Based upon its explanation provided to Mr. Pendrak, and his ability to inspect some records, the Township denied the Request finding it duplicative.

#### **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 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. The Township did not submit any grounds for withholding the records, and did not submit an attestation of non-existence. Rather, the Township contends that since a prior requester, *i.e.*, Mr. Pendrak, sought the same records, it has already fulfilled its obligation by providing an opportunity to inspect records to Mr. Pendrak. The OOR does not find this response in accordance with Chapter 9 of the RTKL. The OOR notes that the Requester also sought electrical inspection/compliance reports from the Township in a request made the same day. The Township's response to that request is the same as its response to the instant request. *See Keating v. Covington Township*, OOR Dkt. AP 2010-0449. The analysis and

holding set forth in that determination is incorporated and adopted herein. The Township failed to assert any basis to withhold the records and is required to obtain copies of the plumbing inspection/compliance reports for the Requester.

**CONCLUSION**

For the foregoing reasons, the Requester's appeal is **granted**, and the Township is required to obtain the reports from its third-party contractor and provide copies of them to the Requester 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 Clearfield 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: June 23, 2010**



**AUDREY BUGLIONE, ESQ.**  
**APPEALS OFFICER**

Sent to: Joseph Keating; David Petrosky for Township