



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>CHAD TREGO,</b>	:	
<b>Complainant</b>	:	
	:	<b>Docket No.: AP 2010-0505</b>
<b>v.</b>	:	
	:	
<b>SLATINGTON BOROUGH</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

Mr. Chad Trego (the “Requester”) filed a right-to-know request (the “Request”) with the borough of Slatington (the “Borough”) seeking access to information involving the discharge of the former borough manager. The Borough denied the Request, stating that 1) the Request was not sufficiently specific, and 2) under sections 67.708(b)(7), (10), (12) and (17) of the Right-to-Know-Law ( “RTKL”). 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 below.

**FACTUAL BACKGROUND**

On June 3, 2010, the Requester filed the Request with the Borough seeking, “ANY and ALL information involving the discharge of former Slatington Borough Manager

Herb Pfeiffer.” Edmund J. Healy, Esquire, (“Counsel”) responded on behalf of the Borough on June 3, 2010, via letter denying the request because “the request fails to describe the records sought with sufficient specificity to enable Slatington to understand which records are being sought” and denied the information requested under several provisions of the RTKL, including 65 PS § 67.708(b)(7), (10), (12) and (17).

The Requester filed a timely appeal (the “Appeal”) with the OOR on June 7, 2010 asserting that the records are public under RTKL § 67.708(b)(7)(viii).

“[i]nformation regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.”

The Requester argues that the information he is seeking is not protected by §67.708(b).

On June 9, 2010, the Borough was invited to submit legal and factual information to support its asserted bases for denial. The Borough responded, submitting an affidavit of Edmund J. Healy, Counsel for the Borough. Counsel stated that the June 3, 2010 response constituted the Borough’s official position.

### **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. *See* 65 P.S.

§

67.301. The RTKL defines 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 provide exemptions. 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).

### **1. The Request is Sufficiently Specific**

The OOR has consistently held that a request must be sufficiently narrow to allow an agency to discern what is being requested. OOR Dkt. AP 2009-0972. The OOR notes from the outset that there is no "bright line standard" or "weighing of factors test" to determine whether a Request is sufficiently specific under 65 P.S. § 67.703. OOR Dkt. AP 2010-0264.

The OOR recognizes that determining whether a record request is specific enough under Section 703 is challenging for requesters and the agencies. "The determination of whether a request is specific enough is by a totality of the circumstances as it is entirely dependent upon the facts of any particular request and denial." *Urbina-Office of the Governor OOR Dkt. AP 2009-0972*. The Legislature did not define specificity other than to guide that the records sought must be identified "with sufficient specificity to enable the agency to ascertain which records are being requested." 65 P.S. § 67.703.

The ultimate question is whether or not the Request, in toto, enables an agency to determine what records are sought. *Folmer-DOE OOR Dkt. AP 2010-0264*. If the OOR can determine what the Request seeks, it will find the request to be sufficiently specific. *See Id.*

Using these parameters, the Request in this matter enables the Borough and the OOR to determine what the Requester seeks.

**2. Denial under PS § 67.708(b)(7), (10), (12) and (17).**

The Borough bears the burden of proof, by a preponderance of the evidence, that records sought are exempt. The Borough has provided a list of exceptions without demonstrating how they are applicable to the facts in this case and failed to meet its burden. *See California Concerned Citizens Group v. California Borough* (“while the Borough provided legal support for withholding the requested records, it failed to provide any factual basis as to how the requested records fall into the cited exemptions. Therefore, as it provided no evidence supporting nondisclosure, the OOR has no choice but to grant the appeal.”) *OOR Dkt. AP 2010-0383, 2010 PA O.O.R.D. LEXIS 366 (PA O.O.R.D. 2010)*

**CONCLUSION**

For the foregoing reasons, the Requester’s appeal is **granted**. The Borough is directed to provide any and all information involving the discharge of former Slatington Borough Manager Herb Pfeiffer within thirty (30) days. 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 Lehigh County Court of Common Pleas. 65 P.S. § 67.1302. All parties must be served with notice of the appeal. The OOR shall be

served notice and have an opportunity to respond according to court rules. 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: July 7, 2010**



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APPEALS OFFICER  
CHRISTOPHER S. HALLOCK, ESQ.

Sent to: Chad Trego; Edmund J. Healy, Esq.