



program the [] Authority pays rent subsidies to landlords, allowing low-income tenants to pay a limited proportion of their incomes toward the rent.” He argues “[t]hese are public funds” and that he made “an identical request to the Allegheny County Housing Authority and that request was granted in full.” He contends that the requested records are financial records because they “show the identity of a vendor being paid by the [] Authority” thus section 708(c) applies.

On August 20, 2010 the Authority responded arguing that “the information sought will identify nearly seven thousand entire household, by address, as the recipients of federal housing assistance and as participants in the federally subsidized Housing Choice Voucher program, commonly referred to as 'Section 8.’” The Authority also disputes the Requester's assertion that the subsidies go to landlords, not social services recipients as follows:

“There are two types of Section 8 assistance: project based Section 8, and the voucher program. For project based Section 8, the financial subsidies are attached to a particular building or group of units. Essentially, the unit or group of units participates in the program, not the tenant (when the tenant moves out, the subsidy does not follow them). For the voucher program, however, the subsidy is tied to the tenant...when the tenant vacates a unit, they remain in the program and their voucher moves with them to their new home.”

The Authority argues that providing “the addresses of every Section 8 unit would identify ...over 6,800 households participating in the Section 8 program.” The Authority adds providing “names of all Section 8 landlords would similarly enable him to cull the

County real estate records to determine which addresses, and thus which households, receive housing assistance.”

### LEGAL ANALYSIS

The RTKL is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. §67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing.

The Authority is a local agency that is required to disclose public records. 65 P.S. §§67.102 and 302. Records in possession of a Commonwealth or local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305. An agency bears the burden of proving the applicability of any cited exemptions, *See* 65 P.S. §67.708(b). Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a)(1) states: “[t]he 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(a). 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.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

Section 708(b)(28) protects from disclosure “a record or information:

- (i) identifying an individual who applies for or receives social services; or
- (ii) relating to the following:
  - (A) the type of social services received by an individual;
  - (B) an individual’s application to receive social services... or
  - (C) eligibility to receive social services, including the individual’s income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

65 P.S. §67.708(b)(28). “Social services” is defined as “cash assistance and other welfare benefits...” 65 P.S. §67.102.

A rent subsidy is a form of cash assistance to the tenant; thus an individual receiving cash assistance in the form of a rent subsidy is an individual receiving social services. However, the Request seeks the names of *owners* of section 8 properties and the property addresses, not the name of the tenant. The name of the landlord or the address of a section 8 eligible property does not, by itself, identify an individual who receives social services. Rather, as admitted by the Authority a second step, or more, must be taken to identify the tenant who is the recipient of social services. Therefore, because the information requested does not identify an individual who receives social services the exemption does not apply and the appeal is granted.

### **CONCLUSION**

For the foregoing reasons, the Requester’s appeal is granted. Within (30) days of the mailing date of this Determination, the Authority is required to provide the requested records. 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 Allegheny 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 §67.1302. 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:** September 22, 2010



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**APPEALS OFFICER  
AUDREY BUGLIONE, ESQUIRE**

**Sent to:** Paul Van Osdol, Clare Ann Fitzgerald