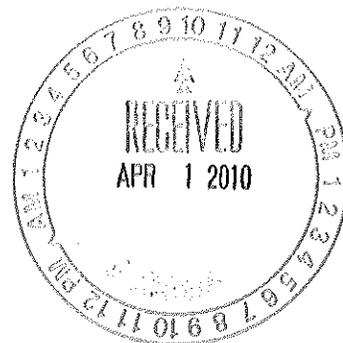

Douglas K. Hanes	:	Court of Common Pleas
Petitioner	:	Warren County
	:	
v.	:	000197
	:	
Sugar Grove Volunteer Fire	:	Office of Open Records
Department	:	Docket No. AP 2009-1147
Respondent	:	



**PETITION TO ENFORCE FINAL DETERMINATION
 OF OFFICE OF OPEN RECORDS
 PURSUANT TO SECTION 1302
 OF THE PENNSYLVANIA RIGHT TO KNOW LAW, 65 Pa.C.S § 67.1302**

This Petition to Enforce arises from a Final Determination of the Office of Open Records (OOR) and is brought under the Pennsylvania Right to Know Law, 65 Pa.C.S. § 67.101 et seq. (RTKL).

Petitioner seeks enforcement of an OOR Final Determination ordering release of Sugar Grove Volunteer Fire Department documents and records. Respondent, Sugar Grove Volunteer Fire Department has both failed to challenge the OOR Final Determination through a petition for review and to completely release the records the Petitioner requested.

Petitioner files this Petition to Enforce the OOR Final Determination in order to protect and preserve his right to receive the records and documents under the Right to Know Law.

1. Petitioner seeks judicial enforcement of a Final Determination from the Pennsylvania Office of Open Records (OOR), which directed and ordered, Respondent, Sugar Grove Volunteer Fire Department to release the records requested by Petitioner. That Final Determination, *DOUGLAS HANES v. SUGAR GROVE VOLUNTEER FIRE DEPARTMENT*, OOR Docket No. AP 2009-1147, which is attached to this Petition to Enforce, required Sugar Grove Volunteer

Fire Department's compliance within thirty days from its issuance on January 27, 2010. Thirty days have passed and Petitioner has not received all of the records that were ordered released. Petitioner now turns to this Court to compel the Sugar Grove Volunteer Fire Department's release of records and documents.

2. When records and documents have been requested of a "local agency," such as the Sugar Grove Volunteer Fire Department, Section 1302 of the Right-to-Know-Law grants jurisdiction to the Courts of Common Pleas for judicial review of OOR Final Determinations. 65 Pa.C.S. § 67.1302(a).
3. Respondent Sugar Grove Volunteer Fire Department has the records at issue and is in custody of the records at issue. Petitioner is therefore immediately seeking an Order from this Court that Sugar Grove Volunteer Fire Department preserves the records and documents at issue.
4. The records ordered released to Petitioner include:
 - (1.) All meeting minutes for all meetings held on December 14, 2009;
 - (2.) All bids for snow removal and copies of bid specifications for snow removal that were used in the bidding process;
 - (3.) Guidelines that pertain to awarding of bids and the process used;
 - (4.) Copy of the election results with vote counts, if not included in the minutes requested above;
 - (5.) A roster of all current members with members address to be included;

See Attached, DOUGLAS HANES v. SUGAR GROVE VOLUNTEER FIRE DEPARTMENT, OOR Docket No. AP 2009-1147

5. Petitioner wants the Court of Common Pleas to be informed that he has received some of the records requested and ordered released by the OOR Final Determination, however the records released were incomplete as follows:
 - (1.) Meeting minutes were released on February 25, 2010 to Petitioner.
 - (2.) All bids for snow removal and copies of bid specifications for snow removal that were used in the bidding process have not been released to Petitioner.
 - (3.) Guidelines that pertain to awarding of bids and the processed used was released on March 03, 2010, however the Respondent Sugar Grove Volunteer Fire Department informed the Petitioner that there is a policy for this. Petitioner considers this a informative answer. The Respondent Sugar Grove Volunteer Fire Department did not provide a copy of this policy that was referenced. Petitioner considers this Incomplete.
 - (4.) Copy of the election results with vote counts, if not included in the minutes requested above. Petitioner received the meeting minutes on February 25, 2010, however the vote count in the meeting minutes were incomplete, the meeting minutes do not make note of how many absentee ballots were included in the vote count. Petitioner considers this request incomplete.

- (5.) A roster of all current members with members address to be included. Respondent released a 2010 Fire/EMS list on February 25, 2010 without addresses included. Petitioner requested a roster of all current members and clarified this in a letter to Respondent Sugar Grove Volunteer Fire Department on February 26, 2010. Petitioner reminded that current members were to include any and all members (Active, Auxillary and Meritorious). Respondent Sugar Grove Volunteer Fire Department released a list of Active, Auxillary and Meritorious members on March 3, 2010 without members addresses as requested and ordered to release. Petitioner considers this incomplete.

Petitioner also wants to remind the Court of Common Pleas that he requested these records on December 16, 2010 with no response from the Respondent Sugar Grove Volunteer Fire Department by United States Postal Service using certified mail. Petitioner then filed a timely appeal on December 30, 2010 of which a copy was sent to the Respondent Sugar Grove Volunteer Fire Department. On December 30, 2010 the OOR and Appeals Officer assigned each sent correspondence to Respondent Sugar Grove Volunteer Fire Department notifying the Respondent Sugar Grove Volunteer Fire Department of the appeal. The Respondent Sugar Grove Volunteer Fire Department was informed that a failure to respond to a request is a denial and that it bears the burden of proving its denial. Respondent Sugar Grove Volunteer Fire Department was invited to provide information in support of its position. No response was received by the Respondent Sugar Grove Volunteer Fire Department. Petitioner would like to inform the Court of Common Pleas that on February 23, 2010 that Petitioner sent a courtesy letter to Respondent Sugar Grove Volunteer Fire Department informing them that Petitioner would be filing a Petition of Enforcement with the Warren County Court of Common Pleas to enforce the OOR Final Determination of Docket No. AP 2009-1147, it was after this courtesy letter that Petitioner started receiving any response from Respondent Sugar Grove Volunteer Fire Department.

Petitioner, who was entitled to receive the records requested no later than January 27, 2010 and the Respondent Sugar Grove Volunteer Fire Department did not appeal the OOR Final Determination within 30 days of the OOR Final Determination to the Warren County Court of Common Pleas. Petitioner seeks enforcement of the OOR Final Determination.

WHEREFORE, Petitioner requests that this Honorable Court:

- a) Order Respondent Sugar Grove Volunteer Fire Department to preserve and provide all records and documents to Petitioner; and
- b) Order Respondent Sugar Grove Volunteer Fire Department to reimburse Petitioner Douglas K. Hanes for the filing of this Petition to Enforce a Final Determination of the Office of Open Records of Pennsylvania; and

c) Order such other relief as the Court deems appropriate.

April 1, 2010

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Douglas K. Hanes". The signature is written in a cursive style with a large initial "D".

Douglas K. Hanes
8165 Jackson Run Road
Sugar Grove, Pennsylvania 16350
(814) 489-3866



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

DOUGLAS HANES
Complainant

v.

**SUGAR GROVE VOLUNTEER
FIRE DEPARTMENT**
Respondent

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Docket No. AP 2009-1147

INTRODUCTION

Mr. Douglas Hanes (the "Requester") submitted a request to the Sugar Grove Volunteer Fire Department (the "Fire Department") for meeting minutes, bids for snow removal, guidelines pertaining to the bid awards process, election vote counts, and a roster of current members with addresses pursuant to the Right to Know Law, 65 P.S. §§67.101 *et seq.* ("RTKL"). The Fire Department did not respond to the request and the Requester timely appealed to the Office of Open Records ("OOR").

For the reasons set forth in this Final Determination, the appeal is **granted**.

FACTUAL BACKGROUND

On December 16, 2009, the Requester mailed a right-to-know request to the Fire Department seeking:

1. All meeting minutes for all meetings held on December 14, 2009;
2. All bids for snow removal and copies of bid specifications for snow removal that were used in the bidding process;
3. Guidelines that pertain to awarding of bids and the process used;

4. Copy of the election results with vote counts, if not included in the minutes requested above;
5. A roster of all current members with members address to be included.

(the "Request") There is no evidence in the record indicating that the Fire Department responded. On December 30, 2010 the Requester timely appealed the deemed denial. In support of his appeal he provided a copy of the certified mail receipt evidencing mailing of the request by certified mail and receipt by Tom Braloz on December 16, 2009. On December 30, 2010 the OOR and the undersigned appeals officer each sent correspondence to the Fire Department notifying the Fire Department of the appeal. The Fire Department was informed that a failure to respond to a request is a denial and that it bears the burden of proving its denial. It was invited to provide information in support of its position. No response was received by the Fire Department.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The Fire Department qualifies as a local agency subject to the RTKL and its obligations of mandatory disclosure. *See* 65 P.S. §67.102, §67.302. *See also Pierce v. Morris Township Fire Dept.*, OOR Dkt. No. AP 2009-0116. The rationale and holding in *Pierce* are incorporated by reference herein.

The Fire Department has not distinguished itself from *Pierce* or demonstrated any reason that it is not subject to the RTKL. A record in the possession of a Commonwealth or local agency is presumed to be a public record unless: (1) the record is exempt under Section 708; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other federal or State law or regulation or judicial order or decree, 65 P.S. 67.305. The agency bears the burden of proof to demonstrate by a preponderance of the evidence that the record is not

subject to disclosure. 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.). *See also: Commonwealth v. Williams*, 615 A.2d 716 (PA, 1992).

Section 67.901 states: "[i]f the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied."

The Request was submitted via certified mail on December 16, 2009 using the OOR's Standard Right-to-Know Request Form. The Requester indicated that he wanted copies and chose email as the delivery method. It was received on the same day as indicated on the Certified Mail Receipt. The Fire Department was required to respond no later than December 23, 2009. The Requester timely appealed on December 30, 2009. No evidence of a response by the Fire Department was provided. Accordingly, the Request in this case was deemed denied. The Fire Department failed to provide any basis, even upon invitation by the OOR, for withholding requested records. It has therefore failed to meet its burden of overcoming the presumption that records in the possession or control of an agency are public. The OOR has no alternative under the law but to order release of the requested records subject to redaction of any information that is nonpublic under the RTKL.

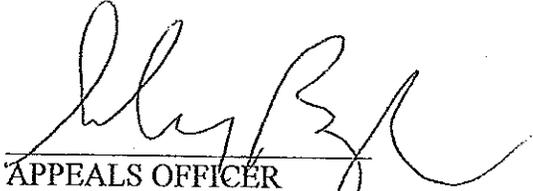
CONCLUSION

The Appeal is **granted** and Fire Department is required to take further action as set forth above. 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 Warren 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.

This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: January 27, 2010



APPEALS OFFICER
AUDREY BUGLIONE, ESQ.

Sent to: Douglas Hanes; Sugar Grove Volunteer Fire Department Open Records Officer

VERIFICATION

I, Douglas K. Hanes, petitioner herein, verify that the foregoing information is true and correct to the best of my knowledge and belief. I understand that my statements are made subject to the penalties of Pa.C.S. § 4904, which relates to unsworn falsification to authorities.

Dated: 04-01-2010

A handwritten signature in black ink, appearing to read "Douglas K. Hanes", is written over a horizontal line.

Douglas K. Hanes

NOTICE TO DEFEND

A petition has been filed against you in the Warren County Court of Common Pleas. If you wish to defend against the claims set forth in the petition, you must take action within twenty (20) days after this petition and notice are served, by filing in writing with the court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so, the case may proceed without you and an order may be entered against you by the court without further notice for the relief requested by the petitioner. You may lose rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

PA Lawyer Referral Service
PA Bar Association
100 South Street
Harrisburg, Pennsylvania 17108
Phone (800) 692-7375

Northwestern Legal Services
Warren, Pennsylvania 16365
Phone (800) 665-6597

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Forest/Warren County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the Court Administrator's Office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.