

Carrie Thomas	Court of Common Pleas of Pike County
Petitioner	
v.	NOTICE OF PRO SE APPEARANCE
Shohola Township, PA	No. _____ cv - 2011
Respondent	Office of Open Records
	Docket No. AP 2010-1196
	Final Determination dated January 24, 2011

NOTICE OF PRO SE APPEARANCE

To the Court of Common Pleas of Pike County:

The undersigned Petitioner in the above referenced matter enters an appearance in this action as *Pro Se* Petitioner. I request notice of all further proceedings. The Clerk of Court and the opposing party will be informed of any changes in address. Any and all notices should be sent to:

Carrie Thomas
110 Ploch Road
Shohola, PA 18458
(570) 559-7844

Dated this 12th day of September, 2011

Carrie Thomas
Pro Se

cc: Audrey Buglione, Appeals Officer – Office of Open Records
Terry Mutchler, Executive Director – Office of Open Records
Jason Ohliger, Esquire

Carrie Thomas	Court of Common Pleas of Pike County
Petitioner	
v.	No. _____cv-2011
Shohola Township, PA	Office of Open Records
Pike County	Docket No. AP 2010-1196
Respondent	Final Determination dated January 24, 2011

RULE to SHOW CAUSE

AND NOW this _____ day of _____ 2011, upon consideration of the attached Petition to Enforce the Final Determination of the Office of Open Records in the matter *Carrie Thomas v Shohola Township*, OOR, AP 2010-1196 pursuant to Section 1302 of the Right to Know Law, 65 Pa.C.S § 67.1302, a Rule is hereby issued upon Respondent to show cause, if any it may have, why the attached Petition should not be Granted.

RULE RETURNABLE the _____day of _____2011 at _____ in the Pike County Court of Common Pleas.

A Hearing is scheduled for _____ 2011 at _____.

BY THE COURT:

cc: Audrey Buglione – Office of Open Records
Terry Mutchler – Office of Open Records
Jason R. Ohliger, Esquire

Carrie Thomas
Petitioner

v.

Shohola Township, PA
Pike County
Respondent

Court of Common Pleas of Pike County

No. _____cv-2011

Office of Open Records
Docket No. AP 2010-1196
Final Determination dated January 24, 2011

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

AND NOW, this _____ day of _____ 2011, upon consideration of Carrie Thomas' Petition to Enforce, response thereto, and oral argument held thereon, this Court finds that Respondent, Shohola Township, possesses and can timely produce in electronic Excel format and medium the 2011 Draft Budget; 2010 Budget; and, line item expenditures for 2007-October 2010. This Court also finds that Respondent possesses the budgets for 2007, 2008 and 2009 and can timely produce same in hard copy.

Pursuant to Section 1302 of the Right to Know Law, Petitioner is entitled to the requested records as ordered by the January 24, 2011 Final Determination of the Pennsylvania Office of Open Records.

Therefore, it is ORDERED and DECREED that said Petition is hereby GRANTED.

Shohola Township is required to provide Petitioner within five (5) business days of this Order all of the following records in electronic Excel format and medium:

1. Expenditure records by line item for the period 2007 – October 2010;
2. 2010 budget; and,
3. 2011 draft budget.

Electronic records must be provided as electronic Excel file(s) transmitted attachments to an email addressed to Petitioner at carriethomas99@yahoo.com. Respondent is ordered to provide the

electronic file(s) at no charge to Petitioner pursuant to the Fee Schedule of the Office of Open Records wherein an agency may charge Petitioner only the actual cost of providing electronic records.¹

Respondent shall not convert said electronic files to PDF or any other format or medium nor shall Respondent provide the Excel files by way of flash drive.

THIS COURT FURTHER DIRECTS Respondent to provide complete budget records for 2007, 2008 and 2009 in hard copy medium.

IT IS FURTHER ORDERED that Shohola Township pay a civil penalty pursuant to Section 1305 of the Right to Know Law for BAD FAITH.

This Court finds that Respondent acted in bad faith by ignoring Petitioner's November 22, 2010 open records request; defying the January 24, 2011 order of the Office of Open Records to provide Petitioner with the requested records in electronic Excel medium and format; using false and misleading testimony under penalty of perjury to prevent Petitioner from receiving the records; employing false and knowingly deceptive public statements on April 14, July 14, and August 11, 2011 with the intent to discredit Petitioner; promulgating untrue and inflammatory information to selected township citizens who used the false information to launch unwarranted and hostile attacks on Petitioner for Petitioner's continued attempts to secure the requested records; and, with willful and wanton intent, abrogating its obligation under law by denying Respondent timely access to the requested records in electronic Excel format.

Therefore, in accordance with Section 1305 of the Right to Know Law, this Court imposes a penalty of \$9,000 constituting \$1,500 for each of Petitioner's six requests.

IT IS FURTHER ORDERED that pursuant to Section 1305 of the RTKL Shohola Township pay Petitioner one hundred and seventy five (175) dollars as recompense for court costs, travel, office expenses and software consultant services incurred by Petitioner in its appeal to this Court.

BY THE COURT:

¹ *Daly v. Achievement House Charter School*, OOR Dkt. AP 2010-0300, 2010 PA O.O.R.D. LEXIS 305; and, *Buskey v Department of Public Welfare*, Dkt. No. 2010-0822,

Carrie Thomas	Court of Common Pleas of Pike County
Petitioner	
v.	No. _____ cv-2011
Shohola Township, PA	Office of Open Records
Respondent	Docket No. AP 2010-1196
	Final Determination dated January 24, 2011

**Petition to Enforce the Office of Open Records' Final Determination
Carrie Thomas v Shohola Township
Docket No. AP 2010-1196
Pursuant to
65 Pa.C.S. § 67.1302**

Summary

1. This Petition to Enforce arises from Shohola Township's refusal to comply with the January 24, 2011 Final Determination of the Pennsylvania Office of Open Records (OOR) [Exhibit A] to provide Petitioner, Carrie Thomas, with specified public financial records in electronic Excel¹ format and medium.
2. Petitioner's action is brought under the Pennsylvania Right to Know Law (RTKL), 65 Pa.C.S. § 67.101 et seq. in the matter *Carrie Thomas v Shohola Township*, OOR, Dkt. No. 2010-1196 wherein the OOR granted Petitioner's appeal of Respondent's deemed denial of Petitioner's lawful request for specified financial records in electronic Excel format.²
3. In granting Petitioner's appeal, the OOR ordered Respondent to provide Petitioner with the specified electronic Excel records within thirty (30) days of the January 24, 2011 Final Determination.
4. More than thirty days have passed, and Respondent refuses to comply with the OOR's January 24, 2011 mandate to provide Petitioner with the requested records in electronic Excel format and medium.

¹ Microsoft Excel is a commercial spreadsheet software application written and distributed by Microsoft for Microsoft Windows and Mac OS X, featuring calculation, graphing, and pivot table tools. Excel is part of Microsoft Office, a software suite included with the Microsoft operating system. Respondent possesses Microsoft Office and Microsoft Excel.

² The RTKL grants individuals and entities the right to access public records in the medium in which they exist.

Jurisdiction

5. Section 1302 of the Right to Know Law (RTKL)³ grants jurisdiction to this Court of Common Pleas for judicial review of Respondent's failure to comply with the Final Determination of the OOR.

6. The Office of Open Records has further clarified Petitioner's right to petition this Court:

"If the agency does not file a petition for review,⁴ the Office of Open Records' Final Determination becomes enforceable on the 31st day after the mailing date of the Final Determination. ***As of this date, if the agency has not complied with the Final Determination and provided the documents as ordered by the Office of Open Records, the requester may seek to enforce the order with a Court.***

If the agency involved is a local agency, the requester must file an enforcement action in the Court of Common Pleas for the county as indicated in the Final Determination." *Information Regarding Enforcement Action of an OOR Final Determination.*⁵ [EMPHASIS ADDED]

Scope of Review

7. Respondent did not appeal the OOR's finding. In light thereof, Respondent waives argument on the OOR's Final Determination and its order to provide Petitioner with the requested records in electronic Excel format.

8. Therefore, this Court's scope of review – or the "what" to be considered -- is whether Respondent has defied the order of the Office of Open Records (OOR) in its Final Determination by improperly withholding from Petitioner the records requested in electronic Excel format.

9. In addition, this Court's scope of review includes consideration of Respondent's basis for defying the OOR's January 24, 2011 Final Determination and Respondent's actions and false and misleading statements as demonstrations of bad faith.

10. Petitioner files this Petition to Enforce to protect and preserve her right to receive the records under the Right to Know Law.

³ Section 1302. Local agencies.

General rule. – Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under section 1101(b) or of the date a request for access is deemed denied, a requester or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

⁴ Respondent did not appeal the Final Determination of the OOR.

⁵ <https://www.dced.state.pa.us/public/oor>

11. Petitioner asks this Court to compel Respondent to immediately comply with the OOR's Final Determination. Petitioner further requests this Court to impose applicable fines and penalties.

Facts and Procedural History

12. On November 22, 2010, Petitioner properly submitted by way of email an Open Records Request (ORR)(Exhibit B) to Diana Blume, Shohola Township's Open Records Officer (ORO.

13. Petitioner requested certain public expense and budget records in electronic Excel format and medium⁶ as detailed in Exhibit B, attached herewith.

14. Respondent did not respond to Petitioner's request which, under Law, was deemed denied.⁷

15. Petitioner timely appealed to the Pennsylvania of Open Records (OOR) on December 15, 2010 (Exhibit C).

16. In response to Petitioner's appeal, Respondent submitted a sworn affidavit from ORO Blume (Exhibit D) in which she falsely attested that, among other things, Respondent does not use Excel to maintain the 2011 draft budget. Respondent's affidavit failed to meet the OOR's deadline for response. Therefore, the Appeals Officer considered only Respondent's December 28, 2010 letter to Petitioner. (Exhibit E)

17. There was no hearing in this matter.

18. The OOR granted Petitioner's appeal and issued its Final Determination on January 24, 2011. The OOR directed Respondent to provide Petitioner with the requested records in electronic Excel format within thirty (30) days.

19. The Final Determination is binding on both parties.

20. Respondent did not appeal the OOR's Final Determination OOR and, therefore, waives argument on the OOR's ruling and its order to provide Petitioner with the requested records in electronic Excel format.

21. Therefore, Respondent has no basis to withhold from Petitioner the records in the requested format and medium.

⁶ The OOR has defined the word "medium" as the "substance through which something is transmitted or carried, a 'means,' such as on paper or on a hard-drive or on a database or over the Internet." Petitioner requested records in electronic, not paper, medium. In addition, the OOR has defined "format" as "the structuring or organization of information, which could be a *spreadsheet* or a list, or another mechanism of presenting or displaying the information at issue." *Acton v. Fort Cherry Sch. District*, OOR Dkt. AP 2009-0926, 2009 PA O.O.R.D. LEXIS 786. [EMPHASIS ADDED] Petitioner requested the records in electronic Excel spreadsheet format.

⁷ Section 901. General rule.

"The time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency. If the agency fails to send the response within five business days of the written request for access, the written request for access is deemed denied."

22. Despite Petitioner's numerous requests, Respondent has failed to provide the records in the requested electronic Excel format and medium. Moreover, it has steadfastly and publicly maintained throughout that it has complied fully with the OOR's directive by providing Petitioner with hard copy documents.

23. Although Respondent has waived argument on the matter, it now holds through public statements that it is not required to provide public records in electronic Excel format and medium as that constitutes "creation" of a record as defined in Section 705 of the Right to Know Law (RTKL).

"Section 705. Creation of a record.

When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record."

24. Respondent maintains expenditure records in QuickBooks accounting software program. Data records within QuickBooks can be transferred to an electronic Excel spreadsheet through a "one click" Export button. Transferring records to an electronic spreadsheet no more constitutes "creation" of a records than printing a copy of the records.

25. In granting Petition's appeal, the OOR stated:

"The Township has failed to establish that the records do not exist in the requested format. The Requester specifically sought access to the records in Excel format. The Township's December 28, 2010 response does not demonstrate that records do not exist in the format requested. The Township states only that it printed out copies for the Requester."

26. Thus, in directing Respondent to provide the requested records in Excel, the OOR has confirmed that production of the requested records in electronic format in no way constitutes creation of a record, otherwise it would not have directed Respondent to produce the records in such format and medium.

27. The OOR determined in *Lock v Colwyn Borough*, Dkt. No. 201-1118 that an agency must provide the requested records in the entirety and format requested by a requester, if the records exist in such format.

28. Moreover, there is abundant case law supporting Petitioner's right to receive the records in the requested electronic Excel format and medium.⁸

⁸ See *Brenckle and The Patriot News v Dickinson Township*, ORR Dkt. No. AP 2010-1057; *Acton v Fort Cherry School District*, OOR Dkt. AP 2009-0926; *Signature v Aston Township*, No. 1311 CD 2009; *Bowser v Carroll Township*, Dkt. No. AP 2009-0910; *White v Wrightsville Borough Municipal Authority*, OOR Dkt. No. AP 2010-0494

29. Respondent failed to provide the OOR and Petitioner with any evidentiary support for denying Petitioner the records in electronic Excel format and medium.

30. Petitioner, who was entitled to receive the records in electronic Excel format no later than February 23, 2011, seeks enforcement of the OOR Final Determination.

Penalties

31. Sections 1304 and 1305 of the RTKL provide a mechanism for a requester to obtain court costs, attorney fees and penalties against an agency deemed by the court to have willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of the RTKL. 65 P.S. §67.1305

Section 1304. Court costs and attorney fees.

(a) Reversal of agency determination. — If a court reverses the final determination of the appeals officer ***or grants access to a record after a request for access was deemed denied***, the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester if the court finds either of the following:

(1) the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of this act; or

(2) the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law.

Section 1305. Civil penalty.

(a) Denial of access. – A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith.

32. The OOR further clarified that civil penalties may be imposed in the amount of \$1, 500 ***per record***.⁹

WHEREFORE, Petitioner requests that this Honorable Court:

1. Order Respondent to preserve and provide Petitioner with the following in electronic Excel format and medium by way of email transmission to Petitioner:

- a. 2011 draft budget;
- b. 2010 budget
- c. expenditures for the period January – October 2010;
- d. expenditures vs. budget in line item detail for January - October 2010;

⁹“ If an agency denies a record in bad faith, the court may impose a civil penalty of up to \$1,500 ***per record***. [EMPHASIS ADDED], FAQs. http://openrecords.state.pa.us/portal/server.pt/community/open_records/4434/faqs/462051

- e. expenditures vs. budget in line item detail for 2007, 2008 and 2009, if said annual budgets exist in electronic Excel format and medium. Otherwise, direct Respondent to provide Petitioner with the 2007 – 2009 annual budgets in hard copy medium;
- 2. Compel Respondent to transmit said electronic Excel files to Petitioner as attachments to an email addressed to carriethomas99@yahoo.com.
- 3. Order Respondent to provide the electronic file(s) at no charge to Petitioner pursuant to the Fee Schedule of the Office of Open Records wherein an agency may charge Petitioner only the actual cost of providing electronic records.¹⁰
- 4. Order Respondent to provide the electronic Excel files in Excel format only and not in any other electronic format or medium, including PDF format and flash drive medium;
- 5. Impose civil penalties in the amount of \$9,000¹¹ as provided under Sections 1304 and 1305 of the Right to Know Law for Respondent's bad faith in:
 - a. Intentionally ignoring Petitioner's ORR of November 22, 2010;
 - b. Refusing to comply with the Final Determination of the OOR;
 - c. Willfully and with wanton intent, denying Petitioner timely access to the requested records in electronic Excel format and medium;
 - d. Failing to respond in any way to Petitioner's request for the 2007-2009 budgets;
 - e. Ignoring Petitioner's frequent requests for compliance with the order of the OOR;
 - f. Knowingly submitting false and misleading statements to the Office of Open Records by way of sworn Affidavit;¹²
 - g. Making intentionally false and misleading statements to Petitioner regarding Respondent's alleged inability to provide the requested records in electronic Excel format and medium;
 - h. Misleading the public to the detriment of Petitioner's reputation and good standing when Respondent stated that it would never provide Petitioner with requested records in electronic medium;

¹⁰ *Daly v. Achievement House Charter School*, OOR Dkt. AP 2010-0300, 2010 PA O.O.R.D. LEXIS 305; and, *Buskey v Department of Public Welfare*, Dkt. No. 2010-0822,

¹¹ Six (6) requested records at \$1,500 per record.

¹² 18 Pa. C.S.A § 4904

- i. Publicly impugning Petitioner's reputation by falsely accusing her of sending "hate mail" to Ms. Blume;
 - j. Treating Petitioner with unwarranted disregard and ridicule;
 - k. Misleading the public at Petitioner's expense in holding that it had fully complied with the order of the Office of Open Records;
 - l. Providing false and misleading information about Petitioner's requests for information to selected citizens and inciting them to verbally assail Petitioner during Supervisors' meetings;
 - m. Treating Petitioner with disdain when she publicly questioned Respondent's refusal to provide the requested electronic records;
6. Order Respondent to pay Petitioner one hundred seventy five (175) dollars as recompense for office, travel and other expenses incurred by Petitioner in its appeal to this Court; and,
7. Order other remedies deemed appropriate by this Court.¹³

September 12, 2011

Respectfully submitted,

Carrie Thomas
Petitioner
Pro Se
carriethomas99@yahoo.com
110 Ploch Road
Shohola, PA 18458
(570) 559-7844

¹³ Section 1304(c) - Other sanctions. — Nothing in this act shall prohibit a court from imposing penalties and costs in accordance with applicable rules of court.

IN THE MATTER OF:	:	
	:	
CARRIE THOMAS,	:	
Complainant	:	
	:	
v.	:	Docket No.: AP 2010-1196
	:	
SHOHOLA TOWNSHIP,	:	
Respondent	:	

Carrie Thomas (the “Requester”) filed a right-to-know request with Shohola Township (the “Township”) pursuant to the Right-to-Know Law (the “RTKL”), 65 P.S. §§ 67.101, *et seq.*, seeking certain financial records in Excel format. The Township did not respond and the Requester timely appealed to the Office of Open Records (the “OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Township is required to take further action as set forth herein.

1. Monthly expenses for January – October in EXCEL format.
2. Draft Budget for 2011 with by line item in EXCEL format.
3. Actual expenses vs. budget by line item for the years 2007, 2008 and 2009 in EXCEL format.

4. Actual expenses vs. budget by line item for January 1 – October 31, 2010.

(“Request”). As the Township did not respond to the Request, the Request was deemed denied under the RTKL. *See* 65 P.S. §67.901.

The Requester appealed to the OOR and the OOR invited both parties to provide information in support of their positions. During the appeal, the Township provided access to only October 2010 records in response to Item 1 asserting that the January through September records had previously been provided in response to prior requests. The Township advised that a copy of a record responsive to Item 2 is available. It denied Items 3 and 4, asserting “[t]his is not a document held by this office.”

The Requester responded, arguing that, as the Request seeks Excel format records rather than hard copies, the Request is not duplicative. She contends the Township uses QuickBooks to maintain its financial records and, as a result, the records exist in the requested format. She notes that the hard copy of the 2011 Budget provided to her was “clearly produced from Excel.” After the record closed, the Township provided the affidavit of Diana Blum, Township Secretary. Because this affidavit was provided after the record closed, it was not considered.

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.* However, parties cannot disregard filing procedures and ignore the filing schedule set by the OOR for submitting evidence to the appeals officer. See 65 P.S. § 67.1102(a)(1). Here, neither party requested a hearing and the OOR has the necessary information before it to properly adjudicate the matter.

The Township is a local agency required to disclose public records. 65 P.S. §§67.102 and 302. Records in possession, custody or control of a local or Commonwealth 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).

1. The Township did not establish that the Request was disruptive

Under Section 506(a), an agency may deny access to a record “if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.” 65 P.S. §67.506(a). The OOR has recognized that, in order for this exemption to apply, 1) the request must be “repeated” and 2) the repeated request places “an unreasonable burden on the agency.” *See Slate v. DEP*, OOR Dkt. AP 2009-1143, 2010 PA O.O.R.D. LEXIS 97 (“A repeated request alone is not enough to satisfy § 506(a)(1)”; *but see Dreyer v. DEP*, OOR Dkt. AP 2009-0453, 2009 PA O.O.R.D. LEXIS 207 (“[W]hen a request has been made under the ... RTKL and granted, the OOR finds that a repeat request for the same record is repetitive and places an unreasonable burden on the agency”). The OOR has held that repeated requests for the same records, although phrased differently, may be denied as disruptive. *See Cohen v. Dept. of Labor & Industry*, OOR Dkt. AP 2009-0296, 2009 PA O.O.R.D. LEXIS 159; *Dougher v. Scranton*, 2009-0798, 2009 PA O.O.R.D. LEXIS 318 (“Slight differences in phraseology do not preclude application of [Section 506(a)]”).

The Township’s response to the Requester dated December 28, 2010 does not provide any evidence that the Request placed an “unreasonable burden on the agency” by seeking the records in Excel format that were previously sought in a different format. Therefore, the OOR finds that the Request is not a Disruptive Request under Section 506(a).

2. The Township failed to establish that records do not exist in the requested format

The Requester specifically sought access to the records in Excel format. The Township’s December 28, 2010 response does not demonstrate that the records do not

exist in format requested. The Township states only that it printed out copies for the Requester.

CONCLUSION

For the foregoing reasons, the Requester's appeal is granted. 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 Chester County Court of Common Pleas. 65 P.S. § 67.1302(a). 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 as per Section 1303 of the RTKL. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: January 24, 2011



APPEALS OFFICER
AUDREY BUGLIONE, ESQUIRE

Sent to: Carrie Thomas, Jason Ohliger, Esquire

EXHIBIT B

Shohola Township

RIGHT-TO-KNOW REQUEST FORM

DATE SUBMITTED	November 22, 2010
SUBMITTED VIA	Email
NAME	Carrie Thomas
ADDRESS	110 Ploch Rd - Shohola, PA 18458
PHONE	570-559-7844
FAX	570-559-7037
email	carriethomas99@yahoo.com
RECORDS REQUESTED	
<ol style="list-style-type: none">1. Monthly expenses for January – October 2010 <u>in EXCEL format</u>2. Draft Budget for 2011 with by line item <u>in EXCEL format</u>3. Actual expenses vs. budget by line item for the years 2007, 2008 and 2009 <u>in EXCEL format</u>4. Actual expenses vs. budget by line item for January 1 – October 31, 2010	

APPEAL

**DENIAL OF OPEN RECORDS REQUEST
Carrie Thomas vs. Shohola Township
Submitted to the Township of Shohola on November 22, 2010
Date of Appeal: December 15, 2010**

I affirm under penalty of perjury that to the best of my knowledge and recollection the following is a true and complete accounting of the matters set forth.

1. On November 22, 2010, I submitted by way of email [*Attachment A*] an Open Records Request (ORR) to Ms. Diana Blume, Shohola Township Open Records Officer (ORO). [*Attachment B*]
2. My submission fulfills the requirement of Section 703 – Written Requests of the Right to Know Law (RTKL).
3. My submitted request does not violate any of the provisions of Section 506 of the RTKL and the provisions of Section 506(b) of the RTKL are not applicable in this matter.
4. The requested documents are non-exempt and do not conform to any exception contained in Section 708(b).
5. The requested documents exist, and the Township is not required to create such documents.
6. The documents are not available through electronic means as provided under Section 704.
7. The mandated five (5) business day response period commenced on Tuesday November 23, 2010 and, due to the two-day Thanksgiving holiday, ended on Wednesday, December 1, 2010.
8. As of the date of this Appeal, Open Records Office Diana Blume has not provided the documents nor has she provided a written or verbal explanation for the reason pertaining thereto, including that all or any part of the requested documents submitted on November 22, 2010 are exempt under Section 708(b) of the RTKL, are no longer in existence or for any reason not available.
9. This Appeal is submitted within fifteen (15) business days of the December 1, 2010 deemed denial as required under Section 1101(a) of the RTKL.
10. I requested the following non-exempt documents on November 22, 2010:
 - a. Monthly expenses for January – October 2010 in EXCEL format
 - b. Draft Budget for 2011 with by line item in EXCEL format
 - c. Actual expenses vs. budget by line item for the years 2007, 2008 and 2009 in EXCEL format
 - d. Actual expenses vs. budget by line item for January 1 – October 31, 2010
11. I affirm that Ms. Blume never notified me at any time or by any manner or means that my request would not be accommodated within the required five (5) business day response period.
12. I attest that Ms. Blume never notified me at any time or by any manner or means that a thirty (30) business day extension was needed as provided under Section 902 of the RTKL.

13. I attest that Ms. Blume never notified me at any time or by any manner or means that any or all of the requested documents were exempt under Section 708(b) of the RTKL.
14. I affirm that Ms. Blume never notified me at any time or by any manner or means that the requested documents were unavailable.
15. I affirm that Ms. Blume never notified me at any time or by any manner or means that the requested documents were not available in the requested format.
16. During a telephone conversation with ORO Blume on or about December 2, 2010, I inquired of the status of and expected fulfillment of my November 22, 2010 request.¹⁴
17. Ms. Blume stated that the requested documents were not ready and evaded answering my question regarding the reason for the delay and when the documents would be available.
18. I asked Ms. Blume to provide the overdue documents as soon as possible.
19. Ms. Blume did not acknowledge or respond to my request for such notification.
20. As of the date of this Appeal, ORO Blume has not responded by any manner or means to my verbal request of December 2, 2010 to be advised of when the requested documents will be available nor has the November 22, 2010 been fulfilled.
21. On December 8, 2010, I emailed Ms. Blume to, among other things, ask her to notify me when the documents that I requested on November 19¹⁵, November 22 November 27¹⁶ and December 2,¹⁷ 2010 would be available [Attachment C]. I reminded her that ten (10) business days had passed since the submission of the November 22, 2010 request.
22. As of the date of this Appeal, ORO Blume has not acknowledged nor responded to my email of December 8, 2010 nor provided the documents rightfully and properly requested on November 22, 2010.¹⁸
23. I affirm that I am prohibited by law from driving a motor vehicle due to disability. Therefore, it has been my general practice to request receipt of documents by facsimile.
24. I attest that I have infrequently picked up requested documents at the Municipal Building on the rare occasions when others have been available to transport me.
25. I further affirm that on those occasions when fulfillment of the document request exceeds five business days, I always request transmission by fax to expedite receipt of the overdue documents.
26. Between April 9, 2010, when Ms. Blume was appointed Township Secretary/Treasurer and Open Records Officer, and early August 2010, she occasionally exceeded the mandated five business day response period.
27. I affirm that on no occasion between April 9, 2010 and the date of this Appeal has Ms. Blume properly notified me by any manner or means that a request would not be fulfilled within five business days.

¹⁴ I also asked Ms. Blume of the status and expected fulfillment date of ORR's filed on November 19 and November 27, 2010.

¹⁵ As of the date of this Appeal, the Township has not provided the documents requested on November 19, 2010. Appeal has been filed.

¹⁶ As of the date of this Appeal, the Township has not provided the documents requested on November 27, 2010. Appeal will be filed.

¹⁷ As of the date of this Appeal, the Township has not provided the documents requested on December 2, 2010. Appeal will be filed.

¹⁸ Ms. Blume also had not provided documents requested on November 19, 27 and December 2, 2010 .

28. I attest that between April 2010 and December 8, 2010 I did not register any complaints by any manner or means with Ms. Blume or any other individual about any of the delayed responses, and refrained from lodging complaints in acknowledgment of Ms. Blume's short tenure as Township Secretary/Treasurer and Open Records Officer.
29. Commencing in early August 2010, a pattern of delays in responding to my Open Records Requests commenced.¹⁹
30. I attest that on or about December 8, 2010, my spouse, David Farrington, drove me to the Township Municipal Building to ask Ms. Blume when my outstanding Open Records Requests, including the November 22, 2010 request, would be fulfilled.²⁰
31. I affirm that Ms. Blume stated that the outstanding were not available nor did she know when the documents would be available.
32. I attest that I reminded Mr. Blume of her responsibility as Open Records Officer to provide properly requested documents within five business days unless a thirty business day extension is invoked.
33. I attest that Ms. Blume stated that she would follow procedures when I follow procedures.²¹
34. I affirm that I also reminded Ms. Blume that she was obligated to notify me in writing if she could not fulfill a request within the five business day response period.
35. I affirm that, in response to my reminder to Ms. Blume, she stated that her actions complied in full with the Right to Know Law.
36. I attest that on December 10, 2010, my spouse, David Farrington, drove me to the Township Municipal Building to pay for documents received through a previous ORR and to inquire when my outstanding Open Records Requests would be fulfilled.
37. On December 10, 2010 and in the presence of my spouse,²² I asked Ms. Blume if the significantly delayed documents were available. She answered, "No."
38. I asked when the outstanding requests for documents would be fulfilled. Ms. Blume responded "I don't know."
39. I asked Ms. Blume to fax me the requested documents when available. She refused my request and advised me that she would no longer provide requested documents by facsimile.

¹⁹ While not directly pertinent to this Appeal, it is worth noting that since early August 2010, Ms. Blume has exhibited a pattern of efforts that have thwarted my rightful access to Township documents. In addition to numerous and increasingly frequent delays in responding to my requests, ORO Blume has used contrived reasons to deny my rightful request for documents, all of which do not conform with the RTKL nor to Final Determinations and Advisory Opinions of the Office of Open Records.

Such contrived reasons include, but are not limited to: a) Refusal to accept a written Open Records Request because it was not provided on the Township's form b) Refusal to accept an Open Records Request because it was not provided on the Standard Form provided on the website of the Office of Open Records; c) Refusal to provide audio tapes of Supervisors meetings recorded for the sole purpose of preparing minutes of the meetings on the basis that the tape medium was the personal property of the Township Secretary [Reference: Advisory Opinion 2009-003]; and, d) Refusal to fax requested documents without pre-payment [the amount due was less than \$2.00]

Copies of email exchanges regarding the above will be supplied if needed.

²⁰ I also picked up an audio tape requested through an earlier Open Records Request.

²¹ When I asked Ms. Blume to enumerate the procedures that I failed to follow, she referred to the fact that I do not use the request form provided by the Township.

²² To be provided upon return of affiant from a business trip.

40. I affirm that Ms. Blume has faxed me requested documents numerous times since she became Open Records Officer in April 2010.
41. I affirm that I indicated on the ORR submitted on November 22, 2010 that I wanted to receive the requested documents by fax.
42. I further affirm that Ms. Blume never informed me by any manner or means until December 10, 2010 that the documents requested on November 22, 2010 would not be provided to me by facsimile.
43. I attest that Ms. Blume never informed me by any manner or means that she had revised the Township's Open Records form, which I do not use, and eliminated a requester's ability to request document delivery by fax.
44. I affirm that I am unaware of the date on which Ms. Blume changed the procedures, yet to the best of my knowledge, Ms. Blume's adoption of the policy eliminating fax as a means through which to provide requested documents did not occur until after my November 22, 2010 request for receipt of the requested documents by way of facsimile.
45. During my December 10, 2010 interchange with Ms. Blume, I again reminded her of the required response deadline and her obligation as ORO to inform me in writing of her inability to meet the deadline.
46. Ms. Blume provided no response.
47. As of the date of this Appeal, I have not received the documents requested in writing on November 22, 2010 nor has Ms. Blume informed me by any manner or means when the request will be fulfilled.
48. Certain historical matters which occurred prior to this Appeal are included as Attachment D to rebut any claims that may be made by Shohola Township in response to this Appeal that the Township's failure to timely respond to my request of November 22, 2010 was related to *bona fide* staffing limitations as provided under Section 709(a)(3).
49. In summary, Shohola Township has not:
- a. Pro-actively communicated with me at any time or by any manner or means regarding fulfillment of my properly submitted Open Records Request of November 22, 2010.
 - b. Provided written or verbal notice of the inability to meet the required five business day response deadline;
 - c. Provided written or verbal notice of the need for a thirty business day extension;
 - d. Provided written or verbal notice that my request violated any provision of the RTKL, including Section 708(b) - Exceptions of the RTKL.
 - e. Provided the properly and rightfully requested documents; nor,
 - f. Provided written notice of denial and the reasons therefore.
50. As provided in Section 901 of the Right-to-Know Act, the Township's failure to provide the requested documents is deemed a denial.

I hereby appeal Shohola Township's denial of my properly submitted and rightful request of November 22, 2010 for non-exempt documents cited in Item 10 a-d herein.

Requested Remedy:

1. Receipt of the requested documents within five (5) business days of the Final Determination of this Appeal, if said Appeal is successful.
2. Receipt of the requested documents by way of facsimile addressed to Carrie Thomas at (570) 559-7844.

SIGNED

Carrie Thomas

DATE: December 15, 2010

EXHIBIT D



SHOHOLA TOWNSHIP BOARD OF SUPERVISORS

George C. Fluhr-Eleanore N. Wall- Gregory P. Hoeper

159 Twin Lakes Road
Shohola PA 18458

(570) 559-7394

Fax (570) 559-7523

SHOHTWP@PTD.NET

December 28, 2010

Mrs. Carrie Thomas
110 Ploch Road
Shohola, PA 18458

Re: Open Records Request dated November 22, 2010

Dear Mrs. Thomas:

In response to your Open Records Request of November 22, 2010, I have printed out the monthly expenses for October of 2010. Initially your request did specify January 2010 – October 2010, however, you received a printout of expenses from January through August as requested in your Open Records Request dated September 22, 2010; and you had also received a printout of expenses from January through September as requested in your Open Records Request of October 12, 2010. Therefore, the only list of expenses provided to you in this request will be for October, 2010 expenses, as we are not required to respond to duplicative requests.

Also, I have copied the “Draft Budget for 2011 with by line items”, for you. In addition, you requested “actual expenses vs. budget by line items for 2007; 2008 and 2009”, as well as “expenses vs. budget by line items for January 1 – October 31, 2010. “ This is not a document held by this office.

Your documents are available at the Township Building for you to pick up at your convenience. The fee for the documents provide is \$1.50.
[EMPHASIS ADDED²³]

Respectfully,

Diana Blume
Open Records Officer

²³ Respondent made no mention of the fact that I requested the responsive records in electronic Excel format.

VERIFICATION

I, Carrie Thomas, petitioner herein, verify that the foregoing information is true and correct to the best of my knowledge, recollection and belief. I understand that my statements are made subject to the penalties of 18 Pa.C.S. §4904, which relates to unsworn falsification to authorities.

Carrie Thomas
Petitioner
Pro Se

Dated: September 12, 2011

Carrie Thomas

Petitioner

v.

Shohola Township, PA

Respondent

Court of Common Pleas of Pike County

No. _____ cv-2011

Pennsylvania Office of Open Records

Docket No. AP 2010-1196

CERTIFICATE OF SERVICE

I, Carrie Thomas, hereby certify that on this 12th day of September, 2011, I hand-delivered a copy of this Petition on the following:

Jason Ohliger, Esquire
Shohola Township Solicitor
Weinstein, Kannebecker & Lokuta
104 West High Street
Milford, PA 18337

Date: September 12, 2011

Carrie Thomas
Petitioner
Pro Se