pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
PAUL SHARPLESS,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2016-0971**
	:	
BOROUGH OF LITTLESTOWN,	:	
Respondent	:	

INTRODUCTION

Councilman Paul Sharpless ("Requester"), submitted a request ("Request") to the Borough of Littlestown ("Borough") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking various financial records. The Borough did not respond to the Request, and the Requester 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.

FACTUAL BACKGROUND

On May 17, 2016, the Request was filed, seeking "all financial documents for April, 2016." The Borough did not respond to the Request, and the Request was deemed denied. 65 P.S. § 67.901.

On June 2, 2016, the Requester appealed to the OOR, stating grounds for disclosure.[1] Pertinently, the Requester noted that, prior to his election to Borough Council, the Requester received similar records on an on-going basis. The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On June 13, 2016, the Borough submitted a position statement supported by the affidavit of Charles Keller, Borough Manager. In its position statement, the Borough argues that the Requester's insistence on receiving paper copies instead of electronic records places an unreasonable burden on the Borough and "that these ongoing voluminous requests from [the Requester] are frivolous and unnecessary and should not be permitted to continue indefinitely." On June 16, 2016, June 24, 2016 and July 6, 2016, the Requester submitted several position statements, stating that he is amenable to receiving electronic copies of the requested records, and describing his ongoing efforts to obtain records from the Borough.

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law 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. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

[1] In his appeal, the Requester granted the OOR an additional thirty days to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).

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 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; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Borough 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 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) states: "(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(a). Preponderance of the evidence has been defined as "such proof as leads the fact-finder … to find that the existence of a contested fact is more probable than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

On appeal, the Borough argues that the Requester's "ongoing voluminous requests … are frivolous[.]" While not citing any specific provisions of the RTKL, the Borough's position statement appears to argue that the Request is disruptive. 65 P.S. § 67.506(a). Section 506(a) of the RTKL provides that an "agency may deny a requester 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." *Id.* (emphasis added). "Under this section … an agency must demonstrate that (1) 'the requester has made repeated requests for th[e] same record' and (2) 'the repeated requests have placed an unreasonable burden on the agency." *Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011); *see also Slate v. Pa. Dep't of Envtl. Prot.*, 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)").

Here, the Requester seeks the Borough's financial records for April, 2016. While there is no dispute that the Requester has previously requested (and received) the Borough's financial records for prior months, there is no evidence that the Requester has sought these same records previously. In addition, the Borough's evidence fails to demonstrate that responding to the Request places an "unreasonable burden" on the Borough. Accordingly, the Borough has failed to demonstrate that the Request is disruptive. As the Borough raises no other grounds for withholding the Borough's financial records, these records are subject to disclosure.

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted**, and the Borough is required to provide all requested records within thirty days. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Adams 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 of

the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.[2] This Final Determination shall be placed on the OOR website: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: July 29, 2016

/s/ Charles Rees Brown
CHARLES REES BROWN
CHIEF COUNSEL

Sent via e-mail to:

Paul Sharpless
Frank Lavery, Esq.

[2] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).