



On June 30, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Authority to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c). Neither party made any supplemental submissions.

### **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).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 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 Authority 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. 65

P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65

P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions.

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 *Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The sole issue in this matter is whether the Request seeks “records” or, instead, asks a question. The RTKL defines a “record” as:

Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

65 P.S. § 67.102. Because the RTKL is remedial legislation, the definition of “record” must be liberally construed. *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013) (internal citations omitted). The Commonwealth Court has specifically held that requests that are “set forth as a question complete with question mark” seek

answers to questions, rather than records. *Gingrich v. Pa. Game Comm'n*, No. 1254 CD 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at \*13 (Pa. Commw. Ct. 2012).

Furthermore, “[a] request that explicitly or implicitly obliges legal research is not a request for a specific document; rather, it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request.” *Askew v. Office of the Governor*, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013). An agency cannot be required to perform legal research for a requester. *See, e.g., Monighan v. Pa. Dep't of Transp.*, OOR Dkt. AP 2013-1967, 2013 PA O.O.R.D. LEXIS 1118; *Aliota v. Millcreek Twp.*, OOR Dkt. AP 2012-1351, 2012 PA O.O.R.D. LEXIS 1170.

Here, the Request requires the Authority to locate the applicable section of the Act that allows the Authority to refuse water service to new tenants. Because the Authority is not required to perform legal research, the Request does not seek records as defined by the RTKL, and the appeal is denied. *See McManus v. Office of the Governor*, OOR Dkt. AP 2014-1606, 2014 PA O.O.R.D. LEXIS 1218; *Mason v. Pa. Dep't of State*, OOR Dkt. AP 2014-1250, 2014 PA O.O.R.D. LEXIS 952; *Maddrey v. Pa. Dep't of State*, OOR Dkt. AP 2013-2204, 2013 PA O.O.R.D. LEXIS 1249 (holding that the agency is not required to perform legal research to locate “enacting clause” in Title 18).

## CONCLUSION

For the foregoing reasons, Requester’s appeal is **denied**, and the Authority is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Westmoreland 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 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.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: August 1, 2016**

/s/ Blake Eilers

Blake Eilers, Esq.

APPEALS OFFICER

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<sup>1</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).