pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MITCH TREMBICKI,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2016-1158**
	:	
MIDDLETOWN TOWNSHIP,	:	
Respondent	:	
	:	

INTRODUCTION

Mitch Trembicki ("Requester") submitted a request ("Request") to Middletown Township ("Township") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking documents regarding a proposed oil pipeline. The Township did not respond, 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 Township is required to take further action as directed.

FACTUAL BACKGROUND

On June 16, 2016, the Request was filed, seeking:

1. All correspondence (whether written or electronic) between Middletown Township (including any agent or contractor acting on behalf of the township) and Sunoco Pipeline (including any parent or subsidiary of Sunoco Pipeline, as well as any agent or contractor acting on behalf of Sunoco Pipeline or any parent or subsidiary company).

2. Any notes, minutes, agendas, and recordings of telephone conversations and [sic] person meetings between the parties listed in (1) above that pertain to current or proposed pipeline infrastructure projects.

3. All correspondence (whether written or electronic) between Middletown Township (including any agent or contractor acting on behalf of the township) and any other agency (including but not limited to the Pennsylvania Department of Environmental Protection, Delaware County Conservation District, and any emergency response agency) concerning proposed activities of Sunoco Pipeline (or any parent or subsidiary company).

4. Any notes, minutes, agendas, and recordings of telephone conversations and in-person meetings between the parties listed in (3) above that pertain to current or proposed pipeline infrastructure projects.

5. Any permit application(s) made by Sunoco Pipeline (including any parent or subsidiary of Sunoco Pipeline, as well as any agent or contractor acting on behalf of Sunoco Pipeline or any parent or subsidiary company of Sunoco Pipeline).

6. The response(s) of Middletown Township to any permit application(s) made by the parties listed in (5) above.

7. In addition, I ask to inspect any records in the possession of Middletown Township that relate to preparedness or emergency planning for pipeline infrastructure leaks/explosions/fires and evacuation of residents as a result of such events.

As the Township did not respond to the Request by June 24, 2016,[1] the Request was deemed denied on that date. *See* 65 P.S. § 67.901.

On July 6, 2016, the Requester appealed to the OOR, stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in the appeal pursuant to 65 P.S. § 67.1101(c). On July 7, 2016, the Township submitted a position statement, explaining its delay and noting that it anticipated being able to respond to the Request within thirty days.[2]

[1] The Township later acknowledged receiving the Request on June 17, 2016.
[2] To the extent that the Township attempted to invoke a thirty-day extension of time to respond to the Request, the Township's extension notice was untimely. *See* 65 P.S. § 67.902(b)(1) (requiring an extension notice to be sent within five business days).

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 Township is a local agency subject to the RTKL that is required to disclose public records. *See* 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)).

Here, the Township has not asserted or presented any evidence establishing that any of the requested records are exempt from public access or otherwise protected from disclosure, and states that it will provide the requested records. Accordingly, the Township has not established that the requested records are exempt from public access. *See* 65 P.S. § 67.305(a).

CONCLUSION

For the foregoing reason, Requester's appeal is **granted**, and the Township is required to provide the Requester with all responsive records within thirty days. 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 Delaware County Court of Common Pleas. *See* 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.[3] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

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

FINAL DETERMINATION ISSUED AND MAILED: August 4, 2016

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Mitch Trembicki (via e-mail only);
W. Bruce Clark (via e-mail only)