



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

<b>IN THE MATTER OF</b>	:	
	:	
<b>TIM BUCKWALTER AND LNP MEDIA GROUP,</b>	:	
<b>Requester</b>	:	
	:	<b>Docket No: AP 2016-1190</b>
<b>v.</b>	:	
	:	
<b>LANCASTER COUNTY HOUSING AND REDEVELOPMENT AUTHORITY,</b>	:	
<b>Respondent</b>	:	

### INTRODUCTION

Tim Buckwalter (“Requester”), on behalf of LNP Media Group, submitted a request (“Request”) to the Lancaster County Housing and Redevelopment Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking addresses of properties participating in the Section 8 voucher and moderate rehab program administered by the Authority. The Authority denied the Request, citing Federal regulations. 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 Authority is required to take additional action as directed.

### FACTUAL BACKGROUND

On June 7, 2016, the Request was filed seeking:

[t]he list of addresses where Section 8 vouchers and Moderate Rehab program units administered by the [Authority] are currently in use. I'm also request[ing] the number of people at each address (household size or each unit).

On June 13, 2016, the Authority invoked a thirty-day extension to respond to the Request. *See* 65 P.S. § 67.902. On July 12, 2016, the Authority denied the Request, claiming that the,

[U.S Department of Housing and Urban Development (“HUD”)] regulations preclude us from providing the information. Those records are, technically, HUD data under their jurisdiction, and they prohibit release of any information that could lead to identifying individual Section 8 clients.

On July 13, 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 this appeal. *See* 65 P.S. § 67.1101(c).

On July 22, 2016, the Authority submitted a position statement reiterating its grounds for denial. The Authority claims it is precluded from releasing the requested records under HUD guidance<sup>1</sup> and that Section 708(b)(28) of the RTKL exempt records that would reveal the identity of individuals receiving social services.<sup>2</sup> 65 P.S. § 67.708(b)(28).

### **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

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<sup>1</sup> Although the Authority referenced HUD “regulations” in its July 12 denial, only a HUD “guidance” document was submitted and discussed on appeal.

<sup>2</sup> The Authority is permitted to raise this reason for denying access for the first time on appeal. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

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. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. 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.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing and 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. *See* 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. *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)(1). 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)).

The Authority states that the requested information is exempt under Section 708(b)(28) of the RTKL because it would identify individuals that receive social services. Section 708(b)(28) of the RTKL exempts from disclosure, among other items, a record or information that “identif[ies] an individual who applies for or receives social services.” 65 P.S. § 67.708(b)(28)(i). The RTKL defines “social services” as including “medical, mental and other health care services” and “services for the elderly [and] individuals with disabilities.” 65 P.S. § 67.102.

In *Housing Authority of the City of Pittsburgh v. Van Osdol*, the Commonwealth Court construed this exemption narrowly, stating:

[the requester] sought to obtain only the addresses of Section 8 properties and the names of the individuals owning those properties. The requested information does not itself identify individuals who apply for or receive social services or the type of social services received by those individuals. Nor does such information directly identify the name, home address or date of birth of children who are 17 years of age or younger residing in Section 8 properties, or the home address of a law enforcement officer or judge who may own Section 8 properties. When the exemptions under Section 708(b)(6)(i)(C), (28)(i) and (ii)(A) and (30) of the Law are narrowly construed, as we must do, the requested information does not fall within those exemptions.

40 A.3d 209, 215-16 (Pa. Commw. Ct. 2012). Relying on *Van Osdol*, the OOR has found that the addresses of individuals owning properties whose residents receive housing assistance, by themselves, do not identify individuals receiving social services. *See Polaha v. Chester Housing Auth.*, OOR Dkt. AP 2014-1698, 2014 PA O.O.R.D. LEXIS 1265; and that the addresses of

individuals applying for workers' compensation benefits, by themselves, do not identify the recipients of social services. *Simpson v. Pa. Dep't of Labor & Indus.*, OOR Dkt. AP 2015-0338, 2015 PA O.O.R.D. LEXIS 0338.

Here, like in *Van Osdol*, addresses alone will not "identify" those who receive social services. In fact, the Court in *Van Osdol* rejected the agency's argument that the disclosure of home addresses would identify recipients of social services, noting:

[T]he record contains no information concerning the county's electronic records search capabilities. *That properly disclosed public records may enable the requestor or others, by doing further research, to learn information that is protected from disclosure is not generally a sufficient basis to refuse disclosure....* There may be some cases in which the evidence establishes that disclosure of public records which are not facially exempt will necessarily or so easily lead to disclosure of protected information that production of one is tantamount to production of the other, or that disclosure of the one is highly likely to cause the very harm the exemption is designed to prevent, but no such evidence was presented here. Accordingly, at this time we need not attempt to define in further detail the standards which must be met to allow withholding of records which are not facially exempt.

40 A.3d at 216 (emphasis added).

There is no evidence presented by the Authority that disclosure of addresses and the number of individuals at each address "will necessarily or so easily lead to disclosure of [the identities] that production of one is tantamount to production of the other." *Van Osdol*, 40 A.3d at 216. Therefore, the Authority has not demonstrated that disclosure of addresses will lead to disclosure of the protected information. Therefore, these addresses and the number of individuals at each address are subject to disclosure. *See* 65 P.S. § 67.708(a)(1); *Pennsylvanians for Union Reform v. Pa. Dep't of Human Servs.*, OOR Dkt. AP 2015-0673, 2015 PA O.O.R.D. LEXIS 657.

In *Pa. State Education Association v. Office of Open Records*, the Commonwealth Court reinstated a preliminary injunction enjoining the release of the home addresses of public school

employees in the possession of school districts. 110 A.3d 1076 (Pa. Commw. Ct. 2015) (“*PSEA*”). In reinstating the injunction, the Court held that an agency “is prohibited from granting access to an individual’s personal address information without first notifying the affected individual and providing that affected individual with an opportunity to demonstrate that disclosure of the requested information should be denied pursuant to the personal security exception as set forth in Section 708(b)(1)(ii) of the RTKL.” The Court also held that “the OOR is prohibited from granting access to personal address information of an individual who objected to the disclosure of such information ... without first permitting that individual to intervene as a right of appeal from an agency’s denial of a requester’s request for access to such information.” Here, although it originally directed the Authority to provide notice to third parties of their ability to participate in this appeal, the addresses sought are not “personal.” See *Van Osdol*, 40 A.3d at 216. As this case is distinguishable from *PSEA*, *Van Osdol* governs. Thus, notice of this appeal was not required.

Finally, the Authority asserts that it is precluded from releasing the requested documents pursuant to guidelines issued by the United States Department of Housing and Urban Development (“HUD”), attaching the “U.S. Department of Housing and Urban Development Privacy Protection Guidance for Third Parties” (Notice 2015-06). Additionally, the Authority attached an e-mail from the Division Director of the Office of Public Housing in Philadelphia that states that HUD expects its third party business partners to protect privacy information that is collected and described in Notice 2015-06 that restricts personally identifiable information. However, as discussed above in *Van Osdol*, the Commonwealth Court has determined that releasing addresses that receive Section 8 assistance does not personally identify the individuals receiving assistance. In addition, the Authority does not proffer any evidence of how releasing

these addresses and the number of individuals at each address is precluded under the law. Therefore, the Authority has not provided sufficient evidence to withhold the information sought in this Request.

### CONCLUSION

For the foregoing reasons, Requester's appeal is **granted**, and the Authority is required to provide the addresses and number of individuals at each address 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 Lancaster 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>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: August 9, 2016**

/s/ Jill S. Wolfe, Esq.

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APPEALS OFFICER  
JILL S. WOLFE, ESQ.

Sent to: Tim Buckwalter (via e-mail only);  
John Esphenshade, Esq. (via e-mail only);  
Matthew Sternberg (via e-mail only)

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