

to the Request.¹ *See* 65 P.S. § 67.902(b). On June 16, 2016, the Requester appealed to the OOR, stating that she still had not received the requested records.²

The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c). Neither party made a submission to the OOR prior to when the record was initially scheduled to close in this matter. On June 29, 2016, the OOR sought clarification regarding the records requested and asked the Township if it wished to participate in the appeal.

On July 1, 2016, the Requester clarified that the bank statements sought were identical to statements sought in a then-pending appeal docketed as *Earley v. Madison Twp.*, OOR Dkt. AP 2016-0843, but that, in this appeal, she additionally seeks the reconciliation statements. On July 5, 2016, the Township submitted an unsworn position statement asking the OOR to consider the materials it had filed in the earlier case, in which it asserted that it did not possess the resources to create the number of copies requested, and that the Requester should be required to bring her own copier. On July 6, 2016, the Township resubmitted those materials. On July 7, 2016, the Requester submitted an affidavit, stating that she had not yet received any records.

On July 11, 2016, the OOR issued a Final Determination in *Earley v. Madison Township*, OOR Dkt. AP 2016-0843, 2016 PA O.O.R.D. LEXIS ____, adjudicating all of the arguments made in this matter. On the same day, the OOR informed the parties that if they believed that there were any distinguishing facts or matters of law between that docket and this one, they should submit them. Neither party submitted any additional information.

LEGAL ANALYSIS

¹ The Township's extension notice was timely as the Township is only open for three business days per week.

² In her appeal, the Requester granted the OOR an additional thirty days to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).

“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. *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 Township is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be 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 to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *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)). “The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

On July 6, 2016 the Township submitted a position statement in which it argues that this Request, along with other business, is unduly burdensome for a small municipality with a single part-time clerical worker. The Township states that a response to the Request would require creating more than five hundred copies, and that it lacks the resources to respond. The Township also maintains that it has been working with the Requester to arrange for her to bring in her own copier, and that the Township’s copier is insufficient to meet the Request.

The OOR has previously ordered the release of the Township’s monthly bank statements and determined the Township’s duty under the law with regard to the production of copies of the records at issue. *See Earley*, OOR Dkt. AP 2016-0843, 2016 PA O.O.R.D. LEXIS _____. The OOR has not previously ruled on the Township’s duty to release the reconciliations to that account, but the Township’s arguments concerning the reconciliations are identical to the arguments it made in *Earley* and nothing in evidence before the OOR disturbs those findings. The inclusion of reconciliations in the request for these accounts does not render them overbroad, and the Township still has a duty to produce them. *See Pa. Dep’t of Educ. v.*

Pittsburgh Post-Gazette, 119 A.3d 1121, 1124-25 (Pa. Commw. Ct. 2015); *see also Wright v. Pa. Dep't of Corr.*, OOR Dkt. AP 2009-0174, 2009 PA O.O.R.D. LEXIS 608.

In her clarification, the Requester informed the OOR that she was not seeking a second copy of the underlying account numbers for the payroll accounts, but rather that she wanted to ensure that she had the reconciliation numbers along with the accounts. The Township is not required to provide additional copies of the same records at issue in *Earley*; the Township need only provide the payroll account and the reconciliations to said account to the Requester to satisfy this appeal.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Township is required to provide all responsive records, with the exception of the records at issue in *Earley*, to the Requester 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 Clarion 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.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 15, 2016

/s/Jordan C. Davis

APPEALS OFFICER
JORDAN C. DAVIS, ESQ

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

Sent to: Sandi Earley (via e-mail only);
Nancy M. Murray (via e-mail only)