



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**SIGNATURE INFORMATION
SOLUTIONS, LLC,
Requester**

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Docket No: AP 2016-1559

v.

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:

**DURHAM TOWNSHIP,
Respondent**

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INTRODUCTION

Trisha Frassetto, on behalf of Signature Information Solutions, LLC, (“Requester”) submitted a request (“Request”) to Durham Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking real estate tax information for March through July of 2016. The Township denied the Request, stating that the records are exempt from disclosure pursuant to the Pennsylvania Local Taxpayers Bill of Rights Act (“Act”). 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 August 29, 2016, the Request was filed, seeking “detailed monthly tax collector statement[s]” pursuant to 72 P.S. § 5511.25 for March through July of 2014.¹ On September 2, 2016, the Township denied the Request, asserting that the records are exempt from disclosure pursuant to the Act. *See* 53 Pa.C.S. § 8421.

On September 16, 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 Township to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On September 28, 2016, the Requester submitted a position statement, arguing that the Act does not apply to real property taxes, so it does not provide a basis for denying the Request. *See* 53 Pa.C.S. § 8438. On October 14, 2016, in response to a request by the OOR, the Requester extended the deadline for the OOR to issue a final determination to October 24, 2016.

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 The Requester later clarified that 2014 was a typographical error on the original request form, and the records that were actually requested were those from 2016. The Township’s response acknowledges that the requested documents are from 2016, rather than 2014.

The OOR is authorized to hear appeals for all 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; however, the OOR has the 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(a)(1).

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: “The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the 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 Act mandates that “[a]ny information gained by a local taxing authority as a result of any audit, return, report, investigation, hearing or verification shall be confidential tax information.” 53 Pa.C.S. § 8437. Furthermore, the Act declares it to be unlawful for a taxing authority to divulge such information. *Id.* However, the Act states that it “shall not apply to any tax on real property.” 53 Pa.C.S. § 8438.

Records in the hands of a tax collector are not public records, and, thus, do not have to be made available. *Honaman v. Twp. of Lower Merion*, 13 A.3d 1014 (Pa. Commw. Ct. 2011).

However, on a monthly basis, a tax collector must:

provide a true, verified statement, in writing on a form approved by the Department of Community and Economic Development, to the secretary or clerk of the taxing district ... giving the names of taxables, the amount collected from each, along with discounts granted or penalties applied, if any, and the total amount of taxes received, discounts granted and penalties applied. The tax collector shall include with each statement made under this section a reconciled monthly tax collector's report for each type of tax collected for each taxing district. The report shall be reconciled from the tax duplicates to the amount of taxes remaining to be collected. A taxing district may require the elected tax collector to provide it with additional information supplementing that set forth on the form approved by the Department of Community and Economic Development.

72 P.S. § 5511.25. These monthly tax reports are publically available when in the possession of an agency subject to the RTKL. *Honaman*, 13 A.3d at 1022 n.9; *see also Signature Information Solutions, LLC v. West Whiteland Twp.*, OOR Dkt. No. AP 2016-0778, 2016 PA O.O.R.D. LEXIS 781 (holding that a tax collector’s monthly report provided to a township under 72 P.S. § 5511.25 is subject to public access).

The Request seeks copies of the tax collector's monthly report for the specified months. In accordance with *Honaman*, these reports become public records when in the possession of the Township. The Township has demonstrated that it possesses these reports; accordingly, they must be disclosed. *See* 65 P.S. § 67.302(a).

CONCLUSION

For the foregoing reason, Requester's appeal is **granted**, and the Township is required to provide the requested records 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 Bucks 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.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 21, 2016

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

Sent to: Trisha Frassetto (via e-mail only);
Kelly Yura (via e-mail only);
Craig Staudenmaier, Esq. (via e-mail only);
Joe Kulick (via e-mail only);
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² *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).