



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
OPEN RECORDS DATA RETRIEVAL,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2016-1591
	:	
CITY OF CHESTER,	:	
Respondent	:	

INTRODUCTION

Alexandra Sherry, on behalf of Open Records Data Retrieval (“Requester”), submitted a request (“Request”) to the City of Chester (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking electronic records. The City did not timely respond to the Request, 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 City is required to take further action as directed.

FACTUAL BACKGROUND

On September 9, 2016, the Request was filed, seeking:

A report, spreadsheet, etc. in electronic format (nothing scanned or printed) containing all residential and commercial building and sub/trade (mechanical, electrical, plumbing, hvac, etc.) permits issued from July 1, 2013 to present.

The information I am seeking would include permit number, issued date, location, permit type, and a description of the work done as well as contractor details and valuations if this available.

As the City did not respond within five business days, the Request was deemed denied. *See* 65 P.S. § 67.901.

On September 21, 2016, the Requester appealed to the OOR, stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the City to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On September 29, 2016, the City submitted its position statement, arguing that the City's Open Records Officer does not have access to the software program where the records are maintained, and that obtaining a license for access to the software program to fulfill the Request is not financially feasible. The City explained that the City's Building Code official has access to the software program and is able to save the requested information in a PDF document, which can be printed, and that the City's Open Records Officer can then scan the printed PDF document to the Requester. The City further explained that the scanned method of providing the records was not agreeable to the Requester. In support, the City submitted the attestation of Janell Brown, the City's Open Records Officer.

On September 30, 2016, the Requester made a submission, explaining that she is not requesting access to the City's software system, but simply seeking the requested information in any electronic format. The Requester argued that "exporting information, whether saved electronically, printed ... does not provide access to the software system." She further argued that the City is not required to obtain an additional license because someone in the City already has the ability to access the software program to fulfill the Request.

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. *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 City 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). 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)).

In *Gingrich v. Pa. Game Comm’n*, the Pennsylvania Commonwealth Court held that “information contained in a database must be accessible to requesters and provided in a format available to the agency.” No. 1254 C.D. 2011, Pa. Commw. Unpub. LEXIS 38 (Pa. 2012). “An agency need only provide the information in the manner in which it currently exists.” *Commonwealth v. Cole*, 52 A.3d 541, 547 (Pa. Commw. Ct. 2012). Further, “drawing information from a database does not constitute creating a record under the [RTKL].” *Id.*

Section 701 of the RTKL states that “[a] record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists.” 65 P.S. § 67.701(a). The RTKL does not define “medium”; however, the OOR has defined it “as the substance through which something is transmitted or carried, a ‘means,’ such as on paper or on a hard-drive or on a database or over the Internet.” *Acton v. Fort Cherry Sch. Dist.*, OOR Dkt. AP 2009-0926, 2009 PA O.O.R.D. LEXIS 786, *aff’d*, No. 2010-719 (Wash. Com. Pl. July 26, 2011), *aff’d*, 38 A.3d 1092 (Pa. Commw. Ct. 2012), *petition for allowance of appeal denied*, 57 A.3d 72 (Pa. 2012).

The OOR has previously differentiated “medium” from “format.” In *Bowling v. Pennsylvania Emergency Management Agency*, the requester sought copies of “electronic spreadsheets” and PEMA provided the documents in PDF format rather than in Excel format. See OOR Dkt. AP 2009-0128, 2009 PA O.O.R.D. LEXIS 607, *rev’d on other grounds*, *Bowling v. Office of Open Records*, 990 A.2d 813 (Pa. Commw. Ct. 2010), *aff’d*, 75 A.3d 453 (Pa. 2013).

The OOR held:

The RTKL provides requesters with the right to inspect and duplicate. Duplication is a snapshot, a static record that cannot be altered or modified, in other words, a “copy.” [Section 701(b) of the RTKL] specifically prevents access to an agency’s computer, evidencing intent to protect government records and files from any interference. By providing a .pdf file, PEMA complied with the RTKL by duplicating its spreadsheet and [the requester] received the “information” requested. It was provided in an electronic medium and there is no requirement to provide records in a manner that would subject them to alteration or manipulation. [The requester] received the record, as defined by the RTKL, which he requested.

OOR Dkt. AP 2009-0128, 2009 PA O.O.R.D. LEXIS 607. Therefore, “under the RTKL, ‘medium’ is a broad term, and ‘electronic medium’ encompasses all electronic formats.” *Cap v. Lehigh and Northampton Transp. Auth.*, OOR Dkt. AP 2013-0168, 2013 PA O.O.R.D. LEXIS 112. Pursuant to Section 701 and *Bowling*, an agency is not required to convert electronic records into a different file format. *Id.*

Here, the Request seeks an electronic record, and it is undisputed that the underlying information exists electronically in the City’s database (software program). While the City has offered to provide a scanned copy of a paper version of the report, the City admits that one of the City’s Building Code Officials has access to the database and is able to generate the responsive report as a PDF document. Pursuant to *Gingrich* and *Cole*, the City must provide the report “in the manner in which it currently exists,” i.e. its native PDF format.

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted**, and the City is required to provide the Requester with the responsive electronic PDF record, not a version that has been printed and scanned. 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. 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 26, 2016

/s/ Bina Singh

APPEALS OFFICER
BINA SINGH

Sent to: Alexandra Sherry (via e-mail only);
Janell Brown (via e-mail only)

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