



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**ROBERT MEYERS,
Requester**

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:

:

v.

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Docket No.: AP 2016-1672

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**PLUMSTEAD TOWNSHIP,
Respondent**

:

:

INTRODUCTION

Robert Meyers (“Requester”) submitted a request (“Request”) to Plumstead Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking answers to various questions regarding a specific property. The Township partially denied the Request, asserting that the responsive records are related to a noncriminal investigation. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **dismissed**, and the Township is not required to take any further action.

FACTUAL BACKGROUND

On September 30, 2016, the Request was filed, stating:

Current zoning of 6920 Tollgate [R]oad PT. Pleasant Demusz property.

What types of businesses are permitted and how many different companies may operate out of this property at one time? What are the operational hours? How many vehicles may be parked at this location? Does zoning ever revert back to

residential? How many construction vehicles are permitted on lot? Does zoning cover outside storage or how big or how many piles of dirt/stone/wood mounds are allowed. Who monitors noise, odor and waste product removal? Do underground liquid storage containers require permits? What are any and all restrictions?

On October 3, 2016, the Township partially denied the Request, granting access to a property file, while denying access to records related to a noncriminal investigation. *See* 65 P.S. § 67.708(b)(17).

On October 5, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. On October 5, 2016, the OOR issued an Order notifying the Requester that the appeal was deficient because it failed to include a copy of the Township's final response. The OOR informed the Requester that he was required to cure the deficiency, and on October 5, 2016, the Requester submitted a copy of the Township's final response. *See* 65 P.S. § 67.1303(b). The OOR also invited the parties to supplement the record, and directed the Township to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On October 10, 2016, the Township submitted an unsworn position statement, arguing that the Request does not seek records, but rather asks questions.¹ In its submission, the Township also provided answers to each question. On October 5, 2016 and October 11, 2016, respectively, the Requester submitted various exhibits, which included photographs of the area for which the Requester seeks information.

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.*

¹ The Township is permitted to raise this additional reason for denial on appeal to the OOR. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

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” 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 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, neither party requested 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. 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 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)).

Under the RTKL a request must seek records, rather than answers to questions. *See Moll v. Wormleysburg*, OOR Dkt. AP 2012-0308, 2012 PA O.O.R.D. LEXIS 197; *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *14 (Pa. Commw. Ct. 2012) (noting that the portion of a request “set forth as a question” did not “trigger a response”); *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (“The [RTKL] did not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens *access* to existing public records”). The presence or absence of a question mark is not determinative as to whether a request asks a question. *See Varick v. Paupack Twp.*, OOR Dkt. AP 2013-1348, 2013 PA O.O.R.D. LEXIS 766.

Here, as evidenced by the Request, as well as the Requester’s October 5, 2016 submission in which he states that he “[r]equested 10-answers for [the specified property],” the Request asks questions and does not seek records.² *See Connelly v. Foster Twp.*, OOR Dkt. AP 2014-1256, 2014 PA O.O.R.D. LEXIS 1062 (“Each of the inquiries are phrased as a question, punctuated with a question mark, and the Requester asks the Township to e-mail the answers to the questions posed, further indicating the Requester’s intent to ask questions”). The OOR cannot refashion the questions asked in the Request into a request for records. *See Pa. State*

² As stated above, the Township answered each question in its submission on appeal.

Police v. Office of Open Records, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010) (“Nowhere in [the RTKL] has the General Assembly provided that the OOR can refashion the request”).

CONCLUSION

For the foregoing reasons, the Requester's appeal is **dismissed**, and the Township is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review 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.³ This Final Determination shall be placed on the website at: <http://www.openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 9, 2016

/s/ Kathleen A. Higgins

APPEALS OFFICER
KATHLEEN A. HIGGINS, ESQ.

Sent to: Robert Meyers (via e-mail only);
Carolyn McCreary (via e-mail only)

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