



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF:

:

**KRAIG DEAN,
Complainant**

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:

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v.

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Docket No.: AP 2009-0282

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**LYCOMING COUNTY,
Respondent**

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INTRODUCTION

Mr. Kraig Dean (the “Citizen”), an employee of SpecPrint, filed a right-to-know request with Lycoming County (the “County”), seeking real estate property tax information pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.* The County granted the request, but required the Citizen to pay \$2,000 for the information because the file was a specialized geographic information system (GIS) based file. The Citizen timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **denied** and the County is not required to take any further action.

FACTUAL BACKGROUND

On April 3, 2009, the Citizen filed a right-to-know request (the “Request”) with the County requesting “a single file named CAMATAB.TXT....This is an export of the real estate public information in a tab-delineated format”. This requested information

was an updated version of the same document the Citizen had requested and been provided by the County in 2008 at a cost of \$50.

Fred F. Marty, Director of Administration and Chief Clerk for the County, granted the request and advised Citizen that the cost of providing the requested information would be \$2,000 because the requested file was a specialized geographic information system (“GIS”)-based file. In explaining the fee increase, the County stated that it had used the fee structure (\$50) in place prior to the enactment of the current RTKL for the Citizen’s 2008 request. The County further explained that when the current RTKL became effective on January 1, 2009, it changed its fee schedule for information that was a “complex and extensive data set within the meaning of § 1307(b)(4).” The County states that the fee currently is based on the market rate which the County established after reviewing the pricing structure of other counties.

On April 10, 2009, the Citizen filed an appeal with the OOR challenging the fee quoted by the County. The Citizen subsequently granted the OOR additional time to issue a Final Determination.

LEGAL ANALYSIS

The Office of Open Records is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. §67.503(a). The County is a local agency subject to the RTKL. See 65 P.S. § 67.301. The parties do not contest that the requested records are public records. The sole issue before the OOR is whether the County is permitted to charge the Citizen \$2,000 for the requested records.

Section 1307(b)(4) of the RTKL provides:

- (4) The following apply to complex and extensive data sets, including geographic information systems or integrated property assessment

lists.

(i) Fees for copying may be based on the reasonable market value of the same or closely related data sets.

The plain language of the RTKL permits an agency to charge a reasonable market value fee for complex and extensive data sets. Here, the Citizen concedes that the County obtained the information from the GIS and that the information could be considered a complex or extensive data set. However, he argues that the County could and should have provided the information in a different format as it had in the past. While the Citizen states that he did not request a data set from the GIS, he admits that he did not request the information in any particular format and assumed that the Request would be treated the same as his 2008 request. Further, the Citizen does not argue or present any evidence that the County still maintains the requested information outside the GIS or in a different file format. Therefore, the OOR determines for purposes of this appeal that the requested information created and maintained by the County using GIS technology qualifies as a complex and extensive data set under the RTKL. The OOR notes that the Citizen cannot force the County to create, maintain, or compile the information in a format in which the agency does not create, maintain or compile that information. *See* 65 P.S. § 67.706. However, if the requested information is maintained or compiled in a different format outside the GIS, the County must provide copies of that information to the Citizen. As noted above, there is no evidence the County maintains the information in any other format than the GIS-based format.

With respect to the fee, the Citizen states that \$2,000 is not fair and reasonable for three reasons. First, he argues that since the County charged \$50 in 2008 for the requested information, it is automatically precluded from charging \$2,000 for essentially

the same information in 2009. The OOR rejects this argument. The plain language of § 1307 permits an agency to charge a reasonable market rate fee regardless of what fee was charged in the past. Further, the Citizen fails to demonstrate how the increase alone makes the current rate unfair or unreasonable.

Second, the Citizen argues that the integration of the requested information into a GIS system was undertaken by the County in an effort to inhibit the public's accessibility to the information and that the County should be required to use a duplication method and cost that would best serve the taxpaying citizen. However, he provides no proof demonstrating the County's alleged motive for integration of the requested information into the GIS. Further, he points to no provision within the RTKL that requires the County to use a particular duplication method or that precludes the County from using the GIS to create or maintain the requested information.

Finally, the Citizen argues that the reasonableness of the County's fee schedule should not be determined by a comparison to the fee schedules of other counties. He provides no analysis for why such a comparison is inappropriate or unnecessary. Again, § 1307 states that "[f]ees for copying may be based on the reasonable market value of the same or closely related data sets." A comparison of fees for closely related data sets is a reasonable method of determining market value.

Having ourselves now reviewed fees from other counties, the OOR notes that fee schedules vary widely across the state and are affected by a number of different factors. As per its charge under Section 1307 of the RTKL, the OOR will continue to analyze fee schedules charged for similar data sets. The OOR notes that such fee schedule

determinations are made on a case by case basis and are fact specific. The OOR maintains the authority to review fee schedules at any time pursuant to the RTKL.

Here, the County has provided evidence that its fee schedule is comparable to the market rate in other counties. While the Citizen has presented evidence that some counties have lower fees, he does not address how the higher fees charged by other counties are unfair or unreasonable. Additionally, he does not state what a reasonable fee would be under the RTKL. As such, the OOR finds that the County's fee schedule is within the market value range charged by other counties and that it may require the Citizen to pay the \$2,000 fee. We note that this determination is limited to this case and is not an approval of the County's fee schedule or a finding that \$2,000 is an appropriate fee for such information.

The OOR notes that the Citizen references 1307(b)(4)(ii) and claims that SpecPrint is a publisher. However, he provides no legal support or argument for how Citizen or SpecPrint qualifies as a publisher under the RTKL. As such, this argument is denied.

CONCLUSION

For the foregoing reasons, the Citizen's appeal is **denied** and the County is not required to take any additional action. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the Common Pleas Court, Lycoming County. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S. §67.1301. The parties are further

advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

FINAL DETERMINATION ISSUED May 29, 2009

A handwritten signature in black ink, appearing to read "Nath J. Byerly". The signature is written in a cursive style with a large initial "N".

APPEALS OFFICER
NATHANAEL J. BYERLY, Esquire