



FINAL DETERMINATION

IN THE MATTER OF

**JOHN SIBLEY,
Requester**

v.

**LEHIGH COUNTY,
Respondent**

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Docket No: AP 2022-1249

INTRODUCTION

John Sibley (“Requester”) submitted a request (“Request”) to Lehigh County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking information regarding an individual’s firearms and license for said firearms. The County denied the Request, arguing the information is made confidential by state statute. The Requester 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 28, 2022, the Request was filed, seeking “[a]ny and all information regarding copies of: applications, revocations, violations, for permit to carry concealed weapon by [name omitted] between years 2000 through 2022. Any/all legal or illegal guns [name] currently owns and possesses.”

On April 28, 2022, the County invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b). On May 9, 2022, the County denied the Request, arguing that the records are protected from disclosure by the Uniform Firearms Act (“Firearms Act”), 18 Pa.C.S. § 6111(i).

On May 24, 2022, 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 County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On June 15, 2022, the County submitted a position statement reiterating its grounds for denial. In support of its position, the County submitted the position statement of solicitor David Backenstoe, Esquire, and the sworn attestation of David Faust, the Chief Deputy Sheriff for the County’s Sheriff’s Office.¹

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” and may consider testimony, evidence and documents that are reasonably probative and

¹ Mr. Faust’s attestation does not appear to address the Request underlying the immediate appeal. It references video surveillance and security video, which appears to be in reference to another RTKL request that the Requester made and attached to the appeal.

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.* Here, neither party requested a hearing.

The County 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)(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 County denied the Request, stating that the requested records are confidential under the Firearms Act, which provides, in relevant part, as follows:

All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section or

any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure.

18 Pa.C.S. § 6111(i); *see also* 37 Pa. Code § 33.103(a).

Further, the County cites to the *Procedures and Specifications for Firearm Record Forms Under the Uniform Firearms Act*, which provides as follows:

(a) Information furnished under this chapter by an applicant, purchaser, transferee or licensee, or collected by the designated issuing authority under this chapter, is confidential and not subject to public disclosure.

(d) No disclosure of information forwarded, collected or maintained under this chapter will be made to requests of noncriminal justice agencies, or individuals other than the applicant, licensee, purchaser or transferee as described in sections 6109 and 6111 of the act.

37 Pa Code 33.103. Backenstoe Position Statement ¶6.

The requested information, whether contained in the underlying application and license or collected and maintained in the course of transferring a license, is protected by the broad confidentiality provision within the Firearms Act and its implementing regulations. *See generally Scott v. County of Allegheny Sheriff's Office*, OOR Dkt. AP 2015-0291, 2015 PA O.O.R.D. LEXIS 336 (concluding that concealed firearms permits are confidential under the Firearms Act). Records made confidential under another state law are not considered public records for purposes of the RTKL. *See* 65 P.S. § 67.102 (exempting from disclosure any record “exempt from being disclosed under any other Federal or State law”); 65 P.S. § 67.3101.1 (“[i]f the provisions of [the RTKL] regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply”). Therefore, based on the submission made by the County, as well as the express language of the Request, the County has demonstrated that the requested records are protected from disclosure by the Firearms Act.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the County 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 to the Lehigh 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. 65 P.S. § 67.1303. 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: AUGUST 1, 2022

/s/ Matthew Eisenberg

APPEALS OFFICER
MATTHEW EISENBERG, ESQ.

Sent to: John Sibley (via email only);
Valerie Hildebeitel (via email only);
David Backenstoe, Esq. (via email only)

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).