



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**MARK BUFFINGTON,
Requester**

v.

**GENESEE TOWNSHIP,
Respondent**

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Docket No: AP 2023-0191

FACTUAL BACKGROUND

On January 16, 2023, Mark Buffington (“Requester”) submitted a request (“Request”) to Genesee Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Mirrored or [c]loned copy of [Township] [c]omputer [hard drive] for years 2015 through [p]resent. Excluding information covered under [RTKL] personal or private exclusions. All other information [is] public [record] and to [be] made access[i]ble [and] covered under the [RTKL]. Information [may be] copied to a cd, floppy disk or thumb drive. Submitter is willing to provide said storage methods[.]

On January 20, 2023, the Township denied the request, arguing that nothing in the RTKL should be construed to require access to any computer either of an agency or individual employee of an agency, 65 P.S. § 67.701(b).

On January 26, 2023, the Requester appealed to the Office of Open Records (“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. 65 P.S. § 67.1101(c).

On February 13, 2023, the Township submitted an attestation made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, of Vickie Smith, the Township's Agency Open Records Officer ("AORO"). The attestation reiterated the Township's grounds for denial.

The Requester submitted a position statement on February 19, 2023. The Requester asserts that he is not requesting physical access to the Township's computer, but merely requesting a cloned or mirrored copy. The Requester also made a submission on February 20, 2023, requesting the acknowledgment of any additional parties involved in the appeal, as well as the disclosure of any expenditures made by the Township as a result of this appeal.¹

LEGAL ANALYSIS

The Township is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Township is required to demonstrate, "by a preponderance of the evidence," that records are exempt from public access. 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*,

¹ The Requester additionally requests a letter indicating that nothing illegal has been deleted from the Township computer in the past three months; however, the OOR has repeatedly held that a requester may not modify, explain or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010). Further, an agency cannot be required to create a record in response to a request. 65 P.S. § 67.705.

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)).

1. The Township's interpretation of the Request is reasonable

The Township argues that the AORO interprets the Request as access to the Township's only computer through means of a digital copy of its hard drive. Smith Attestation ¶¶ 4-5. An agency may interpret the meaning of a request for records, but that interpretation must be reasonable. *See Spatz v. City of Reading*, OOR Dkt. AP 2013-0867, 2013 PA O.O.R.D. LEXIS 513; *Signature Info. Solutions, Inc. v. City of Warren*, OOR Dkt. AP 2012-0433, 2012 PA O.O.R.D. LEXIS 557. The RTKL is remedial legislation that must be interpreted to maximize access. *See Gingrich v. Pa. Game Comm'n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d at 824). The OOR determines the reasonableness of the agency's interpretation from the text and context of the request alone, as neither the OOR nor the Requester are permitted to expand the request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Commw. Ct. 2010); *McKelvey v. Office of Attorney General*, 172 A.3d 122 (Pa. Commw. Ct. 2017) ("Once a RTKL request is submitted, a requester is not permitted to expand or modify the request on appeal."). In this case, without more evidence to suggest a contrary interpretation, the Township's interpretation of the Request is reasonable.

2. The RTKL does not require the Township to allow access to its computer in response to the Request

The Requester specifically requests a cloned or mirrored copy of the hard drive of the Township's only computer. The Requester further indicates that he is not seeking physical "access" to the Township's computer. "Access" is defined as "opportunity or ability to enter, approach, pass to and from a place, or communicate with." BLACK'S LAW DICTIONARY (7th ed.

1999). The Requester's assertion that he is not "accessing" a Township computer if he is given a cloned or mirrored copy of the hard drive is without merit. Upon opening or downloading a mirrored or cloned copy of the hard drive, the Requester would enjoy the same access to the Township's computer as if he were physically sitting at the Township's computer. The RTKL cannot be read to prohibit the electronic access of information through an agency's computer, yet authorize a requester to remotely access the very same information if given a copy of the computer's hard drive. *See* 1 Pa.C.S. § 1922(1) (statutes are not to be construed to produce an absurd or unreasonable result).

Section 701(b) of the RTKL expressly states that "[n]othing in this act shall be considered to require access to any computer either of an agency or individual employee of an agency." 65 P.S. § 67.701(b). In *Donahue v. Luzerne County*, the OOR ruled, in construing this section of the RTKL with respect to a request seeking to inspect an employee's email account, as follows:

While e-mails have been held to be public records subject to disclosure, *see Donahue v. Luzerne County*, OOR Dkt. AP 2013-1395, 2013 PA O.O.R.D. LEXIS 698, and have been required to be provided in electronic format if they exist in that format, *see Scott v. SEPTA*[,] OOR Dkt. 2011-0633, 2011 PA O.O.R.D. LEXIS 459, the Requester does not seek electronic copies of e-mails; rather, the Requester seeks to inspect e-mails residing in County employees' e-mail accounts. Nothing in the RTKL can be read to require the County to provide electronic access to County employees' e-mail accounts, either remotely or through the County's own computers.

OOR Dkt. AP 2013-1394, 2013 PA O.O.R.D. LEXIS 821. Similarly, the Township submits that one component of the Township computer is its hard drive, where digital content is stored. Thus, a copy of this component essentially would allow access to the Township's computer through the means of a digital copy. Smith Attestation ¶¶ 4-5. While certain agency records stored on an agency computer are clearly records subject to access under the RTKL, the Township is not required to clone its hard drive for the Requester to inspect the contents of the Township computer.

See Wachter v. City of Warren, OOR Dkt. AP 2015-2654, 2015 PA O.O.R.D. LEXIS 2191 (“[T]he City is not required to provide access to the City’s computers and, to the extent the Requester seeks to do so, that portion of the appeal is denied”).²

CONCLUSION

For the foregoing reasons, the appeal is **denied**, 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 to the Potter 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 65 P.S. § 67.1303. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 28, 2023

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Mark Buffington (via portal only)
Vickie Smith (via portal only)

² The Requester is not precluded from submitting a new request to the Township, which clarifies the records being sought that may be stored on the Township’s computer. *See Hollinger v. Adams County*, OOR Dkt. AP 2013-0238, 2013 PA O.O.R.D. LEXIS 180.

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