



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
SUSAN NOTO AND ZILLOW GROUP,	:
INC.,	:
Requester	:
	:
v.	: Docket No: AP 2024-0696
	:
ADAMS COUNTY,	:
Respondent	:

FACTUAL BACKGROUND

On February 26, 2024, Susan Noto and Zillow Group, Inc. (collectively “Requester”), submitted a request (“Request”) to Adams County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[1.] An electronic copy of the 2023 Assessment Files, including property appraisal information sometimes referred to as “CAMA Data” for all parcels in [the County] in one of the following electronic formats: Excel, Text, CSV.

[2.] Also[,] include a complete copy of the 2022 Millage Rates (for both [C]ounty and school).

On February 27, 2024, the County issued a response to the Requester, stating that “the County’s Tax Services Department charges \$0.06 [per] record for the CAMA records...which will amount to \$2,833.86” and asking the Requester to advise if she “would like to proceed” with the Request.

On March 12, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the reasonableness of the fee. 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 March 20, 2024, the County submitted a position statement, providing the basis for the fee for the responsive records. In support of its position, the County submitted an attestation made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, authored by Daryl Crum (“Crum Attestation”), the County’s Tax Services Director. On March 21, 2024, the Requester submitted a position statement.¹

LEGAL ANALYSIS

The County 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 County 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*, 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 sole issue on appeal is whether the County was permitted to levy a fee of \$2,833.86 for the requested property records, which equates to \$0.06 per record. The County argues that the fee was authorized by Section 1307(b)(4)(i) of the RTKL, which provides that fees for copying

¹ As the Requester’s appeal did not indicate the County’s response to Item 2 of the Request was at issue, Item 2 of the Request will not be addressed in this Final Determination.

“complex and extensive data sets, including geographic information systems or integrated property assessment lists ... may be based on the reasonable market value of the same or closely related data sets.” 65 P.S. § 67.1307(b)(4)(i). The term “reasonable market value” is synonymous with the term “fair market value,” which is defined as the “monetary worth or price of something; the amount of goods ... that something commands in an exchange.” BLACK’S LAW DICTIONARY 1690 (9th ed. 2009).

In support of the County’s argument, the Crum Attestation indicates, in relevant part, the following:

3. I am familiar with the assessment records sought by Requester and I provided a quote to Requester for such records at a rate of \$0.06 per record, which is the standard County rate for assessment records.

4. As a result of this appeal, I sent a request to other Pennsylvania tax directors via the Assessors’ Association of Pennsylvania email listserv seeking information about the rates their counties impose on similar assessment records. [Twenty-nine] county tax directors responded to my request[,] with rates ranging from \$0.003 (Washington) to \$0.17 (Greene). For entire data sets, some counties charge flat rates ranging from \$150 (Northampton) to \$2,000 (Franklin). The average rate assessed per record from all responding counties is \$0.06, which is the same rate assessed by Adams County...

5. Based on the responses of other counties, I believe that \$0.06 per record is well within the market range for assessment record rates and is therefore reasonable.

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the County has acted in bad faith, “the averments in the [attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

The Requester argues that comparing one county's fee to another county's fee cannot establish fair market value because it does not allow one to "shop around from one service provider to another [which] is a key feature of a fair market system." The Requester additionally argues that the "reasonable market value" for data is artificial and that the RTKL does not authorize the "sale" of government data, as it only provides for fees "for copying." However, Section 1307 of the RTKL contains a separate and distinct fee analysis for specific types of records that the General Assembly determined may have commercial value. Phrases like "reasonable market value," and "fair market system," traditionally associated with the private commercial and business sector, are clearly distinguishable from "copying fees" charged by government agencies providing access to the public. Exceptions for media and researchers further strengthen this distinction.

Unlike other fees authorized under the RTKL, a fee assessed under Section 1307(b)(4) need not be related to an agency's actual costs in producing the data. *See Hahn v. Lawrence County*, OOR Dkt. AP 2020-0370, 2020 PA O.O.R.D. LEXIS 2099; *Black Knight Real Estate Data Solutions LLC v. Cambria County*, OOR Dkt. AP 2016-0512, 2016 PA O.O.R.D. LEXIS 741. Here, the County charges \$0.06 per record, which it argues is reasonable. The "fair market value" under Section 1307(b)(4) of the RTKL depends primarily upon the fees charged by similarly-situated bodies, such as other counties.

The County relies upon *Noto and Zillow Group v. Luzerne Cnty.*, OOR Dkt. AP 2021-1359, 2021 PA O.O.R.D. LEXIS 1561. In *Noto*, the OOR considered the sole issue of "whether Luzerne County was permitted to levy a fee of \$8,400.00 for the requested property records under Section 1307(b)(4)(ii)." The property records were comprised of an electronic copy of the 2021 Tax Assessment Files for all parcels in Luzerne County. OOR Dkt. AP 2021-1359, 2021 PA O.O.R.D. LEXIS 1561, *5. Luzerne County submitted the attestation of the Director of

Assessment in support of its position that the fee assessed to process and respond to the request was reasonable. The Director of Assessment attested to the amount of responsive data and expenses incurred in maintaining the data per parcel. Luzerne County's evidence also included information regarding the charges imposed by other counties for similar records. *Id.* at *6-7. The OOR considered the requester's attestation disputing Luzerne County's evidence and concluded that, based upon the evidence as a whole, the fee being assessed by Luzerne County constituted a reasonable fair market value of the dataset under Section 1307(b)(4)(ii). *Id.* at *9; *see also Ingalls v. Westmoreland Cnty.*, OOR Dkt. AP 2017-2222, 2018 PA O.O.R.D. LEXIS 193 (concluding that geographic and assessment records of land parcels are extensive datasets and the agency proved that the fee assessed fell within the reasonable market range).

In this instance, the County has submitted evidence showing that other counties in Pennsylvania charge from \$0.003 to \$0.17 per parcel. Moreover, the OOR has found that Section 1307(b)(4) of the RTKL permits agencies to charge fees up to \$0.09 per parcel. *See Campbell v. County of Bucks*, OOR Dkt. AP 2013-1201, 2013 PA. O.O.R.D. LEXIS 747; *see also Kearns v. Monroe County*, OOR Dkt. AP 2010-1185, 2011 PA O.O.R.D. LEXIS 16 (approving a fee of \$0.029 per parcel); *Shockley v. Northumberland County*, OOR Dkt. AP 2010-0601, 2010 PA O.O.R.D. LEXIS 525 (approving a fee of \$ 0.043/parcel); *Kozloski v. Susquehanna County*, OOR Dkt. AP 2009-0976, 2010 PA O.O.R.D. LEXIS 130 (approving a fee of \$0.08 per parcel). While the Requester asserts that the Requester is unable to "shop around" for a different service provider, the Requester is specifically seeking the datasets from the County, and the evidence reveals that other counties are charging similar fees. Therefore, because the County has demonstrated that \$0.06 constitutes "fair market value," it is permitted to charge such a fee per parcel for the responsive records.

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 Adams 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.² 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 3, 2024

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Susan Noto (via portal only)
Joy Ramsingh, Esq. (via portal only)
Sean A. Mott, Esq. (via portal only)

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