pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
SUSAN NOTO AND ZILLOW GROUP, INC.,	:	
Requester	:	
	:	**Docket No: AP 2024-0697**
v.	:	
	:	
LUZERNE COUNTY,	:	
Respondent		

FACTUAL BACKGROUND

On February 27, 2024, Susan Noto, on behalf of the Zillow Group, Inc., (collectively "Requester") submitted a request ("Request") to Luzerne County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking "[a]n electronic copy of the 2023 Assessment Files, including property appraisal information sometimes referred to as 'CAMA Data' for all parcels in Luzerne County in one of the following electronic formats: Excel, Text, CSV."

On March 1, 2024, the County granted the Request by referring the Requester to the County website and providing an electronic link to the website. In addition, the County stated that, because the information is on the website, a RTKL request is not required to obtain the information and noting the current fee amount is $10,100.00.

On March 12, 2024, the Requester appealed to the Office of Open Records ("OOR"), stating "all of the records are ... at issue in [the] appeal" and "[w]e are also appealing the fee.[1] 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 19, 2024, the County submitted a position statement. The County states the following:

> The last time Zillow sent a request, they did the same thing when they received the charges. This is not a matter for OOR. They can take it up with the Legislature if they are in disagreement. Further, the information is right on our website and does not require a RTK request. www.luzernecounty[,]org[.] Certified Tax Rolls/Data Purchasing | Luzerne County, PA[.]

On March 21, 2024, counsel for the Requester submitted a position statement, arguing that the fee is unreasonable and unlawful because the "County owned data cannot have a reasonable market value" and that the OOR's "former holding are inconsistent with the statutory language of the RTKL." The Requester also argues that, under Section 1307(i) of the RTKL, a fee may only be charged for the copying of data, not for providing the data. The Requester further argues that the County is "selling public records, which is not permitted under the RTKL." The Requester seeks a re-examination of OOR precedent that has interpreted the language of 65 P.S. § 67.1307(i).

On April 3, 2024, the Requester submitted a supplemental statement, arguing that Pennsylvania counties are colluding to artificially raise the price charged for the types of records sought in this matter and improperly passing on overhead fees for data storage under the guise of copying fees. The Requester's submission included copies of several email chains exchanged among various counties' staff, discussing the fees being charged for CAMA data RTKL requests.

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[1] On April 2, 2024, the Requester agreed to extend the Final Determination deadline, until May 1, 2024. *See* 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).").

The Requester also argues that the County is acting in bad faith by "engaging in actions that are contrary to the intent of the [RTKL] statute." While the Requester's supplemental submission was filed beyond the record closing date, the OOR admitted the statement to the evidentiary record and provided the County with an opportunity to reply to the submission. *See* 65 P.S. § 67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

On April 8, 2024, the County submitted a reply, arguing that the law permits an agency to charge a fee based on what other counties, similarly situated, have charged and, based on OOR precedent, the law is well settled on this issue. The County included copies of OOR Final Determinations and a spreadsheet, outlining the fees charged by twenty-eight Pennsylvania counties charge per parcel, charged by flat fee and any additional fees charged, as applicable.

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 is permitted to charge the Requester a fee of $10,100.00 for the records, which equates to $.06 per record or parcel, to obtain the information.

Section 1307(b)(4)(i) of the RTKL, provides that fees for copying "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).

The Requester argues that because there is no fair market for the CAMA data maintained by the County, a reasonable market value cannot not be determined by comparing the County's fee with other comparably sized counties. The Requester further argues that an agency may not "sell" government data, and as the Requester seeks electronic record, no copying fees are implicated. 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. Under Section 1307(b)(4), we must look to the information's worth – i.e. its "market value" – as opposed to how much it costs for an agency to copy or transmit the information under Section 1307(b)(1).

The County points to several prior OOR final determination that have examined this issue and established the legal test to be applied to determine whether such fees are reasonable under the RTKL. The County submitted evidence in the form of a spreadsheet containing the fees charged by twenty-eight other Pennsylvania counties and, of the counties that charge per parcel, more than half charge $0.06 or more. Notably, as pointed out by the County, the requested information could have been obtained from the County website, without the requirement of filing a RTKL request. In addition, the website clearly states the fees associated with obtaining CAMA data.[2] Finally, in addition to the OOR Final Determinations submitted by the County, the OOR has previously concluded that the County's method of determining the value of the fee charged for tax assessment data is reasonable. *See Noto and Zillow Group v. Luzerne Cnty.*, OOR Dkt. AP 2021-1359, 2021 PA O.O.R.D. LEXIS 1561 (finding that a fee of $.05 per parcel, when compared with similarly situated counties, was reasonable under 65 P.S. § 67.1307(b)(4). The Requester has not submitted any evidence demonstrating that the information's market value, i.e. its worth, is less than $0.06 a parcel.

When considering the instant Requester's challenge to the fees charged for the same information requested from other counties, the OOR has recently and consistently concluded that the CAMA data is a complex and extensive dataset and comparing the County's fee to other counties with comparable composition, the County has demonstrated that $0.06 constitutes "fair market value," and it is permitted to charge such a fee per parcel for the responsive records. *See Noto and Zillow Group, Inc. v. Adams Cnty.*, OOR Dkt. AP 2024-0696, 2024 PA O.O.R.D. LEXIS 836 ($0.06 fee was fair and reasonable under 65 P.S. § 67.1307(b)(4)); *See Noto and Zillow Group, Inc. v. Lehigh Cnty.*, OOR Dkt. AP 2024-0664, 2024 PA O.O.R.D. LEXIS 803 ($0.05 fee was fair

[2] *See* https://www.luzernecounty.org/174/Certified-Tax-Rolls-Data-Purchasing (last accessed April 18, 2024).

and reasonable under 65 P.S. § 67.1307(b)(4)); *Noto and Zillow Group, Inc. v. Mifflin Cnty.*, OOR Dkt. AP 2024-0663, 2024 PA O.O.R.D. LEXIS 875 (($0.10 fee was fair and reasonable under 65 P.S. § 67.1307(b)(4)).

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 Luzerne 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 according to court rules as per 65 P.S. § 67.1303, but 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] 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 24, 2024

/s/ Kelly C. Isenberg

KELLY C. ISENBERG, ESQ.
SENIOR APPEALS OFFICER

Sent via OOR E-File Portal to: Susan Noto; Joy Ramsingh, Esq.; Laura Dennis, Esq., AORO

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