



FINAL DETERMINATION

IN THE MATTER OF	:
	:
MICHELLE WETZEL,	:
Requester	:
	:
v.	: Docket No: AP 2024-1015
	:
LIBERTY TOWNSHIP,	:
Respondent	:

FACTUAL BACKGROUND

On March 14, 2024, Michelle Wetzel (“Requester”) submitted a request (“Request”) to Liberty Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. [C]opies of the bank statements from December 2023 [through] February 2024 for the following accounts: [Township] General account, FNB, [Township] Sewer Accounts from both FNB and JSSB.
2. [C]opy of the detail filing of [F]orm 941 for the month of January.
3. [A] list of all checks wrote from the general account from December 1, 2023 through March 14, 2024. (A [QuickBooks] report, check detail)
4. [P]ayroll report for checks dated [January 5, 2024].
5. [A] copy of my payroll check you said was deleted since the hard copy is at the office.

6. [P]rintout of all employee[s'] gross wages and hours from December 18, 2023 through March 14, 2024.

[7.] ...[A] copy of all zoning permits and business license[s] issued from January 1, 2024 through March 14, 2024[,], along with the amounts paid.

On April 15, 2024, following a thirty-day extension during which to respond,¹ 65 P.S. § 67.902(b), the Township granted the Request. The Township provided some records in electronic format and noted that the remaining responsive records were available for pick up upon receipt of \$6.25, which represented the fee for photocopying pursuant to Section 901 of the RTKL. 65 P.S. § 67.901.

On April 16, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”), alleging that the responsive records exist in electronic format and that the Township failed to provide all responsive records.² Specifically, the Requester asserts the Township did not provide all records responsive to Items 1, 2 and 5 through 7 of the Request.³ Additionally, the Requester authored and submitted an attestation (“Requester Attestation”), made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities. 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).

After the record closed without a submission from the Township, the OOR afforded the Township through May 1, 2024 to submit evidence.⁴ To date, no submission has been made by the Township.

¹ On March 21, 2024, responsive records were also provided to the Requester by the Township with the 30-day extension notice.

² The Requester also alleges that the Township falsified documents provided in response to the Request; however, as a determination regarding the truthfulness of responsive documents is not within the jurisdiction of the OOR, this allegation will not be addressed in this Final Determination.

³ See Requester Attestation ¶ 8.

⁴ Additionally, the Township was contacted via telephone by OOR administrative staff on April 29 and May 2, 2024 regarding the lack of an evidentiary submission.

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*, 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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020).

An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency’s records, that it has conducted a search reasonably calculated to uncover

all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

The Requester argues that not all responsive records were provided and that the records exist in electronic format. Specifically, the Requester's Attestation indicates, in relevant part, as follows:

6. During my term as secretary and all secretaries prior to me, we utilized online banking. The Township currently continues with this pattern. Electronic records do exist by means of online banking and I, myself, have provided those record upon request. An example is the fact Jersey Shore State Bank Statements were emailed to me by [the Township] just 31 days prior as an attempt to partially fill my original [R]equest.

7. During my employment at [the Township], I was also the zoning officer. All permits are REQUIRED to be emailed to Centre County[,] PA, that also creates the electronic copy.

In this instance, the Township did not participate on appeal by submitting legal argument or evidence in support of a good faith search for records or its assertion that records do not exist in electronic format. Accordingly, the Township did not meet its burden of proof under the RTKL. 65 P.S. § 67.305.

CONCLUSION

For the foregoing reasons, the appeal is **granted**. The Township is required to provide responsive records in the format requested, as noted above, within thirty days of this Final Determination or, in the alternative, a sworn affidavit or a statement made under the penalty of perjury demonstrating that the records either do not exist and/or do not exist in the requested format. 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 Centre 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.⁵ 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: May 6, 2024

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent via portal only to: Michelle Wetzel, Agency Open Records Officer

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