

J.ORS

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DAVE BOHMAN and WNEP-TV,  
*Respondents*

CIVIL ACTION NO. CV-17-648

v.

CLINTON TOWNSHIP VOLUNTEER  
FIRE CO  
*Petitioner*

AGENCY APPEAL - RTKL

FILED  
CLINTON TOWNSHIP  
2017 AUG -9 PM 3:01  
LYCOMING COUNTY  
JUDICIAL CENTER  
CLINTON TOWNSHIP  
PENNSYLVANIA

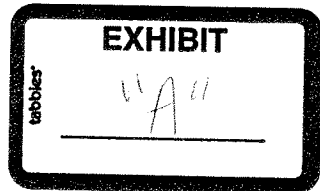
OPINION AND ORDER

This matter comes before the Court on a petition from a final determination issued by the Pennsylvania Office of Open Records (“OOR”) regarding the applicability of Right to Know Laws (“RTKL”)<sup>1</sup> to a volunteer fire company. For the reasons that follow, this Court affirms the OOR’s determination that volunteer fire companies are local agencies subject to the RTKL.

**FINDINGS OF FACT**

1. On February 21, 2017, Dave Bohman and WNEP-TV filed a Request Form seeking the same records as those sought by Todd Pysher, Respondent in a companion Lycoming County Case, *Todd Pysher v. Clinton Township volunteer Fire Company*, No. 17-657. This Request Form was not responded to within five business days, and was therefore deemed denied on February 28, 2017.
2. Mr. Bohman and WNEP-TV’s request was met by a letter from Solicitor for the Petitioner dated March 1, 2017. This letter mirrored the letter previously sent to Pysher.
3. On March 31, 2017, the OOR issued a final determination with regards to the Pysher’s request for records, concluding that the Fire Company is a local agency subject to the RTKL.

<sup>1</sup> 65 P.S. §§ 67.101 *et seq.* The parties agreed that a complete record was made on appeal consistent with 65 P.S. § 67.1303 and that the matter could be decided on briefs. While Bohman an WNEP did not file any briefs, the Fire Company nonetheless failed to persuade the Court that OOR had erred.



4. On April 10, 2017, the OOR issued a similar final determination with regards to Mr. Bohman and WNEP-TV's request for records, concluding again that the Fire Company is a local agency subject to the RTKL.
5. The appeal at bar was brought pursuant to a timely appeal filed by Respondent on April 24, 2017, which requested that the decision of the OOR be reversed.
6. The following three issues were raised on appeal: (1) whether Petitioner is precluded from alleging that it is not a "local agency" by collateral estoppel; (2) whether the Fire Company is a local agency subject to the RTKL; and (3) whether Respondent is entitled to attorney fees due to Petitioner's bad faith denial of public records.

#### CONCLUSIONS OF LAW

##### *Standard of Review*

7. "[A] de novo standard of review applies to appeals from the OOR under the RTKL." *Bowling v. Office of Open Records*, 75 A.3d 453 n.5 (Pa. 2013).
8. The "scope of review is broad or plenary" for appeals from the OOR. *Id.* at 477.
9. "The RTKL requires both the Commonwealth Court and the courts of common pleas . . . to render decisions that '**contain findings of fact and conclusions of law based upon the evidence as a whole.**'" *Id.* at 548 (emphasis in original).
10. "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).

##### *'Local Agency' and RTKL Conclusions of Law*

11. In pertinent part, 'local agency' is defined by the RTKL as "[a]ny local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity." 65 P.S. § 67.102 (emphasis added).

12. "Similar governmental entity" is defined neither in the RTKL nor in the Statutory Construction Act, 1 Pa.C.S. § 1991.

13. Based on (1) the plain language of the phrase "similar governmental entity" and (2) the way in which other statutory law encompasses volunteer fire companies within the definition of "similar governmental entity,"<sup>2</sup> a volunteer fire company does qualify as a local agency with respect to the RTKL.

#### *Attorney Fees Conclusions of Law*

14. The court reversing a final determination may award reasonable attorney fees and costs of litigation if the court finds that "the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of [the RTKL]." 65 P.S. § 67.1304.

15. Because the role of fact finder belongs to the court reviewing the appeal,<sup>3</sup> and because the record is insufficient to show bad faith on the part of Petitioner without undue speculation, no attorney fees may be awarded

#### **DISCUSSION**

The Court adopts the discussion set forth in the opinion issued today in the companion case of *Todd Pyscher v. Clinton Township volunteer Fire Company*, No. 17-657 (Lyc. Co. Aug. 9, 2017).

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<sup>2</sup> Political Subdivision Tort Claims Act, 42 Pa.C.S. §§ 8501 *et seq.*; *see also* Judicial Code, 42 Pa.C.S. § 102.

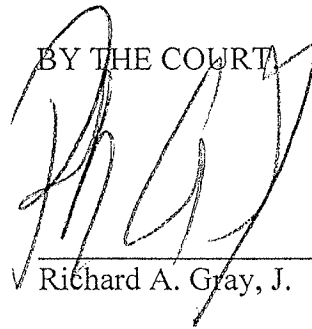
<sup>3</sup> 65 P.S. § 67.1304; *Bowling*, 75 A.3d at 469-70.

Accordingly, the Court enters the following Order.

**ORDER**

*AND NOW*, this 9<sup>th</sup> day of **August, 2017**, following argument and for the reasons stated, it is hereby **ORDERED** and **DIRECTED** that Clinton Township Volunteer Fire Company's Petition for Review of a final determination by OOR is **DENIED** and the determination by OOR issued on April 10, 2017 is **AFFIRMED**. The Clinton Township Volunteer Fire Company **shall** provide access to all responsive records within thirty (30) days of this order.

BY THE COURT



Richard A. Gray, J.

August 9, 2017

Date

c: Dave Bohman and WNEP-TV, <sup>16</sup>Montage Mountain Road, Moosic, Pa 18507  
Joseph Orso, Esquire  
Christopher H. Kenyon, Esquire (courtesy copy)  
Eric Flagg, Judicial Intern, c/o Judge Gray's Office