



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>DAVID ROSNER,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2020-0623</b>
	:	
<b>BUCKINGHAM TOWNSHIP,</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

David Rosner (“Requester”) submitted a request (“Request”) to Buckingham Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking certain Stormwater Management Agreements and Grant of Easement records. The Township partially denied the Request, arguing that certain records must be redacted under the constitutional right to privacy. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Township is required to take further action as directed.

**FACTUAL BACKGROUND**

On February 26, 2020, the Request was filed, seeking:

Copies of every “Stormwater Management Agreement” and “Grant of Easement” Agreement for stormwater management purposes that the Board of Supervisors has approved since January 1, 2016. This includes the addresses and property owner names that are included on those agreements as they are public record.

On March 28, 2020, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b)(2), the Township partially denied the Request, providing the responsive records but redacting certain information, arguing that the names and addresses must be redacted under the constitutional right to privacy.

On March 31, 2020, the Requester appealed to the OOR, challenging the partial denial and stating grounds for disclosure.<sup>1</sup> 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 June 5, 2020, the Township submitted a position statement reiterating its grounds for denial. In support of its position, the Township submitted the sworn affidavit of Dana Cozza, Esq. (“Attorney Cozza”), the Township’s Open Records Officer and Manager. The Requester did not submit additional evidence on appeal.

### LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

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<sup>1</sup> In the Official Notice of Appeal, dated April 1, 2020, the OOR notified the parties that it was invoking an indefinite stay in this matter due to the COVID-19 emergency. The Township responded that it was able to actively participate, and the OOR subsequently lifted the stay and scheduled appropriate deadlines for submissions.

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The Township is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) 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). 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)).

In the instant matter, the Township argues that certain information, including the names and addresses of residential property owners, should be redacted from the agreements. The Pennsylvania Supreme Court has held that an individual possesses a constitutional right to privacy in certain types of personal information. *Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142 (Pa. 2016). When a request for records implicates personal information not expressly exempt from disclosure under the RTKL, the OOR must balance the individual’s interest in informational privacy with the public’s interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest. *Id.*; see also *Pennsylvania State Univ. v. State Employees’ Retirement Bd.*, 935 A.2d 530 (Pa. 2007) (employing a balancing test with respect to home addresses sought under the former Right-to-Know Act).

Although the Pennsylvania Supreme Court did not expressly define the types of “personal information” subject to the balancing test, the Court recognized that certain types of information, including home addresses, by their very nature, implicate privacy concerns and require balancing. *Pa. State Educ. Ass’n*, 148 A.3d at 156-57; see also *Tribune-Review Publ. Co. v. Bodack*, 961 A.2d 110, 117 (Pa. 2008) (finding telephone numbers to constitute personal information subject to the balancing test); *Pa. State Univ.*, 935 A.2d at 533 (finding home addresses, telephone numbers and social security numbers to be personal information subject to the balancing test); *Sapp Roofing Co. v. Sheet Metal Workers’ International Assoc.*, 713 A.2d 627, 630 (Pa. 1998) (plurality) (finding names, home addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test). Furthermore, home addresses may be

confidential even when they do not contain information, such as names, which would lead to the identification of the resident. *Chester Hous. Auth. v. Polaha*, 173 A.3d 1240, 1252 (Pa. Commw. Ct. 2017) (“[W]e hold that the constitutional privacy protection applies when home addresses are requested, regardless of whether names or the resident’s identity are attached.”).

To determine whether the constitutional right to privacy precludes disclosure of an individual’s personal information, the OOR must apply the balancing test enunciated in *Denoncourt v. Pa. State Ethics Comm’n*, 470 A.2d 945 (Pa. 1983), and applied in the public records context in *Times Publ. Co., Inc. v. Michel*, 633 A.2d 1233, 1237 (Pa. Commw. Ct. 1993), “weighing privacy interests and the extent to which they may be invaded, against the public benefit which would result from disclosure.”

Here, the Township asserts that it redacted “residential home addresses and other information which would readily lead to the identification of the resident.” Specifically, Attorney Cozza affirms, in part as follows:

4. The documents in the Township’s possession that are responsive to [the R]equest but that concern residential properties were redacted prior to production to protect residential home addresses and other information which would readily lead to the identification of the resident including (i) certain party (resident) names, (ii) certain party (resident) addresses, (iii) stormwater management plan information (including the name of the plans where the resident is identified, dates of the plans and the firms that prepared them), (iv) certain party (resident) signature lines, (v) notary public information and (vi) exhibits to the agreements that would identify the residents.

Under the RTKL, a sworn affidavit is generally competent evidence to sustain an agency’s burden of proof. *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).

The Requester, in turn, argues that the records should not be redacted because they are publicly available elsewhere.<sup>2</sup> As noted by the Township, the responsive records are available online from the Bucks County Recorder of Deeds Office (“Recorder of Deeds”). The fact that records are accessible by other means does not, in and of itself, deem them public records under the RTKL. However, the fact that the same records are provided online by the Recorder of Deeds weighs heavily against an argument that granting access would violate the constitutional right to privacy. The release of personal information cannot be a violation of a right to privacy in one context and not the other. In other words, if the Township’s release of unredacted agreements would violate the right to privacy, it follows that the right to privacy is being violated each time an agreement is accessed through the Recorder of Deeds’ publicly accessible website.

The Request involves Stormwater Management Agreements and Grant of Easement Agreements, both of which involve certain properties within the Township. It is well established that “land use matters involve public rather than private interests.” *BR Assocs. v. Bd. of Comm’rs of Twp. Of Upper St. Clair*, 136 A.3d 548, 558 (Pa. Commw. Ct. 2016). Grants of easement and stormwater management agreements impact more than the current property owner. A grant of easement, for example, is “generally assume[d] ... to last forever unless otherwise indicated in the document creating the easement.”<sup>3</sup> Likewise, since stormwater does not respect property boundaries, a stormwater management agreement by its very nature will affect, at a minimum, adjoining properties—and, depending on geography and the scope of the agreement, could affect

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<sup>2</sup> The Requester also argues that the Township “has required/forced a resident to hand over thousands of dollars to be escrowed for a construction project without any paper trail. The Township then assessed over ten-thousand dollars in fees for a project that typically would require less than \$2500.” The Requester further states that “the Township has ignored any request for clarification of their actions or provided any information to explain the authority of their actions or provide any investigation on their own to understand if something wrong has occurred.” Thus, the Requester argues that the responsive records “will help [the Requester] verify if there is a pattern of this type of action from [t]he Township with other residents in the community.”

<sup>3</sup> See <https://realestate.findlaw.com/land-use-laws/easement-basics.html>, last accessed July 15, 2020.

significantly more properties. Moreover, stormwater management is fundamental to the public health, safety and welfare of the Township's residents. The fact that these easements and agreements have been entered into with a public body, and action to approve them was taken at public meetings, also weighs against the Township's argument regarding the constitutional right to privacy. The public has a strong and readily discernable interest in knowing when such easements and agreements are entered into by a government agency. Courts have noted that "[t]he disclosure of personal information such as home addresses, reveals little, if anything about the workings of government[.]" *Pa. State Educ. Ass'n*, 148 A.3d 145 (quoting *PSEA v. Commonwealth*, 981 A.2d 383, 386 (Pa. Commw. Ct. 2009)). However, there are situations where disclosure of certain personal information serves a strong public interest. Here, the requested records relate to the overall health and safety of residents and reflect significant actions taken by the Township. Accordingly, the OOR finds that the public interest in disclosure of the Stormwater Management Agreements and Grant of Easement Agreements outweighs any privacy interests, and the requested records must be provided without redaction.

### CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Township is required to provide unredacted copies of the responsive agreements within thirty days. 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 Bucks 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. 65 P.S. § 67.1303. 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.<sup>4</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: July 15, 2020**

*/s/ Magdalene C. Zeppos*

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MAGDALENE C. ZEPPOS, ESQ.  
APPEALS OFFICER

Sent to: David Rosner (via email only); and  
Dana Cozza, Esq. (via email only)

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<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).