



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

:

**DAVID ROSNER,  
Requester**

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:

**v.**

**: Docket No: AP 2020-1364**

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**BUCKINGHAM TOWNSHIP,  
Respondent**

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### **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 billing invoices from Township consultants related to residential stormwater management permits. The Township partially denied the Request, providing the invoices but redacting names and home addresses as information protected by the state 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 in part** and **denied in part**, and the Township is required to take further action as directed.

### **FACTUAL BACKGROUND**

On June 23, 2020, the Request was filed seeking:

[a]ll invoices from any [T]ownship consultants related to residential stormwater management permits for the calendar years 2015-2020. Please include any invoices that were passed down to the property owners as well as any invoices that the township was required to reimburse consultants directly for. To be clear, I am

looking for all billings that were assessed to residential properties by these consultants for any residential projects that required a stormwater permit in the township during this time period. Please also include any contracts and/or agreements between these consultants and the Township that govern these services.

On July 30, 2020, after extending the response period for thirty days pursuant to 65 P.S. § 67.902, the Township partially denied the Request. The Township provided access to the invoices but redacted home addresses and information protected by the attorney-client privilege and attorney-work product doctrine. There was no charge for the redacted records, which were downloaded on a thumb drive and made available for pickup at the Township offices.

On August 12, 2020, the Requester appealed to the OOR, challenging the partial denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in the appeal pursuant to 65 P.S. § 67.1101(c).

On August 18, 2020, the Requester picked up the thumb drive with the records and supplemented his appeal setting forth his reasons for challenging the redactions and records provided to him.

On August 21, 2020, the Township submitted the sworn affidavit from Dana Cozza, Esq., Open Records Officer for the Township, attesting that the Township made records available to the Requester, but the Requester picked those records up on August 18, 2020, after submitting the appeal to the OOR. The Township argues that the appeal is premature. Attorney Cozza also attested that the residential identity and addresses are protected by the constitutional right to privacy and that its previously asserted denials pursuant to the attorney-client privilege and attorney work product doctrine, have been waived because the invoices have been shared with the property owners.

On August 24, 2020, the Requester indicated that he submitted the appeal prior to obtaining the records because he was out of town but understood the Township redacted home addresses and privileged information.

On September 9, 2020, the OOR reopened the record and asked that parties to submit additional information. The OOR asked the Township to address the types of information redacted from the responsive records and its asserted reasons for denying access to the information. The OOR asked the Requester to articulate a public interest in disclosing the names and home addresses that have been redacted pursuant to the Constitutional Right to Privacy.

On September 17, 2020, the Requester supplemented the record setting forth the public interest in obtaining the information.

On September 18, 2020, the Township submitted an additional sworn affidavit from Attorney Cozza as to the redacted information and reason for its denial.

### **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).

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, neither party requested 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)).

**1. The Requester properly appealed the Township’s redactions**

The Township argues that the Requester did not pay for or retrieve the records prior to filing this appeal. In support of its argument, Attorney Cozza attests “[o]n August 12, 2020, prior to retrieving the responsive records, Requester filed the instant appeal...” She further attests that “[o]n August 18, 2020, Requester picked up the thumb drive with the produced documents from the Buckingham Township building.”

In *Indiana Univ. of Pa. v. Loomis*, a requester sought records of a Foundation to Indiana University of Pennsylvania. The University obtained the records from the third-party Foundation and redacted certain information from the records. The University charged a duplication fee and granted access to the redacted records. However, rather than paying for the assessed copy charges and obtaining the records, the requester appealed directly to the OOR, challenging the fees and redactions. 23 A.3d 1126 (Pa. Commw. Ct. 2011). The Court held:

Generally, an agency may require that a requester pay applicable fees before receiving access to records. Section 901 of the Law, 65 P.S. § 67.901. ‘A request for a public record in possession of a party other than the agency shall be submitted to the open records officer of the agency. Upon a determination that the record is subject to access under this act, the open records officer shall assess the duplication fee . . . and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record. If the requester does not pay the fee in full, the agency may withhold access.’ Section 506(d)(3), 65 P.S. § 67.506(d)(3). *See also Prison Legal News v. Office of Open Records*, 992 A.2d 942, 946 (Pa. Cmwlth. 2010). In this case, the Requester requested copies from the third party, the Foundation, and the University assessed copying fees to pay for the Foundation’s copying fees. Because [the RTKL] provides that the agency may withhold access of the documents until the fee is paid in full, the OOR erred in ordering access to those documents.

*Id.* at 1126.

In previous cases, *Loomis* has been applied broadly to include not only access to the requested record but also to a requester’s right to file an appeal of an agency’s denial. Appeals

were denied where the requester had not paid for, nor reviewed the redacted records.<sup>1</sup> Revisiting the Court's holding in *Loomis*, the OOR determines here that the *Loomis* holding should be more narrowly construed. *Loomis* does not require a requester to pay fees or obtain redacted responsive records prior to filing an appeal. Rather, *Loomis* only restricts the Requester's access to the records.

In order to file an appeal before the OOR, Section 1101(a)(1) of the RTKL requires that "a written request for access to a record is denied or deemed denied...[and to] state the grounds upon which the requester asserts that the record is a public record ... and address any grounds stated by the agency for delaying or denying the request." 65 P.S. § 67.1101(a)(1); *see also Pa. Dep't of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) ("[I]t is appropriate and, indeed, statutorily required that a requester specific in its appeal to Open Records the particular defects in an agency's stated reasons for denying a RTKL request").

Here, the Township denied access to redacted information and the Requester appealed identifying the Township's reasons for denial and challenging the redactions of the names and addresses, as well as privileged information. Pursuant to Section 1101(a)(1), the Requester sufficiently appealed the Township's denial. Although the Requester did not review the redactions prior to filing the appeal with the OOR, the OOR no longer interprets *Loomis* so broadly to prohibit the Requester from filing an appeal. Rather, once the requirements of Section 1101 have been met, the Requester has properly and sufficiently challenged an agency's Section 903 denial.

When discussing *Loomis* in *Drack v. Pa Dep't of Transportation*, 42 A.3d 355 (Pa. Commw. Ct. 2012), the Commonwealth Court stated that:

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<sup>1</sup> *See Kunkle v. Pa. Dep't of Env'tl. Prot.*, OOR Dkt. AP 2013-1359, 2013 PA O.O.R.D. LEXIS 812; *Parker v. Pa. Dep't of Agriculture*, OOR Dkt. AP 2011-1238, 2011 PA O.O.R.D. LEXIS 843.

the reference to the right of an agency to withhold access appears to have been first mentioned in *Prison Legal News*, where we stated that, a refusal to provide access based upon a failure of a requester to pre-pay constitutes a denial because the agency has placed a condition precedent (pre-payment) on access to records. The Court reasoned that, as with all denials, Section 903 of the RTKL requires an agency to provide a reason for denial. Citing Section 903 of the RTKL, we stated that when a ‘requester does not pay [such a] fee in full, the agency may withhold access’ *Prison Legal News*, 992 A.2d at 946.

*Drack*, 12 A.3d at 365, n.8. Because the Requester sufficiently challenged the Township’s asserted reasons for redacting information from the responsive records and there was not outstanding duplication fee, the appeal is properly before the OOR.<sup>2</sup>

**2. Names and home addresses, but not tax map parcel numbers, are protected by the constitutional right to privacy**

In the instant matter, Attorney Cozza attests that the Township has redacted the names and addresses of residential property owners and property tax map parcel numbers. 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 Employee’ 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).

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<sup>2</sup> If there are outstanding duplication fees and the OOR’s final determination resulted in a grant of access to the redacted information, the agency pursuant to *Loomis*, *Drack* and *Prison Legal News* is not obligated to provide such records until the Requester has paid the applicable fees to the agency. An agency is permitted to withhold copies of the records until payment is received. *See, e.g., Brown v. Pa. Comm’n on Crime & Delinquency*, OOR Dkt. AP 2018-0451, 2018 PA O.O.R.D. LEXIS 513 (“The RTKL favors a contemporaneous exchange of fees for records, but under no circumstances is an agency required to provide the records to a requester without receiving the applicable fees”).

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 Worker’ 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, Attorney Cozza provided a copy of invoices relating to the Requester and highlighted the information that is redacted from the remaining responsive records. She explains:

6. ...the ‘Buckingham Township Project Statement’, which is a summary of all the various charges for that month, the project ID (which is a truncated version of the



property address), the project name (which is the address of the property), and the name and address of the residential property owner are redacted. ... [A]n invoice from the Township Solicitor, the resident's name in the matter description is redacted as is the handwritten address... [A]n invoice from the Township Engineer, the description of the matter billed including resident's name and property address and tax map parcel number are redacted... Finally, some of the supplied invoices contain an invoice from other township consultants such as the Township Landscape Consultant... what is redacted is 'Project Name', which would include the resident's name, address and Tax Map Parcel Number.

7. Accordingly, the type of information the Township has redacted from the responsive records are the names, addresses and property tax map parcel numbers of residents...

The Township asserts that such information is protected by the constitutional right to privacy and that the tax map parcel numbers would lead to the disclosure of the names and addresses of the property owners.

The Requester argues that the records should not be redacted because the information relates to fees that have been applied to residential properties, that he argues resulted in either inappropriate or illegal charges assessed against residents for fees under state stormwater management laws and local ordinances. He further argues that there is a public benefit to releasing this information so that the residents are aware of the Township's improper actions. The Requester relies on the OOR's recent holding in *Rosner v. Buckingham Township*, OOR Dkt. AP 2020-0623, 2020 PA O.O.R.D. LEXIS 1201 ("*Rosner I*"), wherein the OOR held that the names and addresses contained in stormwater management agreements and grant of easement agreements were not protected by the constitutional right to privacy. The OOR held:

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.' 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 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.

*Id.*

The records in this matter are not stormwater management agreements or grants of easement agreements. Rather, they are invoices for charges to residents under the Township's Stormwater Management Ordinance. Attorney Cozza attests that the Township adopted Stormwater Ordinance 2011-02, which with respect to fees is identical to the model ordinance prepared by the Bucks County Planning Commission and approved by the Pennsylvania Department of Environmental Protection.

The matter at hand deals with invoices for fees pursuant to the Township's ordinance, it does not pertain to the stormwater management that concerns the public health, safety and welfare of the Township's residents or easements that have been entered into with a public body. The OOR is unable to discern how release of the names and addresses of residents assessed fees would be a public benefit that outweighs their right to privacy. The Requester argues that this information, if released, would benefit those residents so that they would be aware and highlight the Township's actions. However, these invoices are sent directly to the residents themselves and they would

already be able to assess any improper action on the part of the Township. Accordingly, the public interest asserted in the *Rosner I* is not present in this matter.

As for tax map parcel identification numbers, the Commonwealth Court has defined “personal identification information” as: [I]nformation that is unique to a particular individual or which may be used to identify or isolate an individual from the general population. It is information which is specific to the individual, not shared in common with others; that which makes the individual distinguishable from another. *Delaware County v. Schaefer*, 45 A.3d 1149, 1153 (Pa. Commw. Ct. 2012). While the Township argues that the tax map parcel numbers are comparable to names and addresses because both are tools to identify the location of an individual, tax map parcel numbers are attributable to a piece of real property, not an individual; and therefore, the constitutional right to privacy is not applicable to tax map parcel numbers. *See Campbell v. Boyertown Area Sch. Dist.*, OOR Dkt. AP 2016-1966, 2016 PA O.O.R.D. LEXIS 1766 (finding that tax parcel ID numbers are not personal information subject to the constitutional right to privacy); *Signature Information Systems, Inc. v. Mt. Lebanon Sch. Dist.*, OOR Dkt. AP 2016-2043, 2017 PA O.O.R.D. LEXIS 29. Therefore, the Township may not redact the tax map parcel numbers.

### CONCLUSION

For the foregoing reasons, Requester’s appeal is **granted in part** and **denied in part**, and the Township is required to provide the tax map parcel numbers within thirty days to the Requester. 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. 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>3</sup> This Final Determination shall be placed on the OOR website at:

<http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: October 7, 2020**

*/s/ Jill S. Wolfe*

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APPEALS OFFICER  
JILL S. WOLFE, ESQ.

Sent via email to: David Rosner;  
Dana Cozza, Esq.

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