



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

ANONYMOUS,
Requester

v.

NORRISTOWN MUNICIPALITY,
Respondent

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Docket No.: AP 2020-2496

INTRODUCTION

An anonymous requester (“Requester”) submitted a request (“Request”) to Norristown Municipality (“Municipality”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking information about a police officer. The Municipality denied the Request, arguing that it is insufficiently specific. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **dismissed**, and the Municipality is not required to take any further action.

FACTUAL BACKGROUND

On November 16, 2020, the Request was filed, seeking:

All publicly available personnel information (including but not limited to commendations, complaints, disciplinary action, salary, training and any similar such records) relating to the officer depicted in the following video attempting to criminalize public photography.¹

¹ The Requester included the following YouTube link: <https://www.youtube.com/watch?v=IMRJT2-xIzE&t=1m40s>.

On November 23, 2020, the Municipality denied the Request, arguing that is insufficiently specific, 65 P.S. § 67.703.

The next day, the Requester appealed to the OOR, challenging the denial. The OOR invited the parties to supplement the record and directed the Municipality to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On December 8, 2020, the Municipality submitted a position statement, reiterating that the Request is insufficiently specific, and it is not required to conduct research to respond to a request. The Municipality also argues that an anonymous requester does not qualify as a “requester” as defined by the RTKL. 65 P.S. § 67.102.

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; however, 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 of the parties requested a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate this matter.

The Municipality 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 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. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *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)).

A “requester” is defined by the RTKL as “[a] person that is a legal resident of the United States....” *See* 65 P.S. § 102. Thus, under the RTKL, a requester must both be a “person” and “a legal resident of the United States.” While not defined by the RTKL, the Statutory Construction Act of 1972 (“SCA”) defines the term “person” to “[i]nclude[] a corporation, partnership, limited

liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S. § 1991.

Here, the Requester is identified only as “E3E3,” and the Request was sent from admin@e3e3.com. Based on the face of the Request, there is no evidence that Requester is an identified “person that is a legal resident of the United States....” 65 P.S. § 67.102. As such, the OOR finds that the Requester is anonymous and does not meet the definition of a “requester” under the RTKL. *See* 65 P.S. § 67.1101(a)(1) (authorizing “the requester” to file an appeal); *see also Anonymous v. Southeastern Pa. Transp. Auth.*, OOR Dkt. AP 2018-1877, 2018 PA O.O.R.D. LEXIS 1416 (finding that the anonymous requester was not a “person” entitled to seek records under the RTKL).

Moreover, Section 1101(a)(1) of the RTKL states that an “appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a)(1). Here, while the appeal does argue that the Request is sufficiently specific, it does not assert that the requested records are public. Accordingly, as the appeal does not satisfy the requirements of Section 1101(a)(1) of the RTKL, it is dismissed. However, the Requester is not prohibited from filing a new appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **dismissed**, and the Municipality 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 Montgomery 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 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.² This

Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 21, 2020

/s/ Blake Eilers

Blake Eilers, Esq.

Appeals Officer

Sent to: Requester (via email only);
Courtney Henderson, Esq. (via email only);
Crandell Jones (via email only);
Crystal Henry (via email only)

² See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).