



FINAL DETERMINATION

IN THE MATTER OF

**BRIAN PURICELLI,
Requester**

v.

**BUCKS COUNTY WATER
AND SEWER AUTHORITY,
Respondent**

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Docket No.: AP 2021-0327

INTRODUCTION

Brian Puricelli (“Requester”) submitted a request (“Request”) to the Bucks County Water and Sewer Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records of water and sewer use. The Authority granted the Request in part, but withheld records relating to other customers. 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 Authority is required to take further action as directed.

FACTUAL BACKGROUND

On January 4, 2021, the Request was filed, seeking:

I would like to inspect [Authority] records.

(1) The records for sewer use and billing for the use.

(2) certification for measurement for sewer use and billing of [Authority] services.

(3) The records of water use from the North Wales Water Authority, for Warrington Twp Citizen, including myself. I wish [to see] the records showing how sewer bills are calculated and to include for bills sent to Warrington residents, including myself, since July 2020.

(4) I wish to see what records exist to show how sewer use bills are processed (determined, calculated, sent out, the payment received, and credited).

(5) I wish to see the record for costs to [the Authority] to credit payment or to include electronic payment, of sewer bills from Warrington Twp citizens. I understand some of the records may only exist since July 2020 but if there are others before July 2020 I wish these records also be produced for an inspection. I only wish at this time to inspect the records and I do not ask for copies.

On February 3, 2021, following a thirty-day extension, 65 P.S. § 67.901, the Authority granted the Request in part, but denied the Request insofar as it seeks access to invoices of private customers as seeking records containing exempt third-party information, 65 P.S. § 67.708(b)(6). The Authority further denied the Request in part as seeking records that do not exist in the Authority's possession.

On February 16, 2021, the Requester appealed to the OOR, providing reasons for disclosure. The OOR invited the parties to supplement the record and directed the Authority to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On April 1, 2021, the Authority submitted a position statement stating that the Request is seeking invoices sent to 8,300 customers quarterly, all of which contain information which is exempt under the RTKL, and that some of the records sought by the Request do not exist. The Authority also provided various public resolutions and ordinances, which the Authority asserts are the only records it maintains regarding setting prices. Finally, the Authority submitted the affidavit of Patrick Cleary, the Authority's Agency Open Records Officer, who attests that the withheld records contain exempt information and that some records do not exist.

On April 23, 2021, in response to an inquiry by the OOR, the Requester submitted a position statement arguing that the public interest in the responsive records outweighs the privacy interest.

On May 2, 2021, the Authority submitted a statement arguing that the right to privacy does apply and that the Requester's rationale for disclosure is not sufficient to disturb it.

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 decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The Authority 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). The burden of proof in claiming a privilege is on the party asserting that privilege. *Levy v. Senate of Pa.*, 34 A.3d 243, 249 (Pa. Commw. Ct. 2011). 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).

1. The Authority has demonstrated that some records do not exist

The Authority provided the Requester with a variety of ordinances responsive to Item 4 of the Request, but otherwise argues that it has no specific documents responsive to Items 2, 4, or part of Item 3 of the Request. In support of this argument, the Authority submitted the affidavit of Mr. Clearly, who attests that:

1. I am employed by the [Authority] and also serve as the Open Records Officer.
4. The [Authority] did not provide a document called a “certification”, as no such document exists but rather a calculation of the amount of the sewer invoices based

upon the amount of water consumption to a given property, which water consumption is provided by the North Wales Water Authority.

9. Public sewer bills are generated based upon the water readings, as noted previously, in accordance with Resolution 2019-07, as amended by Resolution 2020-07, which Resolutions establish public sewer rates for Authority customers.

10. A specimen copy of what is received from the offices of North Wales Water Authority was provided to [the Requester].

11. There are no documents that [reflect] how an invoice is generated other than a process where the public water readings are applied to the rate Resolution, and a bill is generated.

12. The records requested by the [Requester], as to the cost for credit payments and the like, are not in possession of the [Authority] but rather are maintained by a third-party, Level One.

13. To the extent payments are made through the website of the [Authority], if a customer pays by a bank payment, the only information provided to the Authority is the account number and payment amount, all of which are in accordance with NACHA standards.

Under the RTKL, an affidavit made under the penalty of perjury may serve as sufficient evidentiary support. *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). In the absence of any evidence that the Authority has acted in bad faith, “the averments in [the affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (*citing Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Here, the Authority has demonstrated that it does not possess records which would qualify as “certifications” as sought by Item 2 of the Request, and that it has provided all records which show how the Authority calculates charges. Therefore, the appeal must be denied as to Item 2 of the Request, and as to the part of Item 3 of the Request which seeks records showing how charges are calculated. *Hodges*, 29 A.3d at 1192.

However, the Authority's affidavit misunderstands Item 5 of the Request, which seeks "the record for costs to [the Authority] to credit payment or to include electronic payment, of sewer bills from Warrington Twp citizens." The Authority's affidavit instead establishes that the Authority does not possess records of its payment processor's charges to the Authority's customers. The Request is not seeking these records but is only seeking any charges from the Authority's payment processor to the Authority itself for processing credit payments. Because the Authority does not provide any reason to exempt such records, or any evidence that no records responsive to Item 5 of the Request exist, those records must be provided.

2. The Authority may redact account numbers from the responsive bills

The Authority withheld water and sewer bills, other than those accounts owned by the Requester, arguing that they contain personal information which is exempt under Section 708(b)(6) of the RTKL. Under the RTKL, the following personal identification information is exempt from disclosure:

A record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number.

65 P.S. § 67.708(b)(6)(i)(A). The exemption also includes "[a] spouse's name; marital status, beneficiary or dependent information" and "[t]he home address of a law enforcement officer or judge." 65 P.S. §§ 67.708(b)(6)(i)(B), (C). "Personal financial information" is defined to include:

An individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual's personal finances.

65 P.S. § 67.102. This section of the RTKL is specific- it applies only the information listed, not "all personal identification information" as the Authority argues. In support of this argument, the Authority submitted the affidavit of Mr. Clearly, who attests that:

8. Sanitary sewer bills are sent by the Respondent quarterly, which said invoices to customers includes names, mailing addresses, service addresses, meter readings, and balance history.

The Authority maintains that Section 708(b)(6) of the RTKL “would include name, home address, financial information, and the like.”¹ However, Section 708(b)(6) of the RTKL does not generally exempt names or home addresses from production. The Authority also argues that customer financial information is likewise exempt, but the affidavit of Mr. Clearly only attests that the responsive records may include bank account numbers. To the extent that bank account numbers appear on the responsive records, they may be redacted.²

3. The Authority may redact names and home addresses

Although the Authority improperly asserted that names and addresses of residential customers are exempt under Section 708(b)(6), such records may be redacted under the state constitutional right to privacy. The Authority did not explicitly raise the right to privacy in this matter, but the OOR raised the issue *sua sponte* because an agency’s failure to raise an issue does not waive the rights of third parties on appeal. *See McKelvey v. Pa. Dep’t of Health*, OOR Dkt. AP 2017-1443, 2018 PA O.O.R.D. LEXIS 72.

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

¹ The Authority’s attestation and position statement do not indicate that an account number is included on any of the responsive bills. To the extent that such a number is included, however, the OOR has held that it is facially exempt under Section 708(b)(6) of the RTKL. *See Krick v. Girardville Area Municipal Auth.*, OOR Dkt. AP 2018-0510, 2018 PA O.O.R.D. LEXIS 650.

² Because, as noted below, the Authority is permitted to redact names and addresses, any charges or balances set forth on the bills cannot be “personal financial information” as there is no way to connect the financial information to any individual.

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.”). Likewise, the names of private citizens in the possession of a governmental agency have been found to be protected by the constitutional right to privacy in certain instances. *See Sapp, supra*; *Hartman v. Pa. Dep't of Conserv. & Nat. Res.*, 892 A.2d 897, 906-07 (Pa. Commw. Ct. 2006) (finding the names and home addresses of snowmobile registrants to be protected by the constitutional right to privacy).

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."

The OOR has previously considered requests for customer information from public water and sewer authorities and has consistently found that residential customers may have a right to privacy in their names and home addresses. See *Deeter v. Bucks County Water and Sewer Auth.*, OOR Dkt. AP 2019-1972, 2019 PA O.O.R.D. LEXIS 1554; *Deeter v. North Wales Water Auth.*, OOR Dkt. AP 2019-2088, 2019 PA O.O.R.D. LEXIS; see also *Krick v. Girardville Area Munic. Auth.*, OOR Dkt. AP 2018-0510, 2018 PA O.O.R.D. LEXIS 650 (names and home addresses of authority's non-commercial customers subject to redaction under right to privacy). Therefore, there is a privacy interest in the names and home addresses of the customers at issue, and the OOR must proceed to the balancing test.

In response, the Requester asserts that the public interest in production of these records outweighs the right to privacy because the property addresses are public records in other contexts and because the Authority may be billing customers incorrectly.³ For the first rationale, the Requester cites to the Commonwealth Court's opinion in *Butler Area Sch. Dist. v. Pennsylvanians for Union Reform*, where the Court found that a property tax assessment list should be provided to the requester because it was statutorily public and documented only the ownership of real property, rather than identifying facts about an individual, such as their home address. 172 A.3d 1173 (Pa.

³ The Requester does not assert a public interest in the names of the Authority's customers and appears to concede that names may be redacted.

Commw. Ct. 2017). Here, however, the Request explicitly seeks the records of water use and billing thereof for thousands of private citizens, rather than a single property list made public by statute. *See 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.”) Furthermore, the Requester’s speculation that the Authority is billing residents incorrectly does not seem to require that either customer names or addresses be provided; the records of water use and billing records should suffice to identify problems.

Therefore, because residential customers have a right to privacy in their names and home addresses and the Requester has not identified a stronger contrary public interest in that information, the names and home addresses of residential customers may be redacted.⁴

4. The Authority has not demonstrated that the Request is unreasonable

The Authority argues that it should be permitted to withhold the responsive records rather than redact them because the Request would place an unreasonable burden on the Authority. The only section of the RTKL which addresses unreasonable burdens on an agency is Section 506. Section 506 of the RTKL states that “[a]n agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.” 65 P.S. § 67.506(a)(1). “Under this section ... an agency must demonstrate that (1) ‘the requester has made repeated requests for th[e] same record[s]’ and (2) ‘the repeated requests have placed an unreasonable burden on the agency.’” *Office of the*

⁴ Conversely, there is no right to privacy regarding the addresses of business or commercial entities, nonprofit organizations, government agencies, or other non-residential buildings. *Mission Pa., LLC v. McKelvey*, 212 A.3d 119 (Pa. Commw. Ct. 2019). Therefore, to the extent any addresses in the bills pertain to business or commercial entities, that information is subject to public access. *See Manry v. Shrewsbury Borough*, OOR Dkt. AP 2019-0387, 2019 PA O.O.R.D. LEXIS 498 (stating that while the names of private citizens are subject to the right to privacy, the names of business entities are not protected); *see also Swart v. West Goshen Twp.*, OOR Dkt. AP 2019-0659, 2019 PA O.O.R.D. LEXIS 640.

Governor v. Bari, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011); *see Slate v. Pa. Dep't of Env'tl. Prot.*, OOR Dkt. AP 2009-1143, 2010 PA O.O.R.D. LEXIS 97 (“A repeated request alone is not enough to satisfy § 506(a)(1)”).

In *Mezzacappa v. West Easton Borough*, the OOR held that a request must be repeated more than once to constitute “repeated requests” for purpose of 65 P.S. § 67.506(a). OOR Dkt. AP 2012-0992, 2012 PA O.O.R.D. LEXIS 967 (holding that a request was not disruptive since the Requester has made one repeated request rather than multiple repeated requests); *aff'd Borough of West Easton v. Mezzacappa*, No. C-48-CV-2012-7973 (North. Com. Pl. Jan. 9, 2013), *aff'd* 74 A.3d 417 (Pa. Commw. Ct. 2013); *see also Yakim v. Municipality of Monroeville*, OOR Dkt. AP 2014-0948, 2014 PA O.O.R.D. LEXIS 761. Here, the Authority has not demonstrated that repeated requests for the same records have occurred, nor submitted evidence to show that such requests have placed an unreasonable burden on the Authority. Instead, the Authority has merely explained that many responsive records are at issue; this is not sufficient to satisfy Section 506 of the RTKL, and the fact that a request entails many records is not a sufficient basis to deny a request.⁵

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted in part** and **denied in part**, and the Authority is required to provide all records responsive to Items 1, 3, and 5 of the Request, with account numbers and the names and home addresses of any residential customers redacted. 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.

⁵ However, the OOR notes that the Authority is permitted to charge the Requester for any duplication fees necessary to make the redacted records available for inspection. *Garner v. Pa. Dep't of Gen. Servs.*, OOR Dkt. AP 2014-0539, 2014 PA O.O.R.D. LEXIS 613.

§ 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.⁶ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: May 4, 2021

/s/ Jordan C. Davis

Jordan C. Davis, Esq.
Appeals Officer

Sent to: Brian Puricelli, Esq. (via email only);
 Jeffrey Garton, Esq. (via email only)

⁶ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).