



FINAL DETERMINATION

IN THE MATTER OF

**BRIAN COLELLA,
Requester**

v.

**MONROE COUNTY,
Respondent**

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Docket No.: AP 2021-1271

INTRODUCTION

Brian Colella (“Requester”) submitted a request (“Request”) to Monroe County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records proving that the County possesses taxing authority over himself or his property. The County denied the Request, arguing that the Request would compel legal research. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the County is not required to take any further action.

FACTUAL BACKGROUND

On June 18, 2021, the Request¹ was filed, stating:

1. I require all documents that [state] my allodial private property having no situs located on MONROE COUNTY is taxable.

¹ The Requester styles the Request as a “Freedom of Information Law” request. Because Pennsylvania’s equivalent of the Freedom of Information Law is the RTKL, the County properly interpreted the Request as filed under the RTKL.

2. I require all documents that [state] MONROE COUNTY has jurisdiction over me, Brian Colella a living man.

3. I require all documents that [state] MONROE COUNTY has a contract of any kind with Brian Colella.

4. I require all documents that [state] Brian Colella has a legal liability to pay property tax to MONROE COUNTY.

On June 22, 2021, the County denied the Request, arguing that a response would necessitate research.

On June 29, 2021, the Requester appealed to the OOR, challenging the denial and providing reasons for disclosure.² The OOR invited the parties to supplement the record and directed the County to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On July 7, 2021, the County submitted a statement briefly reiterating its position. On July 9, 2021, the Requester submitted a position statement arguing that the records must exist because he received a property tax bill, which he argues would require either a “document” granting jurisdiction or a contract between himself and the County, and that his tax debt should have been discharged because of a public account allegedly operated by the Pennsylvania Department of State on his behalf.

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

² The Requester also submitted a letter containing several legal theories purporting to show that he cannot be subject to municipal taxes. Because the OOR has no jurisdiction over issues involving taxation, the OOR will not address any of these arguments.

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 County 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). 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. Items 1, 2, and 4 of the Request would require the County to conduct legal research

The County argues that responding to Items 1, 2 and 4 of the Request would require the County to conduct research, and, therefore, the Request does not seek records.³ Under the RTKL, a request must seek records, rather than answers to questions. *See Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *14 (Pa. Commw. Ct. 2012) (noting that the portion of a request “set forth as a question” did not “trigger a response”); *Moll v. Wormleysburg Borough*, OOR Dkt. AP 2012-0308, 2012 PA O.O.R.D. LEXIS 197; *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (“The [RTKL does] not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens access to existing public records”). The presence or absence of a question mark is not determinative as to whether a request asks a question. *See Varick v. Paupack Twp.*, OOR Dkt. AP 2013-1348, 2013 PA O.O.R.D. LEXIS 766.

Additionally, the OOR has held that an agency cannot be required to perform legal research for a requester. *See, e.g., Lerner v. City of Phila. Dep’t of Rev.*, OOR Dkt. AP 2016-1470, 2016 PA O.O.R.D. LEXIS 1306; *Neal v. Pa. Dep’t of State*, OOR Dkt. AP 2014-1470, 2014 PA O.O.R.D. LEXIS 1189; *Whitaker v. Pa. Dep’t of State*, OOR Dkt. AP 2014-1463, 2014 PA O.O.R.D. LEXIS 1191 (holding that the agency is not required to perform legal research to locate laws and identify officials involved in the creation of Title 18); *Maddrey v. Pa. Dep’t of State*,

³ The OOR interprets this argument as meaning legal research, specifically - the RTKL does not bar all requests which obligate some amount of research. *See Diaz-Bradley v. Upper Darby Twp.*, OOR Dkt. AP 2021-0572, 2021 PA O.O.R.D. LEXIS 873 (“This bar on legal research prevents an agency from being required to do legal work for a requester, it is not an all-purpose ban on requiring an agency to look up any information at all.”)

OOR Dkt. AP 2013-2204, 2013 PA O.O.R.D. LEXIS 1249 (holding that an agency is not required to perform legal research to locate the “enacting clause” in Title 18). The Commonwealth Court has found that “[a] request that explicitly or implicitly obliges legal research is not a request for a specific document; rather it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request.” *Askew v. Pa. Office of the Governor*, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013).

Here, Items 1, 2, and 4 of the Request seek to obligate the County to determine which laws and codes give it the authority to assess property taxes against the Requester specifically. The OOR has held that a request for an agency to identify the legal authority to take specific actions is a request which would obligate legal research. *See, e.g., Smiles v. County of Lancaster Office of Property Assessment*, OOR Dkt. AP 2014-1999, 2015 PA O.O.R.D. LEXIS 68. Therefore, because Items 1, 2, and 4 of the Request would require the County to conduct legal research, they do not constitute proper requests for records under the RTKL.

Item 3 of the Request, however, seeks any documents demonstrating that the County and Requester have entered into a contract together. Identifying a contract between the County and any other entity does not constitute legal research, and contracts are a discrete type of public record, not a question. Therefore, Item 3 of the Request does seek records.

2. The Requester has demonstrated that no responsive contracts exist

Item 3 of the Request seeks all documents showing that the County and the Requester have any kind of contract. On appeal, the Requester states that he does not have a contract with the County, and that “[t]he only contract I have is The Constitution of the United States.” From a review of the record, it appears that the Requester’s position is that he does not and has never had

any contract with the County, and, therefore, the County lacks the authority to tax him.⁴ The County did not respond to Item 3 of the Request.

Although the County does not address Item 3 of the Request, the OOR is required to consider the context of the Request itself. *Pa. Game C'mmn v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2015). *Fennell* stands for the proposition that an uncontested claim in documents submitted by the Requester on appeal may serve as evidence to determine the public status of record. *Id.* Generally, the OOR finds this doctrine inapplicable to claims that a record does not exist, because the act of filing a RTKL request and appeal constitute a claim by a requester that responsive records exist. *See Wyatt v. Pa. Dep't of Corr.*, OOR Dkt. AP 2019-2111, 2019 PA O.O.R.D. LEXIS 1801. In this appeal, however, the Requester has stated that he has never entered into any contracts with the County, and it is clear from the record that the purpose of Item 3 of the Request and this appeal is to demonstrate that no contracts exist. Therefore, the Requester has not argued that such records exist, and the OOR must conclude that the preponderance of the evidence shows that no responsive contracts exist.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the County 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 Monroe 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,

⁴ The Requester used the OOR's electronic appeal form, which includes a statement establishing that filing it constitutes a claim that responsive records exist. However, the OOR will not interpret form language as controlling over statements made by the Requester in his submissions.

the OOR is not a proper party to any appeal and should not be named as a party.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: July 29, 2021

/s/ Jordan C. Davis

Jordan C. Davis, Esq.
Appeals Officer

Sent to: Brian Colella (via email);
Greg Christine, Esq. (via email)

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