



### **FINAL DETERMINATION**

**IN THE MATTER OF**

**GARY RENNINGER,  
Requester**

**v.**

**SILVER SPRING TOWNSHIP,  
Respondent**

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**Docket No: AP 2022-1276**

### **INTRODUCTION**

Gary Renninger (“Requester”) submitted a request (“Request”) to Silver Spring Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking violation notices for a property. The Township denied the Request, arguing the records are related to a noncriminal investigation. 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 Township is not required to take any further action.

### **FACTUAL BACKGROUND**

On May 21, 2022, the Request was filed, seeking “notice of violation regulating property maintenance notices issued from Code Enforcement Office, Department Of Community Development, Township of Silver Spring, County of Cumberland, Commonwealth of Pennsylvania to Resident and/or Property Owner for location [address] for the period 27 October 2007 to and including 21 May 2022.”

On May 24, 2022, the Township denied the Request, arguing that the records are related to a noncriminal investigation. *See* 65 P.S. § 67.708(b)(17).

On May 26, 2022, the Requester appealed to the OOR, challenging the 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 this appeal. 65 P.S. § 67.1101(c).

On June 8, 2022, the Township submitted a position statement reiterating its grounds for denial. The Township claims that the records are exempt under the RTKL as part of a noncriminal investigation. 65 P.S. § 67.708(b)(17). In support of its position, the Township submitted the affidavits of Willetta Huth, the Open Records Officer for the Township, and Michael McDonald, the Code Enforcement Officer for the Township. The same day, the Requester submitted images pertaining to the underlying violations and an affidavit.

### **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 Township is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in 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)).

The Township argues that the responsive records relate to a noncriminal investigation and thus are exempt under section 708(b)(17) of the RTKL. 65 P.S. § 67.708(b)(17). Section 708(b)(17) of the RTKL exempts from disclosure “[a] record of an agency relating to a noncriminal investigation, including ...[c]omplaints submitted to an agency...[and i]nvestigative materials,

notes, correspondence and reports.” 65 P.S. §§ 67.708(b)(17)(i)-(ii). To successfully assert the noncriminal investigative records exemption, the agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination or probe must be “conducted as part of an agency's official duties.” *Id.* at 814. An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Johnson v. Pa. Convention Center Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012); see also *Pa. Dep't of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014).

As a preliminary matter, the Township is a Second Class Township. Section 66517 of the Second Class Township Code authorizes the Township's Code Enforcement Officer to conduct inspections for the enforcement of the Township's maintenance code. *See* 53 P.S. § 66517. Pursuant to its authority, the Township has enacted ordinances and its officer to investigate allegations of violations.

In his attestation, Mr. McDonald explains the process of code violations being given and the noncriminal investigations thereafter. The Township did not explain the potential issue underlying the notice of violation, however in his affidavit, the Requester identified at least one issue. The Requester attests that a notice of violation regulating property, ordinance number 11-210 was issued dated May 13, 2022, for:

Corrective action for non-serviceable/dissembled from porch- repair front porch. Dangerous structure to be referred to Building Code Department should it not be repaired in specific timeframe. Reinspection terms: a reinspection will be conducted on – 6/15/2022.  
Requester Affidavit ¶2.<sup>1</sup>

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<sup>1</sup> The Requester notes that his property is immediately adjacent to the property in question in the appeal.

A notice of violation as issued by the Township results only upon a thorough investigation of a violation of the Township's ordinance or code in his official capacity with the Township and is issued only after an examination of the evidence relevant to the alleged violation, and consultation with the Township Solicitor as needed, after which a decision is made whether to issue a notice of violation. McDonald Attestation, ¶6. When such a notice of violation is issued, it is done so under the legal authority of his employment by the Township as the code enforcement officer, and it identifies the property, the property owner, a description of the alleged violation, the section of the relevant ordinance or code, the needed corrective action, and the timing and terms of reinspection to determine whether the violation has been remedied. McDonald Attestation, ¶7.

Further, Mr. McDonald attests that a notice of violation as issued by the Township never imposes a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement. Rather, notices of violation are used to warn the recipient of potential ramifications of the violation in an effort to gain voluntary cooperation. McDonald Attestation, ¶8. He contends that neither he nor the Township imposes a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization. McDonald Attestation, ¶9. If action is to be taken by the Township to impose such a penalty, it is done through the courts or other appropriate independent authority, not through a notice of violation. *Id.*<sup>2</sup>

The Township's evidence demonstrates that through Mr. McDonald, it conducted noncriminal investigations pursuant to its legislatively granted authority. Accordingly, the

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<sup>2</sup> Under the RTKL, a sworn affidavit or statement made under 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 competent evidence that the Township acted in bad faith, "the averments in [the statement] 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)).

Township met its burden of proving that the records related to the notices of violation are exempt from disclosure under Section 708(b)(17) of the RTKL. 65 P.S. § 67.708(b)(17)(i). Finally, because Mr. McDonald's attestation demonstrates that the responsive records do not fall within the exception to Section 708(b)(17) in that they do not consist of "the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court," the Township has demonstrated that the exception to the exemption is not applicable in this instance. *See* 65 P.S. § 67.708(b)(17)(vi)(A); *see also Rinick v. Phila. Police Dep't*, OOR Dkt. AP 2021-2001, 2021 PA O.O.R.D. LEXIS 1986. Therefore, based on the evidence presented, the Township has proven these records are part of an official probe conducted as part of the Township's official duties and are, thus, exempt from disclosure.

### **CONCLUSION**

For the foregoing reasons, the appeal is **denied**, and the Township 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 Cumberland 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>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: JUNE 23, 2022**

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

*/s/ Matthew Eisenberg*

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APPEALS OFFICER  
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