



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**JOSEPH DUFFY,  
Requester**

**v.**

**KENNETT TOWNSHIP,  
Respondent**

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**Docket No: AP 2022-1227**

### **FACTUAL BACKGROUND**

On April 1, 2022, Joseph Duffy (“Requester”) submitted a request (“Request”) to Kennett Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...[R]ecords from the Lisa Moore embezzlement relating to Mr. Carl Francis & Mr. Bruce Mowday and their respective companies and/or organizations providing public relations/ crisis management services to [the Township] and the Board of Supervisors[.] ... [A]ny and all financial records ... includ[ing] letters of engagement, scope of work, contracts, agreements, arrangements with [the Township], Board of Supervisors, and any other staff. Such records shall also include all invoices, billing, charges, presented to the [Township], and payments remitted by the [Township] ... [since] approximately April of 2019....

On April 8, 2022, the Township invoked a thirty-day extension to respond. *See* 65 P.S. § 67.902. However, when the Township did not issue a final response to the Request by May 8, 2022, the Request was deemed denied on that date. *See* 65 P.S. § 67.902(b)(2).

On May 23, 2022, the Requester filed an appeal with the OOR, stating grounds for disclosure.<sup>1</sup> 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 2, 2022, the Requester submitted a position statement accusing the Township of withholding records and not complying with the RTKL in a timely fashion. The next day, the Requester submitted a link to a news article about an insurance settlement related to the Request. On June 7, 2022, the Township submitted responsive records, redacted of bank account information, 65 P.S. § 67.708(b)(6)(i)(A), and an attestation made under the penalty of perjury by its Finance and HR Director and Treasurer, Amy Heinrich. The Requester made no subsequent submission.

## LEGAL ANALYSIS

### **1. The Township provided responsive records on appeal**

During the course of the appeal, the Township provided the Requester with responsive records, including cancelled checks and the portions of bank statements that reflect the Township's payments to Envisian. Accordingly, the appeal is dismissed as moot insofar as it seeks the information that has been provided. *See Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931, \*6 (Pa. Commw. Ct. 2019) (unreported opinion) (finding that a case was moot where no controversy remained).

### **2. The Township cannot redact its bank statements or bank account number**

The Township redacted nonresponsive transactions from its bank statements and its bank account number from copies of responsive checks. The Township argues that the account number constitutes exempt personal identification information. Section 708(b)(6) of the RTKL exempts:

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<sup>1</sup> The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

“A record containing ... *personal* financial information...,” defined as “[a]n *individual’s* personal ... bank account information; ... and other information relating to an individual’s personal finances.” 65 P.S. §§ 67.708(b)(6)(i) & 102 (emphasis supplied). While a government agency may be a “person,” the definition of “individual” is limited only to natural persons. 1 Pa.C.S. § 1991.

However, the Request seeks “financial records[,]” defined by the RTKL as “[a]ny account, voucher or contract dealing with: (i) the receipt or disbursement of funds by an agency; or (ii) an agency’s acquisition, use or disposal of services, supplies, materials, equipment or property.” 65 P.S. § 67.102.

In *Mezzacappa v. W. Easton Borough*, the OOR found that the agency could not redact its bank account numbers from cancelled checks, as the checks constituted “financial records,” and the RTKL does not permit such redaction. 2013 OOR Dkt. AP 2013-2078, 2013 PA O.O.R.D. LEXIS 1162. The Northampton County Court of Common Pleas affirmed the OOR, and on further appeal, the Commonwealth Court agreed that agency bank account numbers cannot be redacted from financial records, holding that the disclosure of financial records is essential to fulfilling the purpose of the RTKL. No. 1278 C.D. 2014, 2015 Pa. Commw. Unpub. LEXIS 402 at \*20. Just like the agency in *Mezzacappa*, the Township cannot redact its account number from the cancelled checks.

Similarly, agencies cannot redact information solely on the basis that it is not responsive to a request. Financial records are presumed to be publicly available, and while agencies may redact information that is not subject to public access, the burden is on the agency to prove that an exemption applies. *See* 65 P.S. §§ 67.701(a), 706, 708(a)(1). In *Haverstick v. Pa. State Police*, the Commonwealth Court held that non-responsiveness is not a valid legal basis for redaction. 273 A.3d 593, 600 (Pa. Commw. Ct. 2022). Here, Ms. Heinrich attests that she provided bank

statements reflecting payments to Envisian, but she provides no justification for redacting other transactions. *Cf. Kutztown, supra* (finding that it was error for the OOR to continue its analysis after the agency's provision of the only outstanding information rendered the appeal moot in its entirety). Accordingly, in the absence of evidence justifying the redaction of other transactions, the Township must produce unredacted copies of its bank statements.<sup>2</sup>

### **3. The Township has proven that no other records exist**

The Township argues that no other responsive records exist. Ms. Heinrich attests:

1. I serve as the Finance & HR Director; Treasurer for [the Township] and am responsible for maintaining the financial records of the [Township].
2. In my capacity as Finance & HR Director; Treasurer, I am familiar with the financial records of the [Township].
3. Upon receipt of the [R]equest, I conducted a thorough examination of the files in the possession, custody and control of the [Township] for records responsive to the [R]equest underlying this appeal, specifically the financial and accounting records of the Township.
4. This [R]equest is for any and all financial records for Mr. Carl Francis & Mr. Bruce Mowday and their companies, organizations, entities which they may own, operate and or are employed by, or affiliated with. All bills are in the company name, Envisian.
5. I have provided the following records:
  - a. Envisian Invoices dated May 16, 2019, August 27, 2019, December 19, 2019, February 18, 2020, May 28, 2022; and
  - b. Screenshots showing records/reports from the financial system for each applicable year (2019 Quickbook Records, 2020 Quickbooks, 2021 Sage) that match the invoices provided.
  - c. Cancelled checks dated May 15, 2019, September 23, 2019, and December 30, 2019; and

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<sup>2</sup> In *Duffy v. Kennett Twp.*, OOR Dkt. AP 2022-1175, the Appeals Officer noted, in footnote 7, that even though bank account numbers were not at issue, such redactions were proper. This footnote was dicta and also incorrect for the reasons set forth in this FD. Section 708(b)(6) of the RTKL does not permit the redaction of agency bank account numbers.

- d. Statements from March 1, 2020- March 31, 2020, June 1, 2020-June 30, 2020, and December 1, 2021- December 31, 2021 which reflect ACH payments made to Envisian.
6. Based upon the above-described search of the [Township's] files and inquiries with relevant [Township] personnel, I have made the determination that the following requested records, "any and all letters of engagement, scope of work, contracts, agreements, arrangements with [the Township], Board of Supervisors, and any other staff," are not within the [Township's] possession, custody or control.
7. After conducting a good faith search of the [Township's] files and inquiring with relevant [Township] personnel, I identified all records within the [Township's] possession, custody or control that are responsive to the [R]equest and provided them to the [R]equester.

The Request seeks financial records, and Ms. Heinrich, who handles the Township's financial records, attests that she searched the Township's financial and accounting records, provided all responsive records, and that no other records exist. Under the RTKL, an 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Township has acted in bad faith or that additional records exist, "the averments in the [attestation] 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 *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Accordingly, the Township has met its burden of proving that no additional responsive records exist in its possession, custody, or control. *See Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) ("[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request."); *see also Campbell v. Pa. Interscholastic Athletic Ass'n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to

a “more likely than not” inquiry), *appeal granted on other grounds*, 2022 Pa. LEXIS 889 (June 22, 2022); *Delaware Cnty. v. Schaefer ex rel. Phila. Inquirer*, 45 A.3d 1149 (Pa. Commw. Ct. 2012) (same) (internal citation omitted).

## CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part, and dismissed as moot in part**, and the Township is required to provide unredacted copies of its bank account statements and the checks as set forth above within thirty days. 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 Chester 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: July 22, 2022**

/s/ Blake Eilers  
Blake Eilers, Esq.  
Appeals Officer

Sent to via email to: Joseph Duffy, Eden Ratliff, Gretchen Porterfield, Courtney Richardson, Esq., and David Sander, Esq.

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