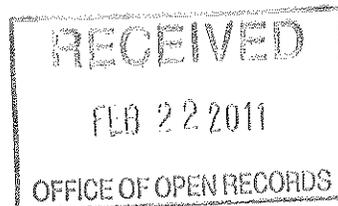


CARL MILLER
428 Fell Street
Belle Vernon, PA 15012



Carl Franklin Miller, Jr.,

Petitioner,

v.

Belle Vernon Fire Department,

Respondent

Court of Common Pleas of
Fayette County

Case No.:

Office of Open Records
Docket No. AP 2010-0154

PETITION TO ENFORCE FINAL DETERMINATION
OF OFFICE OPEN RECORDS PURSUANT TO SECTION 1302
OF THE PENNSYLVANIA RIGHT TO KNOW LAW, 65 Pa.C.S. § 67.1302

This Petition to Enforce arises from a Final Determination of the Office of Open Records ("OOR") and is brought under the Pennsylvania Right-to-Know Law, 65 Pa.C.S. §§67.101 et seq. Petitioner seeks enforcement of an OOR Final Determination ordering release of a[n] Belle Vernon Fire Department ("Fire Department") official fire report of a fire involving his Ford van. The Fire Department has both failed to challenge the OOR Final Determination through a petition for review and to release the report. The Petitioner files this Petition to Enforce the OOR Final Determination in order to protect and preserve his right under the Right-to-Know Law.

1. Petitioner seeks judicial enforcement of a Final determination from the Pennsylvania Office of Open Records (OOR), which directed Respondent Belle Vernon Fire Department to produce a fire report

requested by the Petitioner. That Final Determination, *Carl Miller v. Belle Vernon Fire Department*, OOR Dkt. AP 2010-0154, which is attached to this Petition, required the Fire Department's compliance within thirty days of its issuance on March 22, 2010. Thirty days have passed, and Petitioner has not received the report. Petitioner now turns to this Court to compel the Fire Department's production of the report.

2. When records have been requested of a "local agency," such as the Belle Vernon Fire Department¹, Section 1302 of the Right-to-Know Law grants jurisdiction to the Courts of Common Pleas for judicial review of OOR Final Determination. 65 Pa.C.S. § 67.1302(a).
3. Respondent Belle Vernon Fire Department is named herein and at this time because only the Fire Department has the records at issue, and Petitioner is therefore unable to preserve his ability to obtain enforcement of the Final determination without bringing the Belle Vernon Fire Department before this Court. Immediately upon filing of this petition, Petitioner will seek an Order from the Court that the Belle Vernon Fire Department preserves the report at issue.
4. The report ordered released to the Petitioner is a true and correct copy of the official fire report of a fire which occurred to the Petitioner's Ford van on or about October 14, 2009 near the underpass of Interstate 70, and which was prepared by an agent of the Belle Vernon Fire Department located at Main Street, Belle Vernon, Pennsylvania, 15012.
1. Under the Right-To-Know Law a "local agency" may include "any political subdivision...any local, Intergovernmental, regional, or municipal agency, authority, council, board, commission or similar governmental entity." 65 Pa. C.S. § 67.102.

5. Respondent has failed to supply the report requested.
6. Respondent has not submitted a written denial of a qualifying agency.
7. Respondent has neither responded to nor appealed any decision made by the Office of Open Records.
8. However, the Fire Department seems to have publicly acknowledged that it does possess and must release the report at issue. See Timothy M. Maata, *Letter to Carl F. Miller, Jr.*, December 14, 2009; and *Letter to Ford Motor Company*, December 14, 2009; both available via tmaata@verizon.net and as attachments to this Petition.
9. Petitioner seeks enforcement of the OOR Final Determination.

WHEREFORE, Petitioner requests that this Honorable Court:

- a) Order respondent to preserve and provide all requested reports to the Petitioner; and
- b) Order such other relief as the Court deems appropriate.

February 17, 2011

Respectfully submitted,



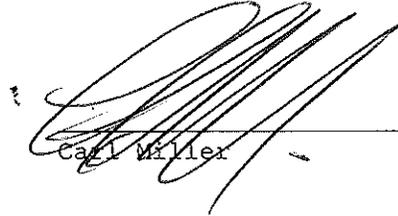
Carl Miller
COMBUSTIBLE EDISON
Carl_fm88@yahoo.com
Post Office Box 412
Charleroi, PA 15022
(724) 797-2895

VERIFICATION

I, Carl Miller, petitioner herein, verify that the foregoing information is true and correct to the best of my knowledge and belief. I understand that my statements are made subject to the penalties of 18 Pa. C.S. § 4704, which relates to unsworn falsification to authorities.

Dated:

2/17/11



Carl Miller

CERTIFICATE OF SERVICE

I, Carl Miller, hereby certify that on this 17th day of February 2010, I served a copy of this Petition and a Notice to Defend by U.S. Mail, postage paid, mailed at Uniontown, Pennsylvania, on the following:

OPEN RECORDS OFFICER or PERSON IN CHARGE

Belle Vernon Fire Department
Borough of Belle Vernon
Main Street
Belle Vernon, PA 15012

TAMMY BOYLE, OPEN RECORDS OFFICER

Fayette County Courthouse
61 East Main Street
Uniontown, PA 15401

LUCINDA GLINN, APPEALS OFFICER

OFFICE OF OPEN RECORDS OF THE COMMONWEALTH OF PENNSYLVANIA

Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, Pa 17120-0225

undersigned appeals officer each sent correspondence to the Fire Department notifying the Fire Department of the appeal. The Fire Department was informed that it bears the burden of overcoming the presumption of openness for any records in its possession, and was invited to provide information in support of its position. No response was received by the Fire Department.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The Fire Department qualifies as a local agency subject to the RTKL and its obligations of mandatory disclosure. *See* 65 P.S. §67.102, §67.302. *See, e.g., Hanes v. Sugar Grove Vol. Fire Dept.*, OOR Dkt. AP 2009-1147; *Brown v. Frystown Community Fire Dept.*, OOR Dkt. AP 2009-0199). The rationale and holding in *Brown* are incorporated by reference. A record in possession of a local agency is presumed to be public unless it is exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305.

The Fire Department did not respond to the OOR or provide any grounds for withholding the record. Presuming that such a record exists within its possession or control, as an agency subject to the RTKL, the Fire Department must disclose it. Accordingly, the Appeal is granted.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Fire Department is directed to provide its fire report, with any personal identification information redacted, to the Requester within thirty (30) days unless it can show that such a report is statutorily exempt.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal to the Fayette or Westmoreland 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. This Final Determination shall be placed on the website at
<http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: March 22, 2010



**LUCINDA GLINN, ESQ.
APPEALS OFFICER**

Sent to: Carl Miller; Fire Department -- ATTN: Records Officer

TIMOTHY M. MAATTA
ATTORNEY AT LAW
513 SCHOONMAKER AVENUE
MONESSEN, PA 15062
724-684-3131
Fax: 724-684-5004
e-mail: tmaatta@verizon.net

December 14, 2009;

Carl F. Miller, Jr.
542 Highland Avenue
Charleroi, PA 15022

Dear Mr. Miller:

As you know, we have been attempting to procure the fire report necessary to enable us to move forward with your claim against Ford Motor and/or Davies.

After telephone calls and letters, we were told that they had mailed the report to us twice. We do not have the report, it did not arrive.

My secretary was asked to call the fire department again and they said that you had been belligerent with them but they did say they had forwarded the report to our office on that occasion.

Unfortunately, I will not be able to be of assistance to you in this regard, however, your DUI attorney would be in a position to subpoena the fire report and, if at that time we receive it, we can supplement it with Ford Motors claim.

Very truly yours,

Timothy M. Maatta

TMM/ba

TIMOTHY M. MAATTA
ATTORNEY AT LAW
513 SCHOONMAKER AVENUE
MONESSEN, PA 15062
724-684-3131
Fax: 724-684-5004
e-mail: tmaatta@verizon.net

December 14, 2009

Ford Motor Company
Claims Department
P.O. Box 70
Dearborn, MI 48121-0070

Attention: Maria Aguilera, Legal Analyst

Re: Carl F. Miller
1993 E150
VIN: 1FDEE14N5PHA90448

Dear Ms. Aguilera:

Enclosed please find information we received from our client, Carl Miller, photographs, repair slips, estimates, etc. All that is missing is the fire report which has been subpoenaed by another attorney.

We did not want to miss the deadline or have you assume that Mr. Miller was not interested in filing a claim.

Very truly yours,



Timothy M. Maatta

TMM/ba

Enclosures

cc: Carl F. Miller, Jr.
Davies Ford Inc. of Charleroi

Carl Franklin Miller, Jr., a.k.a.

Carl Miller,

Petitioner,

and

Belle Vernon Fire Department,

Respondent

Court of Common Pleas of
Fayette County

No.

Office of Open Records
Docket No. AP 2010-0154

RULE RETURNABLE

AND NOW this ____ day of _____, 2011, upon consideration of the attached Petition to Enforce Final Determination of the Office of Open Records pursuant to Section 1302 of the Right-to-Know Law, 65 Pa.C.S. § 67.1302, a Rule is hereby issued upon the Respondents to show cause, if any they may have, why the attached Petition should not be Granted.

RULE RETURNABLE the ____ day of _____, 2011 at _____ in
The Court of Common Pleas of Fayette County.

A Hearing is scheduled for _____, 2011 at _____.

BY THE COURT

Carl Franklin Miller, Jr.
Petitioner,
and
Belle Vernon Fire Department,
Respondent

Court of Common Pleas of
Fayette County

No.

Office of Open Records
Docket No. AP 2010-0154

PROPOSED ORDER ENFORCING FINAL DETERMINATION

OF THE OFFICE OF OPEN RECORDS

PURSUANT TO SECTION 1302

OF THE PENNSYLVANIA RIGHT TO KNOW LAW, 65 Pa.C.S. 67.1302

AND NOW, this _____ day of _____, 2011, upon
consideration of the Petition of Carl Franklin Miller, Jr., to Enforce the
Final Determination of the Office of Open Records and any response thereto,
it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court finds the Respondent Belle Vernon Fire Department has failed to comply with the Final Determination issued by the Office of Open Records on March 22, 2010, which directed it to produce certain records requested by the Petitioner.
2. This Court finds that Respondent Belle Vernon Fire Department performs a governmental function for the County of Fayette and that it alone possesses the public records requested by the Petitioner.

3. The record before this Court contains no evidence to contradict the determination by the Office of Open Records that the Petitioner is entitled to the records sought. Pursuant to section 1302 of the Right-to-Know Law, therefore, Petitioner is entitled to an Order directing the Belle Vernon Fire Department to comply with the Final Determination.

4. Thus, Belle Vernon Fire Department is hereby ordered to provide the Petitioner with copies of the following (in electronic form where available) within 30 days of this Order:

A) An unredacted, true and correct copy of the official fire report of the fire which occurred to the Petitioner's Ford van on or about October 14, 2009 near the underpass of Interstate 70, and which was prepared by an agent of the Belle Vernon Fire Department located at Main Street, Belle Vernon, Pennsylvania, 15012.

SO ORDERED
