pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
TODD PYSHER,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2017-0403**
	:	
CLINTON TOWNSHIP VOLUNTEER	:	
FIRE COMPANY,	:	
Respondent	:	

INTRODUCTION

Todd Pysher ("Requester") submitted a request ("Request") to the Clinton Township Volunteer Fire Company ("Fire Company") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking various financial records and meeting minutes. The Fire Company denied the Request, and the Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Fire Company is required to take further action as directed.

FACTUAL BACKGROUND

On February 16, 2017, the Request was filed, seeking various financial records and meeting minutes. The Fire Company denied the Request, asserting that it is not subject to the RTKL because it is not a local agency.

On February 27, 2017, the Requester filed an appeal with the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Fire Company to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 7, 2017, the Requester submitted a position statement, arguing that the Fire Company is a local agency subject to the RTKL. On March 8, 2017, the Fire Company submitted a position statement reasserting that it is not a local agency under the RTKL.

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. 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 law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id*. The decision to hold a hearing is discretionary and non-appealable. *Id*.; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct.

2011). Here, neither party requested a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The sole issue in this appeal is whether the Fire Company 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. 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. 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)).

1. The Fire Company is a local agency subject to the RTKL

The Fire Company argues that it is not an agency subject to the RTKL. The issue of whether the Fire Company is a local agency is a jurisdictional question, as the OOR only retains authority to review decisions of Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). The RTKL defines "local agency" as:

(1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
(2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or *similar governmental entity*.

65 P.S. § 67.102 (emphasis added). When determining that a volunteer fire company constitutes a local agency under the RTKL, the OOR considers case law finding firefighting to be a governmental activity. *See Schenk v. Unionville Fire Co. and Center Twp.*, OOR Dkt. AP 2012-0567, 2012 PA O.O.R.D. LEXIS 704 (citations omitted). In addition to being considered government agencies under the Political Subdivision Torts Claim Act ("PSTCA"), 42 Pa.C.S. §§ 8501-8564,, volunteer fire companies have also been determined to be government agencies under the Judicial Code. *See Wilson v. Dravosburg Volunteer Fire Dept.*, 516 A.2d 100, 101-02 (Pa. Commw. 1986) (citing 42 Pa.C.S. § 102); *Guinn v. Albertis Fire Co.*, 614 A.2d 218, 219-20 n.2 (Pa. 1992) (same); *see also Rue v. Washington Twp. Volunteer Fire Co.*, No. 1461 C.D. 2009, 2010 Pa. Commw. Unpub. LEXIS 405 at *9 (Pa. Commw. Ct. 2010) (same). As courts have determined that volunteer fire companies constitute agencies under both the Judicial Code and the PSTCA, the Fire Company is a local agency subject to the RTKL.

Notwithstanding the foregoing, however, several county courts have held that volunteer fire companies are not local agencies subject to the RTKL. *See Center Twp. et al. v. Office of Open Records et al.*, No. 12-40148 (Butler Com. Pl. Oct. 12, 2013); *Orangeville Community Fire and Relief Ass'n et al. v. Office of Open Records et al.*, No. 68 of 2014 (Columbia Com. Pl. March 3, 2014); *Pierce v. Morris Twp. et al.*, No. 426-CV-2009 (Tioga Com. Pl. July 8, 2009); *Wrightsville Steam Fire Engine and Hose Company # 1 v. Cornelius*, No. 2011-SU-3621-29 (York Com. Pl. March 12, 2012). However, these decisions are not controlling, as the instant appeal involves a volunteer fire company in Lycoming County. Moreover, other county courts have recognized that volunteer fire departments are subject to the RTKL. *See, e.g., Braden v.*

Lower Augusta Volunteer Fire Dep't., CV-2013-905 (Northumberland Com. Pl. August 7, 2013); *Kirchner v. Clinton Twp. Volunteer Fire Co.*, OOR Dkt. AP 2017-0097, 2017 Pa O.O.R.D. LEXIS 195. Accordingly, the Fire Company is subject to the provisions of the RTKL.

2. The Fire Company has not met its burden of proving that the requested records are exempt from disclosure.

Because it is a local agency, Section 708 of the RTKL clearly places the burden of proof on the Fire Company to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a)(1). In the present case, the Fire Company has not provided any evidentiary basis in support of an exemption under the RTKL. To the contrary, the Fire Company only states that it is not a local agency subject to the RTKL. As such, the Fire Company has not met its burden of proof. *See* 65 P.S. § 67.305.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Fire Company is required to provide all responsive records 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 or petition for review to the Lycoming 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, the OOR is not a proper party to any appeal and should not be named as a party.[1] This Final Determination shall be placed on the website at: http://openrecords.pa.gov.

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

FINAL DETERMINATION ISSUED AND MAILED: March 31, 2017

/s/ Bina Singh

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Bina Singh, Esq.
Appeals Officer

Sent to: Todd Pysher (via email only);
Joseph Orso, III, Esq. (via email only)