INTRODUCTION

Dave Bohman, a reporter for WNEP-TV (collectively, the “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 financial information and meeting minutes. The Fire Company did not respond within five business days, 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 21, 2017, the Request was filed, seeking:

1. Copies of all loans from [the Fire Company] to Todd Winder from 2010 to present including terms, interest, repayment, and collateral.
2. Minutes of [the Fire Company] meetings where loans to Todd Winder from 2010 to present were approved, including roll call votes.

3. Minutes of [the Fire Company] meetings where loans to Todd Winder from 2010 to present were forgiven, including roll call votes.

The Fire Company did not respond within five business days, and the Request was, therefore, deemed denied on February 28, 2017. See 65 P.S. § 67.901. On March 1, 2017, the Fire Company issued an untimely response to the Request, arguing that the Fire Company is not an agency subject to the RTKL.

On March 1, 2017, the Requester appealed to the OOR, stating grounds for disclosure. The OOR invited the parties to supplement the record, and directed the Fire Company to notify third parties of their ability to participate in the appeal pursuant to 65 P.S. § 67.1101(c).

On March 7, 2017, the Requester submitted a position statement and the sworn affidavit of Todd Pysher, a taxpayer and resident of Clinton Township (“Township”). In his affidavit, Mr. Pysher details the process by which the Fire Company receives support from the Township. The Requester also provided information from the Fire Company’s website regarding the municipal fire tax, as well as the Fire Company’s tax reports for the years 2011-2016. On March 8, 2017, the Fire Company submitted an unsworn position statement, reiterating the argument set forth above.

**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

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; however, 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 of the parties requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate this 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 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

The Fire Company argues that it is not an agency subject to the RTKL. The question of whether the Fire Company is an agency is a jurisdictional one, as the OOR is authorized to review only the 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. When determining whether volunteer fire companies are local agencies 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 Dep’t*, 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); *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). As courts have determined that volunteer fire companies are agencies under both the Judicial Code and PSTCA, the Fire Company is a local agency subject to the RTKL. *See Kirchner v. Clinton Twp. Volunteer Fire...*
Co., OOR Dkt. AP 2017-0097, 2017 PA O.O.R.D. LEXIS 195 (finding the Fire Company to be 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 Co. #1 v. Cornelius, No. 2011-SU-3621-29 (York Com. Pl. March 12, 2012); but see Braden v. Lower Augusta Volunteer Fire Dep’t, CV-2013-905 (Northumberland Com. Pl. August 7, 2013) (finding the fire department to be a local agency subject to the RTKL). However, these decisions are not controlling, as the instant appeal involves a volunteer fire company in Lycoming County.

Because the Fire Company is a local agency, Section 708 of the RTKL places the burden of proof on the Fire Company to demonstrate that a record is exempt from disclosure. See 65 P.S. § 67.708(a)(1). Here, the Fire Company has neither raised nor provided any evidentiary basis in support of an exemption under the RTKL. As such, the Fire Company has not met its burden of proof. See 65 P.S. § 67.305; see also Pysher v. Clinton Twp. Volunteer Fire Co., OOR Dkt. AP 2017-0403, 2017 PA O.O.R.D. LEXIS 418.

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 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.\textsuperscript{1} This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: 10 April 2017

/s/ Joshua T. Young

JOSHUA T. YOUNG, ESQ.
APPEALS OFFICER

Sent to: Dave Bohman (via e-mail only);
Joseph Orso, Esq. (via e-mail only)