

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Lycer



County

For Prothonotary Use Only:

Docket No:

17-0647

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint Writ of Summons Petition Notice of Appeal
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name:

Todd Pysher

Lead Defendant's Name:

Clinton Township Volunteer Fire Company

Check here if you are a Self-Represented (Pro Se) Litigant

Name of Plaintiff/Appellant's Attorney: Joseph F. Orso

Are money damages requested? : Yes No

Dollar Amount Requested: _____ within arbitration limits
(Check one) _____ outside arbitration limits

Is this a Class Action Suit? Yes No

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____
 Employment Dispute: Discrimination
 Employment Dispute: Other _____
 Other: _____

CIVIL APPEALS

- Administrative Agencies**
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Zoning Board
 Statutory Appeal: Other
Right to Know Law
Judicial Appeals
 MDJ - Landlord/Tenant
 MDJ - Money Judgment
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: _____

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____

COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA
MOTION COVER SHEET

17-06 47

Caption (may be abbreviated)

Docket No. _____

Todd Pysher

vs.

Clinton Township Volunteer Fire Co;

Case assigned to Judge _____

none

Family Court Hearing Officer

1. Name of filing party: Clinton Twp Volunteer Fire Co.
2. Filing party's attorney: Joseph F. Orso, III, Esquire
3. Type of filing: Petition for Review

<p>4. The following is/are requested:</p> <p><input checked="" type="checkbox"/> Argument</p> <p><input type="checkbox"/> Evidentiary Hearing</p> <p><input type="checkbox"/> Court conference</p> <p><input type="checkbox"/> Rule to show cause</p> <p><input type="checkbox"/> Entry of uncontested order (attach supporting documentation)</p> <p><input type="checkbox"/> Expedited consideration. State the basis:</p> <p><input type="checkbox"/> Video conferencing requested. Request form has been submitted. See Lyc. Co. R.G.C.B. L8.</p> <p><input type="checkbox"/> Attach this cover sheet to original motion previously filed on:</p> <p>5. Time required: 15 minutes</p>	<p>6. Name and addresses of all counsel of record and unrepresented parties:</p> <p>Joseph F. Orso, III, Esquire 339 Market Street Williamsport, PA 17701</p> <p>Todd Pysher 603 Old Road Montgomery, PA 17752</p> <p>Court Scheduling Technician</p> <p><input type="checkbox"/> Continued on separate sheet.</p>
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ORDER

1. ___ An ___ argument ___ factual hearing ___ court conference is scheduled for _____ at ___M. in courtroom no. ____, Lycoming County Courthouse, Williamsport, PA.
2. ___ Briefs are to be filed by the following dates:
Filing party _____
Responding party(ies) _____
3. ___ A rule is issued upon respondent to show cause why the petitioner is not entitled to the relief requested.
4. ___ A response to the motion/petition shall be filed within _____ days.
5. ___ See order attached. ___ See separate order issued this date.
6. ___ Other _____

Judge

Date

cc: ALL PARTIES OR OTHERS TO BE SERVED WITH NOTICE MUST BE DESIGNATED IN "6." ABOVE.
NOTICE: The parties are directed to confer for the purpose of resolving any issue raised in the motion/petition. If a resolution is reached prior to the scheduled date, the moving party shall immediately notify the court scheduling technician, the judge or hearing officer assigned to hear the matter, and all counsel of record or parties if unrepresented. Such notice may be in writing or by email.

TODD PYSHER,
Respondent

vs.

CLINTON TOWNSHIP VOLUNTEER
FIRE COMPANY,
Petitioner

: IN THE COURT OF COMMON PLEAS
: LYCOMING COUNTY, PENNSYLVANIA

: NO. 17-0647

: RIGHT-TO-KNOW LAW (RTKL)

ORDER

AND NOW this ____ day of _____, 2017, upon consideration of
Petitioner-Clinton Township Volunteer Fire Company's Petition for Review under the Right-To-
Know Law, it is hereby ORDERED and DIRECTED that the Pennsylvania Office of Open
Records Final Determination be REVERSED. It is further, ORDERED that Respondent-Todd
Pysher's request with regard to Petitioner-Clinton Township Volunteer Fire Company is
DENIED and DISMISSED.

BY THE COURT,

cc: Joseph F. Orso, III, Esquire

TODD PYSHER,
Respondent

vs.

CLINTON TOWNSHIP VOLUNTEER
FIRE COMPANY,
Petitioner

: IN THE COURT OF COMMON PLEAS
: LYCOMING COUNTY, PENNSYLVANIA

: NO. 17-0647

: RIGHT-TO-KNOW LAW (RTKL)

FILED
LYCOMING COUNTY
APR 13 2017
11:41 AM

PETITION FOR REVIEW

AND NOW, this 24 day of April, 2017, comes Petitioner-Clinton Township Volunteer Fire Company, by and through its attorney, Joseph F. Orso, III, Esquire of Rudinski, Orso & Lynch and petitions Your Honorable Court as follows:

1. Petitioner, Clinton Township Volunteer Fire Company is a Pennsylvania non-profit corporation certified under Section 501(c)(3) of the Internal Revenue Code, with its principal place of business located at 2311 Route 54 Highway, Montgomery, Lycoming County, Pennsylvania 17752.

2. Respondent, Todd Pysher is an adult individual residing at 603 Old Road, Montgomery, Lycoming County, Pennsylvania 17752.

3. Respondent-Todd Pysher filed requests for certain documentation from the Petitioner, Clinton Township Volunteer Fire Company under the Right-To-Know Law. The requests filed with regard to the Fire Company is attached hereto and marked as Exhibit "A".

4. This Petition for Review is filed pursuant to Section 1302 of the Right-To-Know Law with regard to the Final Determination attached hereto and marked as Exhibit "B".

5. Petitioner-Clinton Township Volunteer Fire Company responded to Respondent Todd Pysher's request by letter dated February 13, 2017, a copy of which is attached hereto, made a part hereof and marked as Exhibit "C".

6. Respondent-Todd Pysher appealed to the Pennsylvania Office of Open Records (OOR). A copy of the Appeal with regard to the Clinton Township Volunteer Fire Company's response is attached hereto, made a part hereof and marked as Exhibit "D".

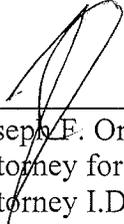
7. The Final Determination of the Pennsylvania Office of Open Records (OOR) is erroneous and should be reversed for the following reasons:

a) Clinton Township Volunteer Fire Company is not an "agency" or "local agency" as those terms are defined in Section 101 of the Right-To-Know Law.

b) The Act as applied in this case violates the privacy protections guaranteed to citizens by the Constitution of the Commonwealth of Pennsylvania.

WHEREFORE, Petitioner-Clinton Township Volunteer Fire Company prays Your Honorable Court enter an Order reversing the Final Determination issued by the Pennsylvania Office of Open Records (OOR) and further, Order that the Respondent-Todd Pysher's request to Petitioner-Clinton Township Volunteer Fire Company under the Right-To-Know Law be denied and dismissed.

RUDINSKI, ORSO & LYNCH



Joseph F. Orso, III, Esquire
Attorney for Petitioner-Fire Company
Attorney I.D. #49806



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 16 February 2017

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): Clinton Township Volunteer Fire Company No. 1
2311 State Route 54 Highway, Montgomery, PA 17752

NAME OF REQUESTER: Todd Pysher

STREET ADDRESS: 603 Old Road

CITY/STATE/COUNTY/ZIP(Required): Montgomery, PA 17752

TELEPHONE (Optional): _____ EMAIL (optional): _____

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information. Please use additional sheets if necessary.*

See Attachment Number 1

DO YOU WANT COPIES? YES NO

DO YOU WANT TO INSPECT THE RECORDS? YES NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? YES NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

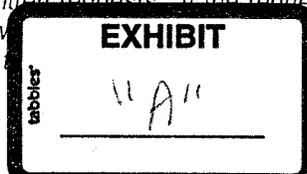
OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. Open requests need not include an explanation why information is sought or the intended use of the information, unless otherwise required by law. (Section 703.)*



ATTACHMENT NUMBER 1

Records Requested:

1. Copy(ies) of any and all written loan agreement(s) during the last ten (10) years between Clinton Township Volunteer Fire Company No. 1 (CTVFC) and any member(s) who received loans from CTVFC, including collateral provisions of loan(s), term(s) of loan(s), and rate of interest for loan(s).
2. Copy(ies) of any and all CTVFC meeting minutes during the last ten (10) years where loan(s) from CTVFC to any member(s) who received loans were discussed and/or approved.
3. Copy(ies) of any and all bank statement(s) during the last ten (10) years showing payment(s) of any and all loan proceeds from CTVFC to any member(s) who received loans.
4. Copy(ies) of any and all bank statement(s) during the last ten (10) years showing any and all loan payment(s) from member(s) who received loans to CTVFC.
5. Copy of Form 990 and all Schedules attached to Form 990 that were filed with the Internal Revenue Service by CTVFC for calendar year 2015.
6. An itemization of amounts billed to and received from the State Correctional Institute at Muncy and the Federal Penitentiary at Allenwood for ambulance services (basic life support) for each calendar year beginning in 1999 and ending in 2016.
7. Page(s) of loan document(s) between CTVFC and Muncy Bank and Trust Company showing date of loan origination, loan amount, rate of interest, and term of loan.
8. Copies of bills for electric service for each month of calendar year 2016.

ATTACHMENT NUMBER 2

On an annual basis, the Clinton Township Volunteer Fire Company (CTVFC) receives municipal tax money collected by the Clinton Township Board of Supervisors (including moneys collected from a municipal fire tax, Act 13 tax revenue, and local service taxes). During calendar year 2016, CTVFC received approximately \$127,000 from the Clinton Township Board of Supervisors. Based on Form 990 filed with the Internal Revenue Service (IRS) for calendar year 2010, CTVFC loaned \$5,000 to the fire chief (Todd Winder). Based on Form 990 filed with the IRS for calendar year 2011, CTVFC loaned an additional \$1,087 to Chief Winder. Based on Form 990 filed with the IRS for calendar year 2012, Chief Winder's loan balance at the end of calendar year 2012 was \$4,087. Based on Form 990 filed with the IRS for calendar year 2013, line 4 on Part X of Form 990 listed accounts receivable of \$4,087 at the beginning of calendar year 2013, and \$0 at the end of calendar year 2013. Ronald Winder (the brother of Chief Winder) was the Treasurer of CTVFC during calendar years 2010 through 2013, and Wilbur Winder (the father of Chief Winder and Treasurer Ronald Winder, now deceased) was a Trustee of CTVFC during calendar year 2010. Also, Melvin Alexander (the brother-in-law of Treasurer Ronald Winder) was the Vice-President of CTVFC during calendar years 2011 through 2013. The Compliance Audit Report of the Clinton Township Volunteer Fireman's Relief Association issued by the PA Auditor General for the period 01 January 2010 through 31 December 2012 does not show any loan(s) to any member(s) of CTVFC. Also, there are no mortgages against Chief Winder's real property by CTVFC. Finally, the Second Class Township Code requires CTVFC to provide itemized financial records on an annual basis to the Clinton Township Board of Supervisors, and itemized financial records have not been provided to the Board of Supervisors.

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>.

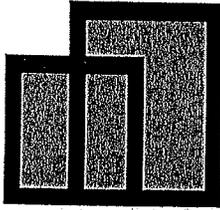
¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: March 31, 2017

/s/ Bina Singh

Bina Singh, Esq.
Appeals Officer

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



**RUDINSKI
ORSO
& LYNCH**

Michael J. Rudinski
Joseph F. Orso, III
Jerry Lynch

ATTORNEYS AT LAW

339 Market Street • Williamsport, PA 17701 • Phone (570) 321-8090 • Fax (570) 326-9110

February 13, 2017

Todd Pysher
603 Old Road
Montgomery, PA 17752

Re: Clinton Township Volunteer Fire Company No. 1

Dear Mr. Pysher,

Please be advised that I am the Solicitor for the Clinton Township Volunteer Fire Company. I am in receipt of your Pennsylvania Standard Right-To-Know Request.

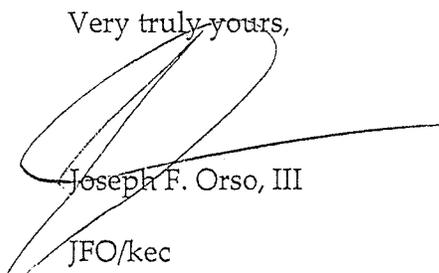
Please be advised that the Clinton Township Volunteer Fire Company is not subject to the Right-To-Know law. The Right-To-Know law applies to the Commonwealth and "local agencies". The definition of local agency does not include a volunteer fire company.

Consequently, the Clinton Township Volunteer Fire Company will not be filing a response to this improper request.

IRS regulations separately provide that Form 990 is a public document. This document may be obtained by you on the internet. If you desire a copy from my client, it will be provided to you at a cost of \$.25 per page.

If you have any questions concerning this matter, feel free to contact me.

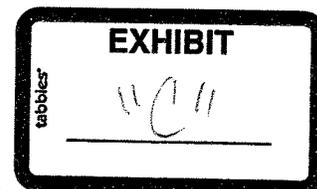
Very truly yours,


Joseph F. Orso, III

JFO/kec

Cc: Clinton Township Volunteer Fire Company

www.pa-law-firm.com





March 1, 2017

Via E-Mail only:

Todd Pysher
603 Old Road
Montgomery, PA 17752
todd@pysherinc.com

Via E-Mail only:

Open Records Officer
Clinton Township Volunteer Fire Co.
2311 State Route 43 Highway
Montgomery, PA 17752
general@ctvfc.com

Via First Class Mail only:

Clinton Township Volunteer Fire Co.
c/o Rudinski Orso & Lynch
339 Market Street
Williamsport, PA 17701

RE: OFFICIAL NOTICE OF APPEAL – **DOCKET #AP 2017-0403**

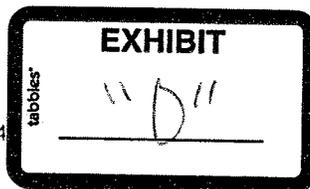
Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, *et seq.* on February 27, 2017. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.** The law requires the agency position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law, and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR’s website.



Submissions to OOR: Both parties may submit information and legal argument to support their positions by 11:59:59 p.m. seven (7) business days from the date of this letter. *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the docket number above on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

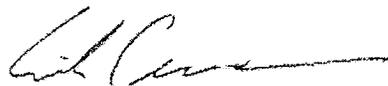
Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice to the OOR within seven (7) business days from the date on this letter.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

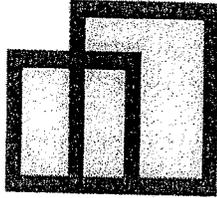
If you have any questions about the appeal process, please contact the assigned Appeals Officer (contact information is enclosed) – and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,



Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR



**RUDINSKI
ORSO
& LYNCH**

Michael J. Rudinski
Joseph F. Orso, III
Jerry Lynch

339 Market Street • Williamsport, PA 17701 • Phone (570) 321-8090 • Fax (570) 326-9110

OPINION LETTER

It is my understanding that the Fire Company has been receiving requests for information under the Pennsylvania Right-To-Know Law.

The Pennsylvania Right-To-Know Law provides that certain records from government agencies are available to the public upon request.

Section 302 of the Act provides that local agencies are required to comply with the Act.

Section 102 defines "local agency" as any of the following:

- (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.

After reviewing the Right-To-Know statute and applicable case law, it is my opinion, that a volunteer fire company is not subject to the Right-To-Know Law.





pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 16 February 2017

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): Clinton Township Volunteer Fire Company No. 1
2311 State Route 54 Highway, Montgomery, PA 17752

NAME OF REQUESTER: Todd Pysher

STREET ADDRESS: 603 Old Road

CITY/STATE/COUNTY/ZIP(Required): Montgomery, PA 17752

TELEPHONE (Optional): _____ EMAIL (optional): _____

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information. Please use additional sheets if necessary*

See Attachment Number 1

DO YOU WANT COPIES? YES NO

DO YOU WANT TO INSPECT THE RECORDS? YES NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? YES NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

ATTACHMENT NUMBER 1

Records Requested:

1. Copy(ies) of any and all written loan agreement(s) during the last ten (10) years between Clinton Township Volunteer Fire Company No. 1 (CTVFC) and any member(s) who received loans from CTVFC, including collateral provisions of loan(s), term(s) of loan(s), and rate of interest for loan(s).
2. Copy(ies) of any and all CTVFC meeting minutes during the last ten (10) years where loan(s) from CTVFC to any member(s) who received loans were discussed and/or approved.
3. Copy(ies) of any and all bank statement(s) during the last ten (10) years showing payment(s) of any and all loan proceeds from CTVFC to any member(s) who received loans.
4. Copy(ies) of any and all bank statement(s) during the last ten (10) years showing any and all loan payment(s) from member(s) who received loans to CTVFC.
5. Copy of Form 990 and all Schedules attached to Form 990 that were filed with the Internal Revenue Service by CTVFC for calendar year 2015.
6. An itemization of amounts billed to and received from the State Correctional Institute at Muncy and the Federal Penitentiary at Allenwood for ambulance services (basic life support) for each calendar year beginning in 1999 and ending in 2016.
7. Page(s) of loan document(s) between CTVFC and Muncy Bank and Trust Company showing date of loan origination, loan amount, rate of interest, and term of loan.
8. Copies of bills for electric service for each month of calendar year 2016.

ATTACHMENT NUMBER 2

On an annual basis, the Clinton Township Volunteer Fire Company (CTVFC) receives municipal tax money collected by the Clinton Township Board of Supervisors (including moneys collected from a municipal fire tax, Act 13 tax revenue, and local service taxes). During calendar year 2016, CTVFC received approximately \$127,000 from the Clinton Township Board of Supervisors. Based on Form 990 filed with the Internal Revenue Service (IRS) for calendar year 2010, CTVFC loaned \$5,000 to the fire chief (Todd Winder). Based on Form 990 filed with the IRS for calendar year 2011, CTVFC loaned an additional \$1,087 to Chief Winder. Based on Form 990 filed with the IRS for calendar year 2012, Chief Winder's loan balance at the end of calendar year 2012 was \$4,087. Based on Form 990 filed with the IRS for calendar year 2013, line 4 on Part X of Form 990 listed accounts receivable of \$4,087 at the beginning of calendar year 2013, and \$0 at the end of calendar year 2013. Ronald Winder (the brother of Chief Winder) was the Treasurer of CTVFC during calendar years 2010 through 2013, and Wilbur Winder (the father of Chief Winder and Treasurer Ronald Winder, now deceased) was a Trustee of CTVFC during calendar year 2010. Also, Melvin Alexander (the brother-in-law of Treasurer Ronald Winder) was the Vice-President of CTVFC during calendar years 2011 through 2013. The Compliance Audit Report of the Clinton Township Volunteer Fireman's Relief Association issued by the PA Auditor General for the period 01 January 2010 through 31 December 2012 does not show any loan(s) to any member(s) of CTVFC. Also, there are no mortgages against Chief Winder's real property by CTVFC. Finally, the Second Class Township Code requires CTVFC to provide itemized financial records on an annual basis to the Clinton Township Board of Supervisors, and itemized financial records have not been provided to the Board of Supervisors.

Sostar, Janelle K

From: no-reply@openrecords.pa.gov
Sent: Monday, February 27, 2017 4:02 PM
To: todd@pysherinc.com
Subject: PA Office of Open Records - Appeal Confirmation



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for request for records under the Right-to-Know Law.

Name:	Todd Pysher	RECEIVED FEB 27 2017 OFFICE OF OPEN RECORDS
Address 1:	603 Old Road	
Address 2:		
City:	Montgomery	
State:	Pennsylvania	
Zip:	17752	
Phone:	570-547-6122	
Fax:		
Email:	todd@pysherinc.com	
Agency (typed):	Clinton Township Volunteer Fire Company No. 1	
Agency Address 1:	2311 State Route 54 Highway	
Agency Address 2:		
Agency City:	Montgomery	
Agency State:	Pennsylvania	
Agency Zip:	17752	
Agency Phone:	570-547-1000	
Agency Fax:		
Agency Email:	general@ctvfc.com	
Records Requested:	I was denied records that appear on the attached file titled Attachment Number 1.	

Request Submitted to Agency Via:	mail
Request Date:	02/16/2017
Response Date:	02/27/2017
No Response:	No
Agency Open Records Officer:	No Named Officer
Reasons for Appeal:	Please see the attached file titled Attachment Number 2.
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	No
Agree to permit the OOR an additional 30 days to issue a final order:	No
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • Attachment Number 1.pdf • Attachment Number 2.pdf • Completed RTKL Request.pdf • Agency Response.pdf

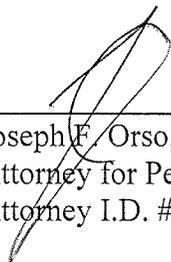
I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

TODD PYSHER, Respondent : IN THE COURT OF COMMON PLEAS
vs. : LYCOMING COUNTY, PENNSYLVANIA
CLINTON TOWNSHIP VOLUNTEER FIRE COMPANY, Petitioner : NO. 17-0647
: RIGHT-TO-KNOW LAW (RTKL)
:

CERTIFICATE OF SERVICE

JOSEPH F. ORSO, III, Esquire of Rudinski, Orso & Lynch hereby certifies that on this 24 day of Apr. 1, 2017, he did cause a true and correct copy of the foregoing Petition for Review to be served on counsel for the Respondent-Todd Pysher, 603 Old Road, Montgomery, PA 17752 and also on counsel for the Pennsylvania Office of Open Records, Bina Singh, Esquire, 400 North Street, 4th Floor, Harrisburg, PA 17120-0225 by placing the same in the United States Mail, postage prepaid and addressed as herein contained on this date.

RUDINSKI, ORSO & LYNCH



Joseph F. Orso, III, Esquire
Attorney for Petitioner-Fire Company
Attorney I.D. #49806