



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**ALICE JACKANIC,
Requester**

v.

**CRANBERRY TOWNSHIP,
Respondent**

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Docket No: AP 2018-0258

INTRODUCTION

Alice Jackanic (“Requester”) submitted a request (“Request”) to Cranberry Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a police call summary report. The Township partially denied the Request by providing a redacted copy of the report. John Jackanic, on behalf of the Requester, appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the Township is not required to take any further action.

FACTUAL BACKGROUND

On February 2, 2018, the Request was filed seeking the report summarizing the Township Police Department’s response to a call made by the Requester reporting an alleged trespasser on her property. On February 2, 2018, the Township partially denied the Request by providing records, including a copy of the responsive Township’s Police Department Call Summary Report

(“Report”), from which it redacted personal identification information and material that relates to a noncriminal investigation. *See* 65 P.S. §§ 67.708(b)(6), (b)(17).

On February 12, 2018, the Requester appealed to the OOR, challenging the redactions and stating grounds for disclosure.^{1,2} 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. *See* 65 P.S. § 67.1101(c).

On February 13, 2018, the OOR issued an order notifying the Requester that the appeal was deficient because it failed to include a copy of the Request. The OOR informed Requester that he was required to cure the deficiency and directed him to file a copy of the Request pursuant to 65 P.S. § 67.1303(b). On February 15, 2018, the Requester submitted a copy of the Request, curing the deficiency and perfecting the appeal.

On February 27, 2018, the Township submitted a position statement asserting, among other things, that the records were properly redacted because the redacted material consists of exempt personal identification information and relates to a noncriminal investigation. *See* 65 P.S. §§ 67.708(b)(6), (b)(17).³ In support of its position, the Township submitted the sworn affidavits of

¹ In the appeal, the Requester specifies that the “[r]edaction that I’m appealing is on page 1”; therefore, the Requester has waived any challenge to redactions made to other pages of the responsive record provided by the Township Police Department. *See Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429 (Pa. Commw. Ct. 2011).

² The Requester granted the OOR an additional thirty days to issue the Final Determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

³ The Township also argues that the appeal should be dismissed for lack of standing because the appeal was filed by John Jackanic, not Alice Jackanic, the person who submitted and signed the Request. However, based on a review of the Request and the appeal form, John and Alice Jackanic live at the same address and use the same e-mail address. The Township relies Sections 102 and 1101 of the RTKL, the definition of “Requester” and the language authorizing the appeal of a denial or deemed denial of a request, to argue that because Mr. Jackanic submitted the appeal, but he is not the “Requester,” he lacks standing to appeal the partial denial of the Request. However, the Township has not pointed to language in the RTKL that prohibits an individual from filing an appeal on behalf of another individual. Further, the OOR has previously permitted a person to file an appeal on behalf of another when the facts were sufficient to demonstrate that the requester and appellant were seeking the requested records in concert. *See, e.g., Spatz v. City of Reading*, OOR Dkt. AP 2013-0210, 2013 PA O.O.R.D. LEXIS 189, *10 n.3 (finding that an appeal was properly filed when a journalist was acting on behalf of his employer, a newspaper, submitted the request in his own name, but filed the appeal in the newspaper’s name); *see also Sunrise Energy, LLC v. Pa. Public Utility Comm’n*, OOR Dkt. AP 2017-0079, 2017 PA O.O.R.D. LEXIS 410.

Rosanne Hawk, the Township's Manager of Police Services, and Kevin Meyer, the Township's Chief of Police.

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. *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. 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, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The Township 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. *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 respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *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)(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 Township may redact “personal identification information” pursuant to Section 708(b)(6) of the RTKL

The Township argues that a portion of the redacted material is personal identification information, which is expressly exempt under the RTKL. More specifically, the Township provided the responsive Report, but redacted the individuals’ personal cell phone and home telephone numbers from the “Complainant/Contact Information” section pursuant to Section 708(b)(6) of the RTKL. *See* 65 P.S. § 67.708(b)(6). In support of the Township’s redactions, Ms. Hawk affirms that she prepared the response to the Request, which was signed by the Township Open Records Officer, and that she was responsible for making the redactions to the Report. Ms. Hawk further affirms as follows:

The redactions that appear on the top half of the first page (in the Report's 'Complainant/Contact Information' section) contain individuals' cell phone and home telephone numbers. These numbers were redacted pursuant to 65 P.S. § 67.708(b)(6)(i)(A).

Under the RTKL, a sworn affidavit may serve as sufficient evidentiary support to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

Section 708(b)(6) of the RTKL expressly exempts from disclosure "personal identification information" including:

...all or part of a person's Social Security Number; driver's license number; personal financial information; *home, cellular or personal telephone numbers*; personal e-mail addresses; employee number or other confidential personal identification number.

65 P.S. § 67.708(b)(6)(i)(A) (emphasis added); *see also Office of the Governor v. Raffle*, 65 A.3d 1105, 1111 (Pa. Commw. Ct. 2013) (finding that government-issued telephone numbers are "personal" under Section 708(b)(6)), *abrogated in part on other grounds by, Pa. State Educ. Ass'n v. Commonwealth*, 148 A.3d 142 (Pa. 2016). Accordingly, the Township permissibly redacted home and cellular telephone numbers from the Report. *See* 65 P.S. § 67.706.

2. The Township has proven that a portion of the responsive records contains material relating to a noncriminal investigation

The Township redacted the second paragraph under the "Call Notes" section of the Report asserting that it contains of statements made to the Township's investigating officer during the course of his investigation of the Requester's trespass allegations; therefore, the Township argues that the redacted material is exempt because it relates to a noncriminal investigation pursuant to 65 P.S. § 67.708(b)(17). Section 708(b)(17) of the RTKL exempts from disclosure "[a] record of an agency relating to a noncriminal investigation, including ... [c]omplaints submitted to an agency... [i]nvestigative materials, notes, correspondence and reports" or a record that, if

disclosed, would “[r]eveal the institution, progress or result of an agency investigation.” 65 P.S. § 67.708(b)(17)(i)-(ii); 65 P.S. § 67.708(b)(17)(vi)(A). To successfully assert the noncriminal investigative records exemption, the agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *Pa. Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination or probe must be “conducted as part of an agency’s official duties.” *Id.* at 814. An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Johnson v. Pa. Convention Center Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012); *see also Pa. Dep’t of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014).

In support of the Township’s redactions Chief Meyer affirms, in pertinent part, as follows:

When the Township’s Police Department receives notification from the Butler County 9-1-1 dispatch center of a call originating in the Township, the Township routinely and regularly sends a police officer to respond to the call and conduct an investigation.

...[T]he officer conducts a systematic or searching inquiry, a detailed examination, of the complaint that gave rise to the call, as part of his official duties. The police officer includes statements of witnesses obtained in the course of his investigation in the written report.

...Township Police Officer Edward Horan conducted a thorough, systematic or searching inquiry, and a detailed examination, of the dispatch call that resulted in the ... [Report]. On the first page of the Report, the second paragraph under “Call Notes” is redacted. These redactions relate the statements made to the Township’s investigating officer, Officer Horan, in the course of his investigation of the [Requester’s] complaint regarding their neighbor... that [the neighbor] allowed her dog to urinate on the [Requester’s] property. The statements were obtained by Officer Horan during his interview of [the neighbor] in the course of his investigation of the [Requester’s] allegations. These redactions were made pursuant to the noncriminal investigation exception of 65 P.S. § 67.708(b)(17).

As previously stated, Ms. Hawk made the redactions to the Report. Regarding the redactions found in the second paragraph under “Call Notes,” Ms. Hawk’s affidavit agrees with

Chief Myers' representation of what is contained in the redacted material. In the absence of any competent evidence that the Township acted in bad faith, "the averments in [the affidavits] 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 *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

In the present matter, the Township is a township of the second class⁴ and the Police Department is administered under the direction the Township Manager and Board of Supervisors through the Township's Department of Public Safety.^{5,6} Pursuant to the Second Class Township Code, "[e]ach township police officer has those powers and abilities as are granted to police officers under the laws of this Commonwealth or the rules of the Supreme Court or the ordinances of the township for which a fine or penalty is imposed unless otherwise excepted in this act." *See* 53 Pa.C.S. § 66905. Based upon a review of the evidence presented, the Township has demonstrated that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted regarding a complaint call made to the 9-1-1 dispatch center about an alleged trespass incident in the Township. Further, the Request, on its face, seeks a report compiled by the Township Police Department regarding the Requester's complaint of an alleged trespass on her property. *See Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal materials when determining whether an exemption applies); *Office of the Governor v. Davis*, 122 A.3d 1185, 1194 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). Therefore, the Township has established that the requested

⁴ *See* <https://dced.pa.gov/local-government/municipal-statistics/municipalities>.

⁵ *See* Cranberry Township Code § 1-301.

⁶ *See* OOR Advisory Opinion issued Jan. 15, 2010, available at http://www.openrecords.pa.gov/Using-the-RTKL/Documents/Separate_ORO_appointment_for_PD.pdf (stating that a township police department is not necessarily a separate agency from a township).

Report is related to a noncriminal investigation and the redacted material consists of statements made to the investigating officer during the course of conducting the investigation. Accordingly, the redactions were properly made under Section 708(b)(17) of the RTKL. *See Mycek v. Upper Merion Twp*, OOR Dkt. AP 2016-1300, 2016 PA O.O.R.D. LEXIS 1650 (local police departments conduct noncriminal investigations as part of the their legislatively granted fact-finding powers, and incident reports prepared in relation to these noncriminal investigations are exempt under Section 708(b)(17) of the RTKL).

CONCLUSION

For the foregoing reasons, Requester's appeal is **denied**, and the Township is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to Butler 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. 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.⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 12, 2018

/s/ Kelly C. Isenberg

APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

Sent to: John Jackanic (via e-mail only);
Paul Lalley, Esq. (via e-mail only);
Jerry Andree, AORO (via e-mail only)

⁷ *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).