



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DAVID HUGHES,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2019-2615
	:	
EXETER TOWNSHIP,	:	
Respondent	:	

INTRODUCTION

David Hughes (“Requester”) submitted a request (“Request”) to Exeter Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking various information from a legal invoice. The Township partially granted the Request, providing a redacted legal invoice and a check. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied in part** and **dismissed as moot in part**, and the Township is not required to take any further action.

FACTUAL BACKGROUND

On December 10, 2019, the Request was filed, stating:

During the 12/9/19 Supervisors meeting Mr. Biancone once again mentioned a figure of \$8,000 for inspection of Township files scheduled for destruction. Please provide copies of invoices for the cost, legal fees, copy of payment, names of lawyers included and hourly cost.

On December 17, 2019, the Township partially granted the Request and provided two documents: 1) a redacted legal invoice dated 07/12/19 and titled “Re: Galtere/Hughes RTK” and 2) a redacted copy of a check demonstrating payment for that legal invoice. The Township explained that it redacted information “outside the scope of the Request” from the legal invoice.

On December 19, 2019, the Requester appealed to the OOR, challenging the redactions made to the legal invoice and stating grounds for disclosure.¹ The Requester argues that the invoice was “heavily redacted to the point that it is impossible to understand where this \$8,000 cost is supported,” and that Mr. Galtere, a newly elected commissioner, “has given his permission to release any information related to him in this document.”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 January 2, 2020, the Township submitted a position statement in support of its response. The Township also submitted the sworn affidavit of John Granger, the Township Manager and Open Records Officer, and a copy of the invoice with certain redactions regarding the descriptions of legal services removed.

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,

¹ The Requester’s appeal does not address the redaction of the Township’s bank account information from the check, and as such any challenge to this redaction is waived. 65 P.S. § 67.1101(a)(1).

² However, the Requester cites to no legal authority for the proposition that a single commissioner-elect has the authority to waive any redactions made by the Township. *See, e.g., Bd. of Supervisors of Milford Twp. v. McGogney*, 13 A.3d 569 (Pa. Commw. Ct. 2011).

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.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* 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.* Here, neither party requested a hearing; however, the OOR has the necessary 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 the 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. 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). 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)).

On appeal, the Township has submitted a “modified redacted version of the Invoice,” in the event that the OOR concludes “that the redactions on the [original redacted] Invoice were overly broad.” Therefore, as the Township has removed certain redactions and provided the lesser redacted invoice to the Requester, the appeal is moot as to the unredacted information.³

With respect to the redactions made to the legal invoice at issue, Mr. Granger attests, in relevant part:

12. I have reviewed the unredacted version of the Invoice at issue in this matter.
13. The entries on the Invoice that were completely redacted prior to production relate to subject matters not identified in the Request; those entries do not pertain to the “inspection of Township files scheduled for destruction.”
14. The partially redacted entries pertain to the Request; those entries pertain to legal services rendered for the “inspection of Township files scheduled for destruction.”
15. The partially redacted entries provide the information specifically sought in the Request by revealing the following information: (a) the name of the billing professional; (b) the amount of time such billing professional spent, and (c) the date the legal services were rendered.
16. Additionally, the final page of the Invoice shows the hourly rate for each type of billing professional, enabling Mr. Hughes to calculate the total amount of legal expenses incurred for the “inspection of Township files scheduled for destruction” by multiplying the number of hours and the billing rates.
17. Reviewing the relevant entries on the Invoice, the total amount of legal expenses incurred by the Township for the inspection of files scheduled for destruction exceeds the amount mentioned on the Request: the total amount incurred was actually \$11,093....
18. The Request did not seek the Invoice entries themselves, and the unredacted portions of the Invoice provide the information sought in the Request; the redactions relate merely to the portions of the Invoice that are outside of, and therefore non-responsive to, the Request.

³ Further, the OOR will not opine on the propriety of the previously made redactions, as that issue is now moot.

Under the RTKL, a sworn affidavit or an attestation made under the penalty of perjury may serve as sufficient evidentiary support. *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). In the absence of any evidence that the Township has acted in bad faith, “the averments in [the affidavit] 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)).

Generally, an agency may not redact “nonresponsive” information from responsive records. *Kerr v. N. Huntingdon Twp.*, OOR Dkt. AP 2014-1080, 2014 PA O.O.R.D. LEXIS 1031 (“Nor is there an exemption under the RTKL which permits an agency to redact content in a responsive record that is presumptively public because that content is non-responsive”). However, such redactions may be permissible in situations where the unredacted information fully satisfies a request as written. In *Kutztown Univ. of Pa. v. Bollinger*, for example, the Commonwealth Court held that an appeal should have been dismissed as moot after the agency “provided precisely the requested information when it sent Respondent the redacted Review Form.” 217 A.3d 931, *6 (Pa. Commw. Ct. 2019) (unreported opinion). Here, the Request sought “copies of invoices for cost, legal fees, copy of payment, names of lawyers included and hourly cost” regarding the “inspection of Township files scheduled for destruction.” The Township has provided a redacted invoice demonstrating this information. The Request did not seek entire invoices, information regarding other legal matters, or any descriptions of legal services performed. Because the

Township provided the Requester with the information sought, and the Requester cannot modify the Request on appeal,⁴ the Township permissibly responded to the Request.

However, the Requester is not prohibited from filing a new RTKL request for a copy of invoice # 2395307, and if necessary, a new appeal pursuant to 65 P.S. § 67.1101(a)(1). In that case, the Township would have the burden of supporting any redactions made to the invoice.

CONCLUSION

For the foregoing reasons, Requester's appeal is **denied in part** and **dismissed as moot in part**, and the Township is not required to take any further action. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Berks 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.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 15, 2020

/s/ Kyle Applegate

APPEALS OFFICER
KYLE APPLIGATE, ESQ.

Sent to: David Hughes (via email only);
John Granger (via email only);
Alicia S. Luke, Esq. (via email only)

⁴ See, e.g., *Michak v. Pa. Dep't of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that "where a requestor requests a specific type of record ... the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request").

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