

determinations of the OOR, the OOR concluded that the Fire Company was a local agency subject to the RTKL. Because the Fire Company raised no exemptions to disclosure, the OOR ordered the Fire Company to disclose all requested records.

The Fire Company subsequently appealed to the Lycoming County Court of Common Pleas (“Trial Court”).² Relying on the evidentiary record before the OOR, the Trial Court found that the Fire Company was a local agency subject to the RTKL because it was entitled to government immunity from tort liability, was created pursuant to statutory authority and relied on government funding to conduct its operations. Thus, the Trial Court affirmed the OOR’s final determination and ordered the disclosure of the requested records.

The Fire Company then appealed to the Commonwealth Court.³ The Commonwealth Court concluded that various factors needed to be considered to determine whether a non-profit entity is a local agency subject to the RTKL, *e.g.*, the degree of government control, the nature of the entity’s functions and financial control. Furthermore, the Court concluded that the record before the Trial Court contained no evidence from which the Court could determine whether the Fire Company was a local agency subject to the RTKL. Therefore, the Court remanded this matter to the Trial Court to more fully develop the factual record. *Pysher v. Clinton Twp. Vol. Fire Co.*, 209 A.3d 1116 (Pa. Commw. Ct. 2019). The Trial Court subsequently remanded the matter to the OOR for further proceedings. *Pysher v. Clinton Twp. Vol. Fire Co.*, No. CV-17-647 (Lycoming C.C.P. 2019).

² Any party aggrieved by a final determination of the OOR relating to a request submitted to a local agency may appeal to the court of common pleas of the county in which the local agency is located. 65 P.S. § 67.1302(a).

³ Any party aggrieved by a final decision of a court of common pleas may appeal to the Commonwealth Court. 42 Pa.C.S. § 762.

On remand to the OOR, the OOR requested the Fire Company to submit evidence regarding various issues relating to the Fire Company's creation, organization, staffing, functions, finances and operations. The Fire Company submitted the affidavit of Todd Winder, Chief of the Fire Company, in response to the OOR's request for evidence.

In *Pysher*, the Commonwealth Court discussed its holding in *Appeal of Hadley*, 83 A.3d 1101 (Pa. Commw. Ct. 2014), where the Court "evaluated whether a regional alliance of businesses, industry, and tourism, which was a private nonprofit, was a 'similar government entity' to be considered a 'local agency' under the RTKL." *Id.* at 1123. In *Hadley*, the Commonwealth Court set forth several factors to be considered when assessing whether an organization is considered a "similar government entity[.]" including the degree of governmental control, the nature of the organization's functions, and financial control. *Hadley*, 83 A.2d at 1108. The Court explained that with respect to the first factor, a court should review the "organizational structure, purposes, powers, duties and fiscal affairs" of the organization. *Id.* The Court also noted that "cooperation with the government is insufficient to establish control." *Pysher*, 209 A.3d at 1123.

Regarding the second factor, the Court held that "[t]he function an entity performs weighs heavily in a local agency assessment. The function must be governmental, but it need not be ... essential. To qualify as governmental, the function must be a substantial facet of a government activity." Finally, with respect to financial control, the Court noted that "the less government financing, the less likely it was that there was governmental control." *Id.* (citations omitted).

The Court concluded its analysis by stating that "there is no factual record to evaluate the degree of governmental control, the nature of [the] Company's functions, and the financial control by the [t]ownship over the Company." *Id.* at 1124 (citations omitted). Thus, the Court remanded the matter, stating that on remand:

the parties shall be prepared to produce evidence relevant to the degree of governmental control the [t]ownship exercises over [the] ... Company, including, but not limited to [the] ... Company's "organizational structure, purposes, powers, duties and fiscal affairs"; the function [the] ... Company performs and whether it is "a substantial facet of government activity"; and the degree of public funding provided to [the] ... Company in relation to private funds.

Id. at 1125 (citations omitted).

Turning to the instant matter, the OOR posed a series of questions to the Fire Company to further develop the record regarding whether the Fire Department is a local agency under the RTKL. In response, the Fire Company submitted the affidavit of Chief Winder, who attests that the Fire Company was created as a non-profit corporation in 1946 by citizens of Clinton Township to provide fire-fighting services to Clinton and Brady Townships. Chief Winder further attests that members of the Fire Company are volunteers who are selected by the Fire Company's membership; the Chief and President are elected by the Fire Company's membership, and Assistant Fire Chiefs are appointed by the Chief. Chief Winder indicates that of the Fire Company annual operating expenses, the Clinton Township pays for workers' compensation insurance, and the Fire Company receives approximately \$112,000 of its operating expenses from Clinton and Brady Township (other sources of funding include Fire Company fund raisers and state grants). With respect to the issue of governmental control of the Fire Company's operations, Chief Winder indicates unequivocally that the Townships have no managerial control over the Fire Company or its day-to-day operations.

Based on a review of the evidence submitted, the Fire Company unquestionably performs a governmental function in providing fire-fighting services and receives municipal taxes to cover a portion of the Fire Company's operating expenses; however, the evidentiary record shows that the Townships exercise no managerial or operational control over the Fire Company. Taken as a whole, the evidence establishes no governmental control over the Fire Company for purposes of

determining whether the Fire Company is a “similar government entity,” and, therefore, cannot be considered a “local agency” under the RTKL.

For the foregoing reasons, Requester’s appeal is **dismissed**, and the Fire Company is not required to take any further action. Within thirty days of the mailing date of this Final Determination On Remand, 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 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.⁴ This Final Determination On Remand shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 5, 2020

/s/ Charles Rees Brown
CHARLES REES BROWN
CHIEF COUNSEL

Sent to: Todd Pysner (via email only);
Christopher Kenyon, Esq. (via email only);
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⁴ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).