



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MICHELLE GROVE,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2018-1655
	:	
GREGG TOWNSHIP,	:	
Respondent	:	

INTRODUCTION

Michelle Grove (“Requester”) submitted a request (“Request”) to Gregg Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking emails and an email attachment. The Township granted the Request and provided a .pdf version of the document and 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 September 8, 2018, the Request was filed, seeking, among other items, an email attachment entitled “Advisory board recommendation-Joel.doc.” On September 10, 2018 the Township granted the Request and provided the attachment.

On September 13, 2018, the Requester filed an appeal with the Office of Open Records (“OOR”), arguing that she had requested a .doc file and was given a .pdf. She argues that she requested the original file and seeks data only available in that file. When she subsequently

requested the .doc file, the Township refused. 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 September 25, 2018, the Township submitted a position statement, as well as the attestation made under the penalty of perjury of Jennifer Snyder, the Township's Open Records Officer. Ms. Snyder attests, in relevant part:

5. ... [Requester] selected "Yes" to "DO YOU WANT COPIES?"
6. The material provided to [Requester] represented copies of the relevant documents.

On September 25, 2018, the Requester submitted correspondence arguing that she requested a .doc file and was given a .pdf instead. Additionally, the Requester provided a link to a YouTube video of a Township Supervisors meeting that she attended to ask why she was not given the file in .doc format. The Supervisors indicated that she did not receive it in that format because it was editable.

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 and the OOR has the necessary, 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)).

The RTKL provides that “[a] record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists.” 65 P.S. § 67.701(a). The RTKL does not define “medium”; however, the OOR has defined it “as the substance through which something is transmitted or carried, a ‘means,’ such as on paper or on the hard-drive or on a database or over the internet.” *Acton v. Fort Cherry Sch. Dist.*, OOR Dkt. AP 2009-0926, 2009 PA O.O.R.D. LEXIS 786, *aff'd*, No. 2010-719 (Wash. Com. Pl. July 26, 2011), *aff'd*, 38 A.3d 1092 (Pa. Commw. Ct. 2012), *petition for allowance of appeal den'd*, 57 A.3d 72 (Pa. 2012).

The OOR has previously differentiated “medium” from “format.” In *Bowling v. Pa. Emgcy. Mgmt. Agency.*, the requester sought copies of “electronic spreadsheets,” and the agency provided the documents in .pdf format rather than in Excel format. OOR Dkt. AP 2009-0128, 2009 PA O.O.R.D. LEXIS 607, *rev'd on other grounds*, *Bowling v. Office of Open Records*, 990 A.2d 813 (Pa. Commw. Ct. 2010), *aff'd*, 75 A.3d 453 (Pa. 2013). The OOR held that:

The RTKL provides requesters with the right to inspect and duplicate. Duplication is a snapshot, a static record that cannot be altered or modified, in other words, a “copy.” [Section 701(b) of the RTKL] specifically prevents access to an agency’s computer, evidencing intent to protect government records and files from any interference. By providing a pdf file, [the agency] complied with the RTKL by duplicating its spreadsheet and [the requester] received the “information” requested. It was provided in an electronic medium and there is no requirement to provide records in a manner that would subject them to alteration or manipulation. [The requester] received the record, as defined by the RTKL, which he requested.

OOR Dkt. AP 2009-0128, 2009 PA O.O.R.D. LEXIS 607. Here, it is undisputed that the Requester was provided a copy of the document requested. As the RTKL only provides that the records must

be in the medium requested, not the format requested, the Township complied with the RTKL by providing a .pdf copy of the record requested.

CONCLUSION

For the foregoing reasons, the 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 or petition for review to the Centre County Court of Common Pleas. *See* 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>.

FINAL DETERMINATION ISSUED AND MAILED: October 5, 2018

/s/ Erin Burlew

Erin Burlew, Esq.
APPEALS OFFICER

Sent to: Michelle Grove (via email only);
David Gaines, Esq. (via email only)

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