



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>GLENN HARMON,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2017-2353</b>
	:	
<b>LONDONDERRY TOWNSHIP,</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

Glenn Harmon (“Requester”) submitted a request (“Request”) to Londonderry Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a salary schedule. The Township denied the Request, asserting, among other things, that the Request is insufficiently specific. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Township is required to take further action as directed.

**FACTUAL BACKGROUND**

On November 3, 2017, the Request was filed, seeking “a copy of the most recent salary schedule such as that presented at the 8/16/2016 Board Meeting.” On November 13, 2017, the Township invoked a thirty-day extension to respond to the Request. *See* 65 P.S. § 67.902. On December 13, 2017, the Township denied the Request, arguing that it is not a *bona fide* RTKL

request, constitutes an interrogatory, requires the creation of records, and is insufficiently specific to enable the Township to respond. *See* 65 P.S. § 67.703. Additionally, the Township generally argued that a variety of exemptions and/or privileges may apply. *See* 65 P.S. § 67.305(a); 65 P.S. § 67.708(b).

On December 14, 2017, the Requester appealed to the OOR, challenging the Township's denial of the Request and stating grounds for disclosure. 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 December 27, 2017, the Township submitted a position statement, reiterating its reasons for denial. In support of its position, the Township provided a sworn affidavit from Jeffrey Burkhart, the Township's Assistant Open Records Officer.

Also on December 27, 2017, the Requester submitted a statement disputing the Township's arguments in its position statement.

### **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 Township requested a hearing; however, that OOR has the requisite information and evidence before it to properly adjudicate the matter. As a result, the request for a hearing is denied.

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 burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

Essentially, the Township argues the Requester is abusing the RTKL by filing numerous requests and acting in bad faith; as such, the Township argues that the Requester’s RTKL requests should be denied. The Township submitted the affidavit of Jeffrey Burkhart, the Township’s Open Records Officer, which states that the Requester “has filed over 85 RTKL requests, many of which contain multiple subparts, and over 60 appeals in only four months; that the Requester has been straining the Township’s resources and “filing frivolous appeals”; and generally, that the Requester has not been acting in good faith.

An agency may not adopt a policy or regulation placing “[a] limitation on the number of records which may be requested” or “[a] requirement to disclose the purpose or motive in requesting access to records.” 65 P.S. § 67.1308. While an agency may deny “repeated requests” for a particular record when those “repeated requests have placed an unreasonable burden on the agency,” there is no evidence here that the Requester has made a repeated request for the record at issue, or that the request for this particular record has placed an unreasonable burden on the Township. *See* 65 P.S. 67.506(a)(1). Even if an agency is permitted to deny a request under Section 506(a) of the RTKL, such a denial “shall not restrict the ability to request a different record.” 65 P.S. § 67.506(a)(2). Therefore, the Requester’s requests for other records are irrelevant to this appeal.

The Request at issue seeks a salary schedule. Such a document constitutes a “record” under the RTKL, *see* 65 P.S. § 67.102, and the Request provides enough details for the Township to conduct a search for this record. *See* 65 P.S. § 67.703; *Pa. Dep’t of Educ. v. Pittsburgh Post-*

*Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015). Employees' salaries are public records under the RTKL. 65 P.S. § 67.708(b)(6)(ii). The record clearly constitutes a "financial record," 65 P.S. § 67.102; as such, many of the Township's cited exemptions could not apply to the record. *See* 65 P.S. § 67.708(c) (stating that the "exceptions set forth in [708](b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) or (17)"). The Township has provided no evidence demonstrating that the record may be redacted. *See* 65 P.S. § 67.706. Finally, the Township has not provided any evidence proving that this record does not exist. As such, the Township has not met its burden of proof.

### CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Township 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 to the Dauphin 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.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: January 12, 2018**

/s/ Kyle Applegate

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APPEALS OFFICER  
KYLE APPLGATE, ESQ.

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

Sent to: Glenn Harmon (via e-mail only);  
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