



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**DAVID HUGHES,
Requester**

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:

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v.

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Docket No: AP 2019-1424

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**EXETER TOWNSHIP,
Respondent**

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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 to inspect Statements of Financial Interest (“SFIs”). The Township granted the Request in part, providing redacted records, and 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 August 12, 2019, the Request was filed, seeking to inspect “all statement[s] of financial interest.” On August 15, 2019, the Township granted the Request in part, providing responsive records with personal identification information, 65 P.S. § 67.708(b)(6)(i)(A), and home addresses redacted. The Township also notified the Requester that redacted copies were available for inspection.

On August 26, 2019, the Requester appealed to the OOR, challenging the redactions and stating grounds for disclosure.¹ 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 5, 2019, the Township submitted a position statement reiterating its grounds for redaction. In support of its position, the Township submitted the affidavit of John Granger, its Open Records Officer. On September 9, 2019, the Requester submitted a position statement, reiterating his challenges to the redactions.

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

¹ The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(c).

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, 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 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)). Likewise, “[t]he 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).

The Township redacted personal telephone numbers from responsive records. Section 708(b)(6)(i)(A) exempts from disclosure personal identification information including “home, cellular or personal telephone numbers.” 65 P.S. § 67.708(b)(6)(i)(A).

However, the SFIs at issue were created and filed pursuant to the Ethics Act, which states that:

Each public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the [State Ethics Commission] no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Each public employee and public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the department, agency, body or bureau in which he is employed or to which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Any other public employee or public official shall file a statement of financial interests with the governing authority of the political subdivision by which he is employed or within which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position....

65 Pa.C.S. § 1104(a). Regarding access to these SFIs, the Ethics Act adds that “[a]ll statements of financial interests filed pursuant to the provisions of this chapter *shall be made available for public inspection* and copying during regular office hours, and copying facilities shall be made available at a charge not to exceed actual cost.” 65 Pa.C.S. § 1104(e) (emphasis added).

The RTKL does not “supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.306. Likewise, “if the provisions of [the Ethics Act] conflict with any other statute ..., the provisions of [the Ethics Act] shall control.” 65 Pa.C.S. § 1112. Because the Ethics Act unconditionally establishes the public nature of SFIs filed under the Ethics Act, the RTKL’s exemptions do not apply. *See Pa. Dep’t of Labor & Indus. v. Heltzel*, 90 A.3d 823, 831-32 (Pa. Commw. Ct. 2014) (discussing how a statute may establish that records are public). Because SFIs filed under the Ethics Act are unconditionally public, the OOR has not permitted the redaction of

these records under the RTKL. *See, e.g., Guydish v. Crestwood Sch. Dist.*, OOR Dkt. AP 2019-0643, 2019 PA O.O.R.D. LEXIS 458 (“The OOR has previously found that statements of financial interests filed pursuant to the Ethics Act, such as the ones at issue in this case, are public records that are subject to disclosure in their entirety”). Exemptions under the RTKL cannot serve as a basis for redaction of records made public under the Ethics Act; both laws are clear that the Ethics Act controls.

The Township also argues that home addresses are protected by the constitutional right to privacy. In *Pa. State Educ. Ass’n v. Commonwealth* (“PSEA”), the Pennsylvania Supreme Court held that an individual possesses a right to privacy in certain types of personal information, including his or her home address. 148 A.3d 142 (Pa. 2016); *see also Tribune-Review Publ. Co. v. Bodack*, 961 A.2d 110, 117 (Pa. 2008) (finding telephone numbers to constitute personal information subject to the balancing test); *Pa. State Univ. v. State Emples. Ret. Bd.*, 935 A.2d 530, 533 (Pa. 2007) (finding home addresses, telephone numbers and social security numbers to be personal information subject to the balancing test); *Sapp Roofing Co. v. Sheet Metal Workers’ International Assoc.*, 713 A.2d 627, 630 (Pa. 1998) (plurality) (finding names, addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test).

In this case, the phone numbers and home addresses constitute personal information. To determine whether the constitutional right to privacy precludes disclosure of an individual’s personal information, a balancing test must be applied. *Denoncourt v. Pa. State Ethics Comm’n*, 470 A.2d 945 (Pa. 1983). In *Times Publ. Co., Inc. v. Michel*, the Commonwealth Court applied the test in the public records context by “weighing privacy interests and the extent to which they

may be invaded, against the public benefit which would result from disclosure.” 633 A.2d 1233, 1237 (Pa. Commw. Ct. 1993).

Here, the General Assembly has already determined that the public interest in this information outweighs any privacy interests by enacting the Ethics Act with clear, unambiguous language making statements of financial interests available for public inspection and copying in their entirety. In *PSEA*, the Court opined:

[T]his Court, through its decisions in *Sapp Roofing, Penn State* and *Bodack*, has developed a body of case law requiring governmental agencies to respect the constitutional privacy rights of citizens when disseminating requested information.... Pennsylvania courts are obliged to construe statutory enactments as consistent with the Pennsylvania Constitution, and we must presume that the legislature did not intend to violate the Constitution of this Commonwealth when enacting the RTKL.

PSEA at 157-58 (internal citations omitted); *see also Harrington v. Pa. Dep’t of Transp.*, 763 A.2d 386, 393 (Pa. 2000) (holding that Pennsylvania courts are obliged to construe statutory enactments as consistent with the Pennsylvania Constitution). In performing a balancing test, the OOR may rely “on legislative pronouncements or prior decisions of this or other Pennsylvania courts,” and the General Assembly’s determination that that information shall be public reflects that “the General Assembly has already performed the necessary PSEA balancing test.” *Reese v. Pennsylvanians for Union Reform*, 173 A.3d 1143, 1159 (Pa. 2017) (citing *PSEA*, 148 A.3d at 156 n.8).

To the extent that there is any expectation of privacy in the information at issue, these privacy interests are outweighed by the strong public interest in favor of disclosure. *See* 65 Pa.C.S. § 67.1101.1(a); *Snider v. Thornburgh*, 436 A.2d 593, 599 (Pa. 1981) (“[T]he intrusion into appellants’ private affairs under the Act is not great; the Legislature’s interest in securing public confidence in the government, at all levels, is not small. The financial disclosure requirements of

the Act are reasonably tailored to fit a legitimate legislative function”); *but see PSEA*, 148 A.3d at 145 (noting that “[t]he disclosure of personal information such as home addresses, reveals little, if anything, about the workings of government”).

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted**, and the Township is required to make unredacted copies of the records available for inspection. 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 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.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 24, 2019

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: David Hughes (via email only);
Alicia Luke, Esq. (via email only);
Shelly Burdy (via email only)

² See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).