



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**LOUIS COROMINAS,
Requester**

v.

**EAST ALLEN TOWNSHIP,
Respondent**

:
:
:
:
:
:
:
:
:
:
:

: Docket No: AP 2021-2229

INTRODUCTION

Louis Corominas (“Requester”) submitted a request (“Request”) to East Allen Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a traffic study completed within the Township. The Requester appealed to the Office of Open Records (“OOR”), arguing that the request was deemed denied. 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 August 30, 2021,¹ the Request was filed, seeking “[t]he ‘Draft Weaversville Curve Study’ (item #3 under Supervisors Business on the meeting agenda) presented and discussed at the Board of Supervisors’ public meeting on August 26, 2021.” On August 31, 2021, the Township

¹ The Request is dated Saturday, August 28, 2021, but The OOR is presuming that the Request was received the next business day.

invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b). The Township did not respond to the Request, and the Request was deemed denied. *See* 65 P.S. § 67.901.

On October 20, 2021, the Requester appealed to the OOR, 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. 65 P.S. § 67.1101(c).

On November 10, 2021, the Township submitted a position statement, arguing that the record is not a public record of the Township and is confidential. In support of its position, the Township submitted the attestation of Brent Green, the Township's Open Records Officer

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 decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

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. 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 Township argues that the records responsive to the Request are made confidential under Section 3754 of the Vehicle Code, which provides that:

The [D]epartment [of Transportation], in association with the Pennsylvania State Police, may conduct in-depth investigations and safety studies of the human, vehicle and environmental aspects of traffic accidents for the purposes of determining the causes of traffic accidents and the improvements which may help prevent similar types of accidents or increase the overall safety of roadways and bridges.

75 Pa.C.S. § 3754(a). Notably, the Vehicle Code makes confidential any information, records and reports used in the preparation of in-depth accident investigations and safety studies. 75 Pa.C.S. § 3754(b); *see also* 23 U.S.C. § 409.

In *Pa. Dep't of Transportation v. Office of Open Records*, the Commonwealth Court determined that Section 3754 serves as “an evidentiary privilege” and that the Department of Transportation (“Department”) carried the “burden of showing that the requested [records] ... fall within the privilege,” and would “thus be exempt from the definition of public record pursuant to Section 305(a)(2) of the RTK[L].” 7 A.3d 329, 335 (Pa. Commw. Ct. 2010). The Commonwealth Court held that the Department failed to meet its burden of proof by not establishing “that the specific sight distance measurements and traffic studies requested ... are information that has been used in formulating a safety study or will necessarily be used in formulating a safety study.” *Id.*

In support of its argument that the responsive records are exempt, the Township relies on the attestation of Mr. Green, who attests in pertinent part, under the penalty of perjury, as follows:

This open record request was reviewed with current records for East Allen Township. A 30 [d]ay extension was requested by the [Township] and a referral was made to [the] Requestor to file a request with the Pennsylvania Department of Transportation District 5 Right to Know Officer. It is our determination that the record is not a public record of East Allen Township and also is also [sic] subject to confidentiality under the Pennsylvania Motor Vehicle Code, 75 Pa.C.S. § 3754. The requested public document is a traffic study performed by PennDOT to assess the safety of Weaversville Road, which is a state route and recommended improvements.

Based on this section of law mentioned above, it was my determination that [the Requester's] request be made to PennDOT and if pursued we would have to deny the request under Pennsylvania Motor Vehicle Code, 75 Pa.C.S. § 3754.

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

Here, the Township has submitted evidence demonstrating that the responsive record “is a traffic study performed by PennDOT to assess the safety of Weaversville Road, which is a state rout and recommended improvements.” Therefore, the Township has submitted sufficient evidence to demonstrate that the record responsive to the Request is confidential under the Vehicle Code.² *See, e.g., Pa. Dep’t of Transp. v. Taylor*, 841 A.2d 108, 113 (Pa. 2004); *Lamontagne v. Pa. Dep’t of Transp.*, OOR Dkt. AP 2021-1533; *Shuman v. Pa. Dep’t of Transp.*, OOR Dkt. AP 2021-1292, 2021 PA O.O.R.D. LEXIS 1432; *Geiselhart v. Pa. Dep’t of Transp.*, OOR Dkt. AP 2020-0069, 2020 PA O.O.R.D. LEXIS 1508; *James D. Morrissey, Inc. v. Pa. Dep’t of Transp.*, OOR Dkt. AP 2017-1103, 2017 PA O.O.R.D. LEXIS 988.³

CONCLUSION

For the foregoing reasons, the 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 to the Northampton 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. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter,

² The Pennsylvania Supreme Court, in *Pa. Dep’t of Transp. v. Taylor*, construed Section 3754 as granting a “narrow but absolute privilege” in the documents specified by Section 3754(b). 576 Pa. 622, 635, 841 A.2d 108, 116 (2004).

³ Because the responsive record is exempt from disclosure under the Vehicle Code, the OOR need not reach the Township’s alternative grounds for denying access. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

the OOR is not a proper party to any appeal and should not be named as a party.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 23, 2021

/s/ Kerianne Baker

APPEALS OFFICER
KERIANNE BAKER, ESQ.

Sent to: Louis Corominas (via email);
Brent Green (via email)

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).