



After extending its time to respond by thirty days, on October 16, 2019, the Authority partially denied the Request, providing the responsive records but redacting certain information, arguing that the records contain personal identification information, 65 P.S. § 67.708(b)(6)(i)(A), and must be redacted under the constitutional right to privacy.

On October 22, 2019, the Requester appealed to the OOR, challenging the partial denial and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the Authority to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On November 1, 2019, the Authority submitted a position statement, asserting that the responsive records contain personal identification information, 65 P.S. § 67.708(b)(6)(i)(A), and must be redacted under the constitutional right to privacy. The Authority further argues that disclosure of the redacted information would threaten personal security, 65 P.S. § 67.708(b)(1)(ii), and that the records were redacted pursuant to that the Pennsylvania Fair Credit Extension Uniformity Act (“FCEUA” or “Act”), 73 P.S. §§ 2270.1 – 2270.6. In support of its position, the Authority submitted the sworn affidavit of Michael Sullivan (“Mr. Sullivan”), the Authority’s Open Records Officer. The Requester did not submit additional evidence on appeal.

### **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,

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<sup>1</sup> During the course of the appeal, the Requester provided the OOR with additional time to issue this Final Determination. 65 P.S. § 67.1101(b)(1).

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; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The Authority 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).

**1. The Authority’s redaction of names and home addresses is appropriate**

The Authority argues that customer names and addresses should be redacted from the Notices. The Authority explains that although it “does not have any documents entitled ‘water shut-off notices,’ it does maintain records of Notices of Intent to File Municipal Lien ... and believes these documents would be responsive” to the Request.<sup>2</sup> The Pennsylvania Supreme Court has held that an individual possesses a constitutional right to privacy in certain types of personal information. *Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142 (Pa. 2016). When a request for records implicates personal information not expressly exempt from disclosure under the RTKL, the OOR must balance the individual’s interest in informational privacy with the public’s interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest. *Id.*; see also *Pennsylvania State Univ. v. State Employees’ Retirement Bd.*, 935 A.2d 530 (Pa. 2007) (employing a balancing test with respect to home addresses sought under the former Right-to-Know Act).

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<sup>2</sup> The Authority also explains that it “does not maintain any documents entitled ‘Owner Tenant Transfer Forms,’ but determined that the Tenant Payment Agreements [‘Agreements’] received within the past 6 months would be responsive” to the Request. The Authority further states that names and addresses were not redacted from the responsive Agreements.

Although the Pennsylvania Supreme Court did not expressly define the types of “personal information” subject to the balancing test, the Court recognized that certain types of information, including home addresses, by their very nature, implicate privacy concerns and require balancing. *Pa. State Educ. Ass’n*, 148 A.3d at 156-57; *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.*, 935 A.2d at 533 (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, home addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test). Furthermore, home addresses may be confidential even when they do not contain information, such as names, which would lead to the identification of the resident. *Chester Hous. Auth. v. Polaha*, 173 A.3d 1240, 1252 (Pa. Commw. Ct. 2017) (“[W]e hold that the constitutional privacy protection applies when home addresses are requested, regardless of whether names or the resident’s identity are attached.”).

To determine whether the constitutional right to privacy precludes disclosure of an individual’s personal information, the OOR must apply the balancing test enunciated in *Denoncourt v. Pa. State Ethics Comm’n*, 470 A.2d 945 (Pa. 1983), and applied in the public records context in *Times Publ. Co., Inc. v. Michel*, 633 A.2d 1233, 1237 (Pa. Commw. Ct. 1993), “weighing privacy interests and the extent to which they may be invaded, against the public benefit which would result from disclosure.”

Recently, home addresses and customer names included in records similar to those requested here have been found to be protected from public disclosure under the constitutional right to privacy. *See Deeter v. North Wales Water Auth.*, OOR Dkt. AP 2019-2088, 2019 PA

O.O.R.D. LEXIS 1733; *Deeter v. Bucks County Water and Sewer Auth.*, OOR Dkt. AP 2019-1972, 2019 PA O.O.R.D. LEXIS 1554; *see also Krick v. Girardville Area Munic. Auth.*, OOR Dkt. AP 2018-0510, 2018 PA O.O.R.D. LEXIS 650 (names and home addresses of authority's non-commercial customers subject to redaction under right to privacy). Likewise, the names of private citizens in the possession of a governmental agency have been found to be protected by the constitutional right to privacy in certain instances. *See Sapp, supra; Hartman v. Pa. Dep't of Conserv. & Nat. Res.*, 892 A.2d 897, 906-07 (Pa. Commw. Ct. 2006) (finding the names and home addresses of snowmobile registrants to be protected by the constitutional right to privacy). Under these circumstances, and given that the Requester has not articulated any public interest in favor of disclosure, the Authority may redact the names and home addresses from the responsive Notices.<sup>3</sup>

## **2. The customer account numbers can be redacted**

The Authority also seeks to redact customer account numbers from the Notices and Agreements. The OOR has previously found that utility account numbers are considered exempt from disclosure under Section 708(b)(6) of the RTKL. 65 P.S. § 67.708(b)(6)(i)(A); *see also Krick*, OOR Dkt. AP 2018-0510, 2018 PA O.O.R.D. LEXIS 650 (finding account numbers are unique to individual customers and their accounts and, therefore, constitute personal identification numbers exempt from disclosure); *Finn et al. v. Borough of East Greenville*, OOR Dkt. AP 2016-0636, 2016 PA O.O.R.D. LEXIS 638; *Mattera v. Lower Paxton Twp.*, OOR Dkt. AP 2014-0550, 2014

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<sup>3</sup> The Authority also argues that names and home addresses it seeks to redact are exempt from disclosure under the FCEUA, 73 P.S. §§ 270.1 *et seq.* However, the OOR has consistently held that FCEUA does not prohibit the release of delinquent utility account information, *i.e.* customer names and home addresses. *See Dobrota v. Chestnut Ridge Area Munic. Auth.*, OOR Dkt. AP 2015-0686, 2015 PA O.O.R.D. LEXIS 783. Regardless, we need not assess the applicability of FCEUA since, per the precedent established in *Deeter v. Bucks County Water and Sewer Auth.*, OOR Dkt. AP 2019-1972, 2019 PA O.O.R.D. LEXIS 1554, and *Deeter v. Northampton Bucks County Munic. Auth.*, OOR Dkt. AP 2019-1984, 2019 PA O.O.R.D. LEXIS 1637, the OOR has previously determined that the information at issue here is exempt from disclosure under the constitutional right to privacy.

PA O.O.R.D. LEXIS 458 (holding utility account numbers are personal financial information and are, therefore, exempt from disclosure). Based on the foregoing, the redaction of customer account numbers from the Notices and Agreements is proper.

### CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the Authority 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 Bucks 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, the OOR is not a proper party to any appeal and should not be named as a party.<sup>4</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: December 20, 2019**

*/s/ Magdalene C. Zeppos*

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Sent to: Amanda Deeter (via email only);  
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<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).