

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

BOROUGH OF FOREST HILLS,

PETITIONER,

v.

FOREST HILLS VOLUNTEER
FIRE COMPANY,

RESPONDENT.

CONCISE DECISION UNDER
65 P.S. § 67.1302(a)

NO. SA 13 - 700

FILED BY:
W. TERRENCE O'BRIEN
JUDGE

COPIES SENT TO:

STEPHEN L. KORBEL, ESQ.
TWO GATEWAY CENTER
603 STANWIX STREET 6TH FLOOR
PITTSBURGH PA 15222

NICHOLAS J. EVASHAVIK, ESQ.
GRANT BUILDING SUITE 1801
310 GRANT STREET
PITTSBURGH PA 15219-2203

CONCISE DECISION UNDER 65 P.S. § 67.1302(a)

O'BRIEN, J.

Factual/Procedural History

I adopt the following factual and procedural history from the Petition For Judicial Review of a Final Determination of the Pennsylvania Office of Open Records:

1. Petitioner the Borough of Forest Hills (the "Borough") is a Borough existing and operating under the laws of the Commonwealth of Pennsylvania, with a business address of 2071 Ardmore Boulevard, Pittsburgh, PA15221.
2. Respondent the Forest Hills Volunteer Fire Company (the "VFC") is a Pennsylvania non-profit corporation with a business address of 2071 Ardmore Boulevard, Pittsburgh, PA 15221.

• • •

5. On April 3, 2013, the Borough received a record request from the VFC dated April 3, 2013 (the "Request Letter").
6. On April 5, 2013, the Borough invoked an additional thirty (30) day review period to conduct legal review of the request to determine if the records were subject to access under the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101, et seq. ("RTKL"). The Request Letter sought the following information:

Delinquent list in full for calendar years 2012 & 2013 pertaining to the fire services fee (Ordinance 1015).
7. The Borough granted the request in part and denied the request in part.

8. The Borough denied the request insofar as it sought an itemized list of property owners with delinquent fire protection services fees on the basis that such a list is exempt from disclosure under Section 102 of the RTKL because it is protected by state law. Specifically, [the Borough's position is that] the list is protected from disclosure under the Pennsylvania Fair Credit Uniformity Act, 73 P.S. § 2270.1 et seq. (the "Act").
9. The Borough granted the request insofar that it appeared to request the outstanding aggregate fire protection services fee and penalties for 2012 and 2013. The relevant figures were stated in the Borough's April 24, 2013 response.
10. On April 29, 2013, the VFC appealed the Borough's partial denial of the Request Letter to the OOR. The OOR dismissed the appeal for the failure to include the original. Request Letter with the appeal by a Final Determination dated May 9, 2013.
11. The VCF re-filed its appeal on May 10, 2013 (the "Appeal"), which was accepted and docketed by the OOR on May 10, 2013 at Docket # AP 2013-0839.
12. The Borough submitted legal argument dated May 20, 2013 to the OOR.
13. The OOR issued its Final Determination on June 10, 2013 granting the VFC's appeal.

The parties have stipulated that "[u]nder Borough Ordinance No. 1015, the Borough charges a fire protection services fee to Borough property owners," which "is meant to generate revenue to support the VFC." Borough's first brief at 3. The parties have also stipulated that "[t]he Borough has contracted with the law firm of Andrews & Price to collect 'delinquent' fire protection services fee accounts. At the time of the VFC's request, the Borough was collecting the fees for 2013 while Andrew & Price was collecting delinquent fees for 2012." Id. at 5.

CONCLUSIONS OF LAW

1. The Borough's granting access to the list of property owners allegedly delinquent in paying the fire protection services fee would violate the Pennsylvania Fair Credit Extension Uniformity Act (FCEUA), 73 P.S. §§ 2270.1 et seq., because it would constitute the "publication of a list of consumers who allegedly refuse to pay debts" "in connection with the collection of [those] debt[s]." 73 P.S. §§ 2270.4(b)(4)(iii) and 2270.4(b)(4).
2. The list sought by the VFC is not a "public record" within the meaning of the RTKL because it is "exempt from being disclosed under ... State law," i.e., the FCEUA. 65 P.S. § 67.102.
3. The "provisions of [the RTKL] regarding access to records" do "not apply" in this case because granting access to the list would "conflict with" the FCEUA. 65 P.S. § 67.3101.1.

In view of the foregoing, I enter the following:

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

BOROUGH OF FOREST HILLS,

PETITIONER,

v.

SA 13 - 700

FOREST HILLS VOLUNTEER
FIRE COMPANY,

RESPONDENT.

ORDER OF COURT

AND NOW, this 3rd day of June, 2014, the Petition for Judicial
Review filed by the Borough of Forest Hills is granted and the Final Determination
of the Office of Open Records is reversed.

BY THE COURT

O'Brien

J.