

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LYCOMING COUNTY,	:	NO. 17 - 0932
Petitioner	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
FRED HEIMBAUGH and DISPOSAL	:	
MANAGEMENT SERVICES, INC.,	:	
Respondents	:	Petition for Review of Final Determination

OPINION AND ORDER

Before the court is a Petition for Review of Final Determination, filed by the County on June 23, 2017. Argument on the petition was heard July 31, 2017, following which the parties requested and were granted the opportunity to file post-argument briefs. The County’s brief was filed August 21, 2017 and Respondents’ brief was filed August 31, 2017. The matter is now ripe for decision.

Respondents sent a Right-to-Know request to the County on February 6, 2017, in which they sought, in relevant part, “all residual waste contracts and per-ton rates charged by LCRMS¹ to any customer after January 1, 2007.”² The County denied access to these records and Respondents appealed to the Office of Open Records. In its Final Determination issued May 24, 2017, the OOR granted access to these records and directed the County to provide copies of all records responsive to the request within thirty days. In their Petition for Review, the County contends the OOR erroneously determined that (1) the request was

¹ Lycoming County Resource Management Services.

² Respondents also asked the County to “identify which rate(s) apply to which streams disposed of under which Form U documents for all time periods after January 1, 2007.” This request was determined by the Office of Open Records to be a question rather than a request for records, and relief from the County’s denial of that request was denied. Respondents have not sought a review of that determination.

sufficiently specific, (2) the records sought were “financial records” and (3) the records sought were not confidential and/or proprietary. Each of these issues will be addressed seriatim.

Specificity of Request

Section 703 of the Right to Know Law requires that a request “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested”. 65 P.S. Section 67.703. The Commonwealth Court has directed the application of a three-part test in addressing the issue of specificity: (1) the subject matter of the request must identify the transaction or activity of the agency for which the record is sought; (2) the scope of the request must identify a discrete group of documents; and (3) the timeframe of the request should identify a finite period of time for which records are sought. Pa. Department of Education v. Pittsburgh Post-Gazette, 119 A.3d 1121 (Pa. Commw. 2015), and Carey v. Pa. Department of Corrections, 61 A.3d 367 (Pa. Commw. 2013).

Here, the request seeks a specific type of record (contracts), identifies a discrete group of documents (residual waste contracts), and specifies a finite period of time (January 1, 2007 to the present). The court thus finds the request to be sufficiently specific.

The County argues that since Respondents have sought “all” residual waste contracts between LCRMS and anyone, for a period of more than ten years, they have not asked for “a discrete group of documents” and the timeframe is not “sufficiently finite” because the documents requested comprise “hundreds of contracts”. That a request may be burdensome, however, does not render it

insufficiently specific. *See Pa. Department of Environmental Protection v. Legere*, 50 A.3d 260 (Pa. Commw. 2012).

Further, the Director’s protest that he “could not discern which contracts” were being sought³ rings hollow; the request seeks *all* residual waste contracts for a specific time period. The court agrees with the OOR that the request “does not require a judgment by the County as to which records are responsive to the Request.”⁴ As noted by the Appeals Officer, the County has explained where these contracts are maintained (in the County Controller’s office or, if expired, at an off-site location for seven years), and thus the court believes the request is specific enough “to enable the agency to ascertain which records are being requested”.

Whether the Records are “Financial Records”

Section 102 of the Right to Know Law defines a financial record (in relevant part) as “[a]ny account, voucher or contract dealing with ... the receipt or disbursement of funds by an agency....” 65 P.S. Section 67.102. The term “dealing with” is sufficiently broad to include the contracts at issue, which, according to Mr. Yorks, “reflect[] the terms and conditions agreed to between the Landfill and the Hauler, to include general terms and conditions, volume, type of service, and *the price the hauler will pay per ton* in the future.”⁵ Since the contracts “deal with” the receipt of funds by LCRMS, they are “financial records”. *See Commonwealth, Department of Public Welfare v. Eiseman*, 125

³ See Attestation of Jason Yorks, Director of LCRMS, attached to the Petition for Review as Exhibit E, paragraph 25.

⁴ See Final Determination at page 8.

⁵ See Attestation of Jason Yorks, Director of LCRMS, attached to the Petition for Review as Exhibit E, paragraph 27 (emphasis added).

A.3d 19, 30 (Pa. 2015)(“subcontracts containing MCO Rates plainly ‘deal with’ DPW's disbursement of billions of dollars of public monies to provide access to essential healthcare”).

The County argues nevertheless that “the [disposal] tickets are the financial records dealing with the receipt of funds by the Landfill, not the contracts” since those tickets reflect the actual payment of funds. While those tickets may indeed be financial records, such does not necessarily mean that other documents cannot also be financial records. The definition of “financial record” specifically includes a contract and the court can take judicial notice that many contracts do not reflect actual payment but merely “deal with” anticipated payment. The court thus finds the County’s argument in this regard without merit.

Whether the Records Sought are Confidential and/or Proprietary

Initially, the court notes that the OOR did *not* make a finding that the records sought were not confidential and/or proprietary. Instead, in the Final determination the Officer stated: “while the County argues that the records contain confidential proprietary information and trade secrets, see 65 P.S. Section 67.708(b)(11), this exemption is inapplicable if the records are financial records.”⁶ The Officer then went on to find that the requested records are indeed financial records, and therefore never reached the issue.

Similarly, this court has found the requested records to be financial records and therefore, not subject to the confidential proprietary information and trade secrets exemption of Section 708(b)(11). It is thus unnecessary to determine

⁶ See Final Determination at page 9.

whether the contracts at issue contain confidential proprietary information and trade secrets.⁷

ORDER

AND NOW, this 6th day of September 2017, for the foregoing reasons, the Petition for Review of Final Determination is hereby DENIED. The County shall provide copies of all residual waste contracts and per-ton rates charged by LCRMS to any customer after January 1, 2007,⁸ within thirty days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Austin White, Esq.
Rich Raiders, Esq., 210 West Penn Avenue, Robesonia, PA 19551
Gary Weber, Esq. (Lycoming Reporter)
Hon. Dudley Anderson

⁷ The County also argues, in its brief, that the exemption contained in Section 708(b)(1)(i) should be applied. That section exempts “a record, the disclosure of which ... would result in the loss of Federal or State funds by an agency or the Commonwealth”. The County fails to point to any state or federal funds which would be lost, however, merely positing that the County would “likely lose business if the requesters obtain the records sought.” The County’s argument that the consequent loss of the environmental stewardship fee (which is passed on to the Commonwealth) equates with a loss of state funds is disingenuous: the fact that the County is not the entity disposing of the waste does not mean that the waste will not be disposed of. Some other entity will be doing the disposing and collecting and transmitting to the State the stewardship fee. The State will not lose funds as a result of the County’s disclosure of these records.

⁸ Of course, only existing contracts need be provided; contracts already destroyed in accordance with County policy need not be provided.