

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TODD PYSHER,
Respondent

CIVIL ACTION NO. CV-17-647

v.

CLINTON TOWNSHIP VOLUNTEER
FIRE CO
Petitioner

AGENCY APPEAL - RTKL

OPINION AND ORDER

This matter comes before the Court on a petition from a final determination issued by the Pennsylvania Office of Open Records (“OOR”) regarding the applicability of Right to Know Laws (“RTKL”)¹ to a volunteer fire company. For the reasons that follow, this Court affirms the OOR’s determination that volunteer fire companies are local agencies subject to the RTKL.

FINDINGS OF FACT

1. On February 16, 2017, Respondent submitted a ‘Standard Right-to-Know Request Form’ (“Request Form”) to the OOR, requesting various financial records and meeting minutes from Petitioner, Clinton Township Volunteer Fire Company (“Fire Company”).
2. Attached to the Respondent’s Request Form were two attachments—a comprehensive list of the records requested from the Respondent (“Attachment 1”), and a statement indicating the reasons upon which the Respondent was seeking these particular records (“Attachment 2”).
3. Attachment 1 indicated that the records sought were: copies of written loan agreements to members of the Fire company dating back ten years; all copies of Fire Company meeting minutes and bank statements showing loan transactions dating back ten years; a copy of

¹ 65 P.S. §§ 67.101 *et seq.*

Form 990 filed with the Internal Revenue Service for calendar year 2015; and a number of itemized bills for Fire Company services and utilities, some dating as far back as 1999.

4. Attachment 2 indicated that Respondent was concerned that there were surreptitious loan transactions being made between the fire chief (Todd Winder), his brother, who was the treasurer of the Fire Company (Ronald Winder), and their father, who was a Trustee of the Fire Company (Wilbur Winder).
5. In a letter dated February 13, 2017, Solicitor for the Petitioner responded to Respondent's request, indicating that it would not respond to Respondent's request because Petitioner was not a local agency, and therefore was not subject to the RTKL.
6. On February 21, 2017, Dave Bohman and WNEP-TV filed a Request Form seeking the same records as those sought by Respondent. This Request Form was not responded to within five business days, and was therefore deemed denied on February 28, 2017.
7. Nonetheless, Mr. Bohman and WNEP-TV's request was met by a letter from Solicitor for the Petitioner dated March 1, 2017. This letter mirrored the letter previously sent to Respondent.
8. On March 31, 2017, the OOR issued a final determination with regards to the Respondent's request for records, concluding that the Fire Company is a local agency subject to the RTKL.
9. On April 10, 2017, the OOR issued a similar final determination with regards to Mr. Bohman and WNEP-TV's request for records, concluding again that the Fire Company is a local agency subject to the RTKL.
10. The appeal at bar was brought pursuant to a timely appeal filed by Respondent on April 24, 2017, which requested that the decision of the OOR be reversed.

11. The following three issues were raised on appeal: (1) whether Petitioner is precluded from alleging that it is not a “local agency” by collateral estoppel; (2) whether the Fire Company is a local agency subject to the RTKL; and (3) whether Respondent is entitled to attorney fees due to Petitioner’s bad faith denial of public records.

CONCLUSIONS OF LAW

Standard of Review

12. “[A] de novo standard of review applies to appeals from the OOR under the RTKL.” *Bowling v. Office of Open Records*, 75 A.3d 453 n.5 (Pa. 2013).
13. The “scope of review is broad or plenary” for appeals from the OOR. *Id.* at 477.
14. “The RTKL requires both the Commonwealth Court and the courts of common pleas . . . to render decisions that ‘**contain findings of fact and conclusions of law based upon the evidence as a whole.**’” *Id.* at 548 (emphasis in original).
15. “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).

Collateral Estoppel Conclusions of Law

16. Collateral estoppel applies if: “1) the issue decided in the prior case is identical to the one presented in the later case; 2) there was a final judgment on the merits; 3) the party against whom the plea is asserted was a party or in privity with a party to the prior case; 4) the party against whom the doctrine is asserted or his privy has had a full and fair opportunity to litigate the issue in the prior proceeding; and 5) the determination in the

prior case was essential to the judgment therein.²” *Mellon Bank v. Rafsky*, 535 A.2d 1090, 1093 (Pa. Super. 1987).

17. The doctrine of collateral estoppel is not barred from being asserted simply because an appeal has been brought pursuant to the final determination of an administrative agency.³
18. A party does not have standing to appeal an order that has been entered in his or her favor⁴, as this party is not aggrieved and therefore does not satisfy the requirements of Pa. R.A.P. 501.
19. As the non-aggrieved party in *Kirchner*, Petitioner did not have standing to appeal the order, and therefore did not have a full and fair opportunity to litigate the issue of ‘local agency’. As such, Petitioner is not precluded from raising that issue in the present case.

‘Local Agency’ and RTKL Conclusions of Law

20. In pertinent part, ‘local agency’ is defined by the RTKL as “[a]ny local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.” 65 P.S. § 67.102 (emphasis added).
21. “Similar governmental entity” is defined neither in the RTKL nor in the Statutory Construction Act, 1 Pa.C.S. § 1991.

² *Kirchner v. Clinton Twp. Volunteer Fire Co.*, OOR Dkt. AP 2017-0097, 2017 Pa. O.O.R.D. LEXIS 195 is the final determination that Respondent cites to aver that collateral estoppel should preclude raising the issue of ‘local agency’ in the case at bar. In *Kirchner*, the OOR could have reached a judgment in favor of the Fire Company on one of two issues: (1) whether the Fire Company was a local agency, or (2) whether the records sought existed. When there are one or more independently sufficient alternative findings, the “essential to the judgment” element of collateral estoppel is, from a literal reading, unsatisfied. However, the Third Circuit has held that “[w]e recognize that such determinations do not fulfill the necessity requirement . . . in a strict sense but, just as we did not quibble about the necessity principle in the context of declaratory judgments, neither will we do so in the context of alternative holdings that have been actually litigated and decided. *Jean Alexander Cosmetics, Inc. v. L’Oreal USA, Inc.*, 458 F.3d 244, 255 (3rd Cir. 2006) (internal citations omitted).

³ “When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it . . . the court will not hesitate to apply red judicata principles.” *Frederick v. American Hardware Supply Co.*, 557 A.2d 779, 780 (Pa. Super. 1989).

⁴ *Estate of Pendergrass*, 26 A.3d 1151, 115 (Pa. Super. 2011).

22. Based on (1) the plain language of the phrase “similar governmental entity” and (2) the way in which other statutory law encompasses volunteer fire companies within the definition of “similar governmental entity,”⁵ a volunteer fire company does qualify as a local agency with respect to the RTKL.

Attorney Fees Conclusions of Law

23. The court reversing a final determination may award reasonable attorney fees and costs of litigation if the court finds that “the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of [the RTKL].” 65 P.S. § 67.1304.

24. Because the role of fact finder belongs to the court reviewing the appeal,⁶ and because the record is insufficient to show bad faith on the part of Petitioner without undue speculation, no attorney fees may be awarded

DISCUSSION

The Court will discuss the threshold issue of collateral estoppel first, followed by a discussion of why the Fire Company is a local agency subject to the RTKL. Lastly the Court will explain why the Respondent is not entitled to attorney fees.

As a preliminary matter, this Court finds that collateral estoppel does not preclude Petitioner from asserting that it is not a local agency. Respondent avers that because the question of ‘local agency’ was raised in *Kirchner*, was not decided in favor of Petitioner, and was subsequently not appealed by Petitioner, that Petitioner did not preserve its right to appeal this issue. However, *Kirchner* was decided in favor of Petitioner on a separate issue. As such, Petitioner was not the

⁵ Political Subdivision Tort Claims Act, 42 Pa.C.S. §§ 8501 *et seq.*; *see also* Judicial Code, 42 Pa.C.S. § 102.

⁶ 65 P.S. § 67.1304; *Bowling*, 75 A.3d at 469-70.

aggrieved party in *Kirchner*, and therefore had no standing to appeal the individual issue of ‘local agency’ pursuant to Pa. R.A.P. 501. Because Petitioner had no standing to appeal this particular issue, Petitioner did not have “a full and fair opportunity to litigate the issue in the prior proceeding,” and each requisite element necessary to assert collateral estoppel was therefore not satisfied. *Mellon Bank*, 535 A.2d at 1093.

1. WHETHER VOLUNTEER FIRE COMPANIES FALL WITHIN THE DEFINITION OF ‘LOCAL AGENCIES.’

Because neither the RTKL nor the Statutory Construction Act, 1 Pa.C.S. § 1991, define “similar governmental entity,” the term must be construed in accordance with its plain meaning. *See, Commonwealth v. McCoy*, 962 A.2d 1160 (Pa. 2009). Volunteer fire companies have been deemed local agencies by several statutes that do not explicitly include the fire companies in their definitions, and by other Pennsylvania county courts. *See, Braden v. Lower Augusta Volunteer Fire Dep’t.*, CV-2013-905 (Northumberland Cty. Com. Pl., August 7, 2013).

The Political Subdivision Tort Claims Act, 42 Pa.C.S. §§ 8501, et seq. (“PSTCA”) defines local agency as “[a] government unit other than the Commonwealth government . . . include[ing], but is not limited to, an intermediate unit; municipalities cooperating in the exercise or performance of governmental functions, powers or responsibilities . . . ; and councils of government and other entities created by two or more municipalities” 42 Pa.C.S. § 8501. The Commonwealth Court in *Zern v. Muldoon*, 516 A.2d 799 (Pa. Commw. Ct. 1986) reasoned that volunteer fire companies qualified as local agencies entitled to immunity under the PSTCA because they were sufficiently governmental in nature.

The court in *Zern* determined that volunteer fire companies qualify as government agencies because “the functions and accomplishments of volunteer fire departments affix to [volunteer fire companies’] continued existence a public, governmental character.” *Zern*, 516

A.2d at 805. The *Zern* court drew from the history of firefighting in this Commonwealth, noting that volunteer firefighting dated back all the way to the 1700s, and that volunteer firefighting “effectively replaced the City's early efforts to combat fires” such that the city of Philadelphia began appropriating monies to the companies in 1811. *Id.* at 801.

Volunteer fire companies also fall under the definition of “government agency” in the Judicial Code. 42 Pa.C.S. § 102. The Judicial Code defines governmental agencies as “[a]ny Commonwealth agency or any political subdivision or municipal or other local authority, or any officer or agency of any such political subdivision or local authority.” *Id.* Following the *Zern* court, the court in *Wilson v. Dravosburg Volunteer Fire Dept.*, 516 A.2d 100 (Pa. Commw. Ct. 1986) explicitly concluded that “‘local agency’ . . . include[s] volunteer fire companies as a government unit entitled to immunity under the 1980 Immunity Act.” *Wilson*, 516 A.2d at 102.

While the court in *Wilson* did “stress . . . that [the court’s] conclusion that volunteer fire companies are local agencies is limited to [the court’s] analysis of the 1980 Immunity Act,” *id.*, it would be wholly inconsistent with the spirit of the analysis in both *Zern* and *Wilson* to conclude that a definition of local agency that encompasses volunteer fire companies for the sake of immunity should not encompass the companies in other respects.

The Pennsylvania rules of statutory construction support the conclusion that volunteer fire companies are local agencies. The term “local agency” and “government agency” have been defined and therefore “acquired a peculiar and appropriate meaning.” Those terms “shall be construed according to such peculiar and appropriate meaning or definition. 1 Pa.C.S. § 1903. Furthermore, under the rules of statutory construction, ‘similar governmental entity’ is a term in a statute that “shall be liberally construed to effect their objects and to promote justice.”¹ Pa.C.S. § 1928.

The Supreme Court of Pennsylvania concluded that the test to determine whether a volunteer fire company is a local agency is as that “[a] volunteer fire company created pursuant to relevant law and legally recognized as the official fire company for a political subdivision is a local agency.” *Guinn v. Alburdis Fire Company*, 614 A.2d 218, 219 n.2 (Pa. 1992). Absent an independent RTKL definition of “local agency,” an inquiry into whether a volunteer fire company is a local agency pursuant to the RTKL should employ the same analysis.

The fact that the Fire Company operates pursuant to the Second Class Township Code, 53 P.S. § 66553 (“Township Code”), demonstrates both that the Fire Company was created pursuant to relevant law, and that it is recognized as the official fire company. Clinton Township appropriates payments to the Fire Company from its budget, and pays several of the Fire Company’s expenses directly from its budget. The Township Code also authorizes the Clinton Township to make regulations for the government of fire companies, bars the organization and operation of fire companies unless approved by resolution by the board of supervisors, and requires fire companies to submit annual reports of the use of appropriated moneys to the township.

By taking on a government function and operating with funds appropriated by the township, the Fire Company subjects itself to the disclosure of documents, including those requested in the present case, pursuant to the RTKL. Despite the lack of an explicit definition of “similar governmental entity” under the RTKL, a plain reading of the phrase considered in tandem with the way by which other statutory law defines “local agency” leads to the conclusion that the Fire Company must be considered a “similar governmental entity,” and therefore a “local agency,” under the RTKL.

2. WHETHER RESPONDENT IS ENTITLED TO ATTORNEY FEES DUE TO PETITIONER'S BAD FAITH DENIAL OF RECORDS.

The RTKL provides, in relevant part, that if a court reverses a Final Determination, that court may award reasonable attorney fees and costs of litigation if the court finds that “the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of this act.” 65 P.S. § 67.1304.

Here, there is insufficient evidence in the record to conclude that Petitioner acted in bad faith by raising the issue of local agency again, as it did in *Kirchner*. This proposition is reinforced by this Court’s conclusion that collateral estoppel does not preclude the Petitioner from raising the issue in the present case, as the issue was preserved post-*Kirchner*. Because no evidence in the record indicates to the contrary, this Court finds that the Petitioner did not act in bad faith by raising the issue of local agency or by denying the Respondent’s request, and that Respondent is not entitled to attorney fees.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 9th day of **August, 2017**, following argument and for the reasons stated, it is hereby **ORDERED** and **DIRECTED** that Clinton Township Volunteer Fire Company's Petition for Review of a final determination by OOR is **DENIED** and the determination by OOR issued on March 10, 2017 is **AFFIRMED**. The Clinton Township Volunteer Fire Company **shall** provide access to all responsive records within thirty (30) days of this order.

BY THE COURT,

August 9, 2017

Date

Richard A. Gray, J.

c: Christopher H. Kenyon, Esquire
Joseph Orso, Esquire
Eric Flagg, Judicial Intern, c/o Judge Gray's Office