

## OOR Holds that Individual Names and Addresses contained in Stormwater Management Agreements and Grant of Easement Agreements Are Not Protected by the Constitutional Right to Privacy

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In *Rosner v. Buckingham Township*, AP 2020-0623 (“*Rosner I*”), the request sought Stormwater Management Agreements and Grant of Easement Agreements relating to certain properties within the Township. The Township redacted the names and home addresses from residents and the requester appealed.

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.*

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. To determine whether the constitutional right to privacy precludes disclosure of an individual’s personal information, the OOR must weigh privacy interests and the extent to which they may be invaded, against the public benefit which would result from disclosure.

In *Rosner I*, the OOR stated:

It is well established that ‘land use matters involve public rather than private interests.’ *BR Assocs. v. Bd. of Comm’rs of Twp. Of Upper St. Clair*, 136 A.3d 548, 558 (Pa. Commw. Ct. 2016). Grants of easement and stormwater management agreements impact more than the current property owner. A grant of easement, for example, is ‘generally assume[d] ... to last forever unless otherwise indicated in the document creating the easement.’ Likewise, since stormwater does not respect property boundaries, a stormwater management agreement by its very nature will affect, at a minimum, adjoining properties—and, depending on geography and the scope of the agreement, could affect significantly more properties. Moreover, stormwater management is fundamental to the public health, safety and welfare of the Township’s residents. The fact that these easements and agreements have been entered into with a public body, and action to approve them was taken at public meetings, also weighs against the Township’s argument regarding the constitutional right to privacy. The public has a strong and readily discernable interest in knowing when such easements and agreements are entered into by a government agency.

Courts have noted that ‘[t]he disclosure of personal information such as home addresses, reveals little, if anything about the workings of government[.]’ *Pa. State Educ. Ass’n*, 148 A.3d 145 (quoting *PSEA v. Commonwealth*, 981 A.2d 383, 386 (Pa. Commw. Ct. 2009)). However, there are situations where disclosure of certain personal information serves a strong public interest. Here, the requested records relate to the overall health and safety of residents and reflect significant actions taken by the Township.

Accordingly, the OOR found that the public interest in disclosure of the Stormwater Management Agreements and Grant of Easement Agreements outweighed any privacy interests and ordered that the requested records be provided without redaction.

This determination is an important reminder that names and home addresses are not always exempt from disclosure. Nevertheless, because privacy rights are implicated when responsive records include the names and home addresses of private citizens, Open Records Officers should consult with their solicitors prior to disclosing this information.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.