

THE COMMONWEALTH COURT OF PENNSYLVANIA

Borough of West Easton, :
Appellant :
 :
v. : No. 1527 C.D. 2012
 : Submitted: February 15, 2013
Tricia J. Mezzacappa :

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: June 12, 2013

The Borough of West Easton (Borough) appeals an order of the Court of Common Pleas of Northampton County (trial court) denying the Borough's appeal of a final determination of the Office of Open Records (Open Records). In its final determination, Open Records held that the Borough improperly denied Tricia Mezzacappa's (Requester) request for public records under the Right-to-Know Law¹ for the stated reason that Requester had not paid \$30.25 in fees owed for a previous records request. Finding no error by the trial court in affirming Open Records' final determination, we affirm.

On June 17, 2011, Requester submitted a request (June Request) with the Borough's Open Records Officer for copies of 11 records. On June 22, 2011, Requester sent an e-mail to the Borough's clerk explaining that she wanted a copy

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101-67.3104.

of only two of the 11 records; the remaining records were requested for inspection only.

One month later, on July 22, 2011, Kelly Gross, the Borough's Open Records Officer, sent a letter to Requester acknowledging receipt of her June Request. The letter acknowledged that the requested documents were public records and stated that they would be made available upon payment of \$30.25 for the cost of copying. Gross's letter noted that the documents were pulled on July 13, 2011. The letter also acknowledged Requester's June 22 e-mail.

On September 16, 2011, Requester submitted a new request (September Request) to the Borough for records, which is the subject of the present appeal. On September 20, 2011, the Borough denied Requester's September Request because she had not yet paid the outstanding \$30.25 invoice for copying the records that were the subject of the June Request. Requester appealed the Borough's denial to Open Records.

Open Records granted Requester's appeal and ordered the Borough to provide the documents requested in the September Request. Open Records acknowledged that Section 901 of the Right-to-Know Law² requires a requester to

² Section 901 provides:

Upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. *All applicable fees shall be paid in order to receive access to the record requested.* The time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency. *If the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.*

65 P.S. § 67.901 (emphasis added).

pay all applicable fees for access to requested public records; however, Open Records held that this requirement was inapplicable. Further, because the Borough had not responded to Requester's June Request within five days, as required by Section 901, the request was deemed denied. Open Records held that Requester was not required to pay fees for a request that was deemed denied. The Borough appealed to the trial court.

The trial court agreed with Open Records' determination that the Borough could not deny Requester's September Request for non-payment of the \$30.25 invoice that related to the June Request because the June Request was deemed denied. The trial court also rejected the Borough's argument that Requester was barred by the doctrine of *res judicata* from questioning the \$30.25 invoice because she had not appealed an entirely separate denial of the Borough of her August 2011 request for records. The Borough's appeal to this Court followed.³

On appeal, the Borough raises two arguments. First, the Borough challenges, as not supported by the record, the trial court's finding that the Borough did not copy any records responsive to the June Request prior to July 22, 2011. The Borough also contends that the trial court erred in concluding that the Borough violated the five-day deadline in Section 901 of the Right-to-Know Law. Second, the Borough argues that Requester was precluded from contesting whether she owed \$30.25 for her June Request because Open Records had previously

³ This Court's review is limited to determining whether findings of fact are supported by competent evidence or whether the trial court committed an error of law, or an abuse of discretion in reaching its decision. *Kaplin v. Lower Marion Township*, 19 A.3d 1209, 1213 n.6 (Pa. Cmwlth.), *appeal denied*, 612 Pa. 693, 29 A.3d 798 (2011).

denied as untimely Requester's appeal of a request filed on July 13, 2011, that the Borough had denied for non-payment of the same \$30.25.⁴

Having reviewed the record and the arguments of the parties, we hold that the trial court properly denied the Borough's appeal because Requester did not owe fees from her June Request that had resulted in a deemed denial. Because the trial court has thoroughly analyzed the issues, and correctly applied the law, this Court affirms the trial court's order on the basis of the well-reasoned opinions of the Honorable Anthony S. Beltrami in *Borough of West Easton v. Tricia J. Mezzacappa*, (Northampton County Court of Common Pleas, No. C-48-CV-2011-11066, filed September 24, 2012) and *Borough of West Easton v. Tricia J. Mezzacappa*, (Northampton County Court of Common Pleas, No. C-48-CV-2011-11066, filed July 3, 2012).⁵

MARY HANNAH LEAVITT, Judge

⁴ *Mezzacappa v. West Easton Borough*, OOR Dkt. AP 2011-1090.

⁵ Requester asks this court to impose sanctions and award costs. Not finding the Borough's appeal was frivolous, this Court will not impose sanctions. *See* Section 1304 of the Right-to-Know Law, 65 P.S. § 67.1304(b) (stating that "[t]he court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to an agency or the requester if the court finds that the legal challenge under this chapter was frivolous."). Further, to petition for costs, Requester "shall state [costs] in an itemized and verified bill of costs which [she] shall file with the Prothonotary within 14 days after entry of the judgment or other final order." PA. R.A.P. 3751. Here, Requester has not followed the proper procedure for petitioning for costs, and therefore her request is denied.

THE COMMONWEALTH COURT OF PENNSYLVANIA

Borough of West Easton,	:	
Appellant	:	
	:	
v.	:	No. 1527 C.D. 2012
	:	
Tricia J. Mezzacappa	:	

ORDER

AND NOW, this 12th day of June, 2013, the order of the Court of Common Pleas of Northampton County dated July 3, 2012, in the above-captioned matter is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge