



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JEREMY BOREN on behalf of the	:	
PITTSBURGH TRIBUNE-REVIEW,	:	
Complainant	:	
	:	Docket No.: AP 2010-1098
v.	:	
	:	
MONTOUR SCHOOL DISTRICT,	:	
Respondent	:	

INTRODUCTION

Jeremy Boren, a reporter for the *Pittsburgh Tribune-Review*, (the “Requester”) submitted a request (the “Request”) to the Montour School District (“District”) seeking a completed audit pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”). The District denied the Request, citing the exemptions for noncriminal investigative records and personnel records. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied** and the District is not required to take any further action.

FACTUAL BACKGROUND

On September 27, 2010, the Request was filed, seeking

The audit prepared by accounting firm Schnieder Downs regarding the ... District’s business office and manager. The [D]istrict commissioned this

audit in late Spring 2010 to examine accounting issues related to a sizable budget surplus.

I am requesting a copy of that completed audit, which was paid for with taxpayer money and describes how taxpayer dollars are used.

On October 4, 2010, the District invoked a thirty-day extension to respond pursuant to 65 P.S. § 67.902(b). On November 4, 2010, the District denied the Request, citing the exemptions for noncriminal investigative records (65 P.S. § 67.708(b)(17)(ii)) and for personnel records (65 P.S. § 67.708(b)(7)).

On November 16, 2010, the Requester appealed to the OOR, alleging that “the audit was performed to investigate allegations of wrongdoing by the [D]istrict’s *former* business manager Samuel F. Reichl III” and, consequently, was subject to public access. The OOR invited both parties to supplement the record. On November 29, 2010, the District provided a position statement in support of its cited exemptions, as well as an affidavit from its Solicitor affirming the factual averments contained therein.

LEGAL ANALYSIS

The RTKL is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here,

neither party requested a hearing, the facts are undisputed, and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The District is a local agency required to disclose public records. *See* 65 P.S. § 67.302. Records in possession, custody, or control of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) 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). Preponderance of the evidence has been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW DICTIONARY 1064 (8th ed.); *see also* *Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

The RTKL provides that “investigative materials, notes, correspondence and reports” that relate “to a noncriminal investigation” may be withheld as exempt from public access. *See* 65 P.S. § 67.708(b)(17)(ii). In order for this exemption to apply, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *See Department of Health v. OOR*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Based on the underlying purpose of the RTKL, however, “exemptions from disclosure must be narrowly construed.” *Bowling*, 990 A.2d at 824.

In support of this exemption, the District alleged in its verified position statement that the District contracted with a public accounting and business advisory firm to investigate mismanagement of programs at the District, as a result of

apparent mismanagement of programs, questionable board practices, possible violations of the Public School Employees Retirement System and IRS rules, failure to apply for state reimbursements and other matters of concern. [The Acting Superintendent] reported to the [District's] Board that the District had a \$28.7 million fund balance.

The District affirmed that the firm's report "detailed numerous compliance and mismanagement issues that fell under Mr. Reichl's supervision." The investigation culminated in Mr. Reichl's resignation in accordance with a negotiated settlement agreement. Based on the evidence presented, the OOR finds that District satisfied its burden under 65 P.S. § 67.708(b)(17) by establishing that a "detailed examination" was conducted regarding a noncriminal matter. *See, e.g., Harris v. Dept. of Corrections*, OOR Dkt. AP 2010-0830, 2010 PA O.O.R.D. LEXIS 781; *Barkley v. Greensboro Borough*, OOR Dkt. AP 2010-0714, 2010 PA O.O.R.D. LEXIS 704; *Michak v. Pennsylvania Dept. of State*, OOR Dkt. AP 2010-0715, 2010 PA O.O.R.D. LEXIS 705.

CONCLUSION

For the foregoing reasons, Requester's appeal is **denied** and the District is not required to take any further action. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal to the Allegheny County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL.

This Final Determination shall be placed on the OOR website at:
<http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: December 7, 2010



APPEALS OFFICER
J. CHADWICK SCHNEE, ESQ.

Sent to: Jeremy Boren; Robert Junker, Esq.