



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>SIMON CAMPBELL,</b>	:	
<b>Complainant</b>	:	
	:	<b>Docket No. AP 2010-1113</b>
<b>v.</b>	:	
	:	
<b>FOX CHAPEL AREA SCHOOL DISTRICT,</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

Simon Campbell (the “Requester”) submitted a request to Fox Chapel Area School District (“District”) seeking Statements of Financial Interest and property tax assessment records pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”). The District redacted home addresses based upon a court order. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part and denied in part** and the District is required to take further action as directed.

**FACTUAL BACKGROUND**

On November 15, 2010, the Requester submitted a right-to-know request seeking, in pertinent part, copies “#2 without any redactions, [of] the most recently filed Statement of Financial Interest Forms for all currently employed public school employees...#3 the names of all currently employed public school employees ...[and] #4 property tax assessment records for all properties that are resident in the [District]” without redaction of name/addresses (the “Request”)

David McCommons, Open Records Officer (ORO), timely responded by providing the Statements of Financial Interest (“Statements”) with redaction of home addresses based upon the preliminary injunction issued by the Commonwealth Court in *PSEA v. OOR, et al*, on July 28, 2009, and reinstated by the Pennsylvania Supreme Court on November 1, 2010, 195 MM 2010 (Pa. November 1, 2010), 2010 Pa. LEXIS 2520 (“Injunction”), arguing that home addresses are protected for the safety of employees and advised that it does not maintain property tax assessment records (“Response”). The Response did not contain appeal information.

The Requester timely appealed to the OOR arguing the Statement is a public record under the Ethics Act, 65 Pa. C.S. §1104(e), and that employees waived any asserted privacy interest in their home address information because they are not required to put their home addresses, and may instead use their work address (“Appeal”). In support, he provides the full form and instructions for completing the Statements. He also argues that the District failed to meet its burden that the property tax assessment records are not maintained by the District when that is one of its governmental functions and are performed by its tax collectors. He further argues that the records are public under 72 P.S. §5341.6, pertaining to tax assessment records.

The District supplemented the record with an e-mail showing that the Statements, Employee List and Fair share excel sheet were provided, a letter explaining the grounds for the Response and a verification of its ORO pursuant to 18 Pa. C.S. §4904 as to the accuracy of the facts in the letter (“Verification”). The ORO asserts that the home addresses cannot be released by the OOR and are protected under Section 708(b)(1)(ii), and adds that requiring release of home addresses is impossible and unconstitutional, and cannot be justified because there is no “legitimate need or reasonable interest of a requester” for the information. The ORO verified that only the home addresses were redacted from the Statements provided to the Requester.

With regard to the property assessment records, the District explains that the Office of Property Assessment of Allegheny County (OPA) performs the assessments and is involved in the appeals process at the County level, such that the District “never has a list of all assessments up to date as a District record.” The ORO, also the Assistant Superintendent, attests that the District does not participate in the processing “except to receive added payments or make refunds as advised by a tax collector” and that each of its 6 composite municipalities has an elected tax collector. While incomplete and “never totally accurate,” the District advised it may supply any list of tax assessments it “may have to Requester” only after it has redacted the names of owners based upon the Injunction.

The Requester acknowledges that he received the names of all current public school employees, and withdrew that part of his Request. He contends that the District did not clearly mark which information is redacted, as it may correspond to Block #2 (address), or Block #8 pertaining to real estate interests. He also argues the property assessment records do not necessarily reflect a “home address” and that it is not for the District to make that assumption.

The only records to which access has been appealed are the redactions of addresses from the Statements and the property tax assessment records alleged to document a District function.

### **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 and the OOR has the requisite and necessary information before it, through written testimony, to properly adjudicate the matter.

The District is a local agency subject to the RTKL and 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. The District cited the Injunction, protecting and preventing release of home addresses of public school employees, as its grounds for redacting home addresses from the Statements. The District advised it does not maintain the property assessment records. As the District failed to set forth other legal grounds with citation in its Response, it is precluded from raising them during the appeal, *see Signature Information Solutions, LLC v. Aston Township*, 995 A.2d 510 (Pa. Commw. 2010), and they shall not be addressed here.<sup>1</sup>

**1. Home addresses of public school employees cannot be ordered to be released.**

The Injunction reinstates the initial injunction issued on July 28, 2009, which provides: “The Office of Open Records is enjoined from directing the release of the home addresses of home addresses of public school employees pursuant to the Right-to-Know Law until further order of this court.” The Supreme Court’s Order, dated November 1, 2010, specifies that its “Order of August 17, 2010, affirming the entry of the preliminary injunction on July 28, 2009 shall remain in effect.” Accordingly, by judicial order, the OOR cannot direct release of home addresses of public school employees.

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<sup>1</sup> As the District raises a common law right to privacy and Section 708(b)(1)(ii) in its supplemental letter for the first time, these grounds are not properly before the OOR.

The District verified that its redactions from the Statements were limited to home address information, and the only Statements at issue are those of public school employees. Thus, although the Statements are public records as a matter of statute, *see* 65 Pa.C.S. § 1104(e), *see also* *Campbell v. Bucks County IU*, OOR Dkt. AP 2010-0843, the OOR is constrained by the Supreme Court’s Injunction<sup>2</sup> to refrain from directing their disclosure whilst the underlying litigation in *PSEA v. DCED, et al*, 59 MAP 2010 is pending.

## **2. Property tax assessment records are subject to disclosure.**

The District did not provide any grounds for withholding property tax assessment records; rather, it stated that it does not “maintain” a list of those records and that the assessments are constantly in flux due to the number of appeals pending with regard to any assessments. The District does not deny that the property tax assessment records are within its possession, custody or control, and from the description offered and verified by the ORO, appears to have custody of many of the records and access to the records as a whole. The District admits it performs a role in property tax assessment, and given that it receives monies for and processes them as part of the process including the tax collectors and the OPA, the property tax assessments qualify as “records” documenting a transaction or activity of the District.

The fact that the District does not maintain an up-to-date accurate “list” of property assessments does not relieve it of the duty to provide property tax assessment records in the form in which it maintains them. The Requester sought property assessment records, not a list, and the District asserted no basis for withholding the records in its control as they relate to a transaction of the District. Property assessment records are public, and like the Statements under the Ethics Act, are public under the statutory provisions pertaining to assessments. *See, e.g.*, 72 P.S. §5452.18 (for

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<sup>2</sup> The judicial order at issue does not reach the public nature of the records, and thus does not pose a direct conflict with the Ethics Act.

counties of the second class, entitled “Records Public” and stating “Any taxpayer may, at any time during office hours, have access to the records of taxable property and be permitted to copy therefrom a list of taxable property.”). Therefore, the District is required to disclose them. The District states that if disclosure is ordered, it will redact the names of public school employees. The Injunction is specific in that it precludes the OOR from directing the release of *home addresses*, not names, of public school employees, and redaction of names is not permitted.

### CONCLUSION

For the foregoing reasons, Requester’s appeal is **granted in part and denied in part** and the District is directed to disclose the property tax assessment records in its possession, custody or control to the Requester within thirty (30) days. The OOR cannot order the disclosure of home addresses of public school employees, requiring the District to provide the property tax assessment records from which only the home addresses of public school employees may be redacted.

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 17, 2010**



**LUCINDA GLINN, ESQ.**  
**APPEALS OFFICER**

Sent to: Simon Campbell; David McCommons for District