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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA PENNSYLVANIA OPEN RECORDS

ALLEGHENY COUNTY DEPARTMENT
OF ADMINISTRATIVE SERVICES,

Petitioner,

A SECOND CHANCE, INC.,

Petitioner,

v.

JAMES PARSONS and WTAE-TV,

Respondent,

and

PENNSYLVANIA OFFICE OF OPEN
RECORDS,

Interested Party.

STATUTORY APPEALS DIVISION

NO. S.A. 09-1124

NOTICE OF APPEAL

Judge W. Terrence O'Brien

Filed on behalf of
A SECOND CHANCE, INC.

Counsel of Record for this Party:

ANTHONY R. SOSSO, JR., Esquire
PA I.D. No. 65457

1310 Freeport Road
Pittsburgh, PA 15238

(412) 963-1837

FILED
10 MAY -3 PM 4:17
DEPT. OF COURT RECORDS
ALLEGHENY COUNTY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ALLEGHENY COUNTY DEPARTMENT
OF ADMINISTRATIVE SERVICES,
Petitioner,

STATUTORY APPEALS DIVISION

NO. S.A. 09-1124

and

A SECOND CHANCE, INC.,
Petitioner

v.

JAMES PARSONS and WTAE-TV,
Respondent,

and

PENNSYLVANIA OFFICE OF OPEN
RECORDS,

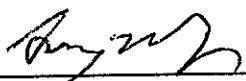
Interested Party.

NOTICE OF APPEAL

Notice is hereby given that Petitioner, A Second Chance, Inc., hereby appeals to the Commonwealth Court of Pennsylvania from the order entered in this matter on April 8, 2010.

This order has been entered in the docket as evidenced by the attached copy of the docket entry.

Respectfully submitted,

By: 

Anthony R. Sosso, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ALLEGHENY COUNTY DEPARTMENT
OF ADMINISTRATIVE SERVICES,
Petitioner,

STATUTORY APPEALS DIVISION

NO. S.A. 09-1124

and

A SECOND CHANCE, INC.,
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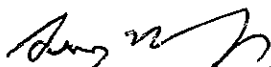
Interested Party.

REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter, the official court reported is hereby ordered to produce, certify, and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

~~On May 3, 2010, counsel for Petitioner A Second Chance, Inc. has made a partial payment to the official Court Reporter with the balance to be paid upon completion.~~

Respectfully submitted,

By: 
Anthony R. Sosso, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALLEGHENY COUNTY DEPARTMENT
OF ADMINISTRATIVE SERVICES

Petitioner,

v.

A SECOND CHANCE, INC.,

Intervenor/Petitioner,

SA 09 - 001124

v.

JAMES PARSONS and WTAE-TV,

Respondents,

and

PENNSYLVANIA OFFICE OF OPEN
RECORDS,

Interested Party.

ORDER OF COURT

AND NOW, this 8th day of April, 2010, after hearing, and in consideration of the record, pleadings, briefs and arguments of the parties, it is hereby ORDERED that Petitioner, Allegheny County Department of Administrative Services, obtain the names, birth dates and hire dates of all employees of A Second Chance, Inc. who provide services to Allegheny County pursuant to Allegheny County's agreement with A Second Chance, Inc. and provide such information to respondents within thirty days of the above date.

BY THE COURT

J. Brian J.

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SA-09-001124

Allegheny County vs Parsons etal

Filing Date:	10/08/2009	Case Type:	Local Agency Appeal
Filing Time:	11:00:12	Court Type:	Arbitration
Related Cases:	--	Current Status:	Order of Court
Judge:	O'Brien W. Terrence	Jury Requested:	No
Amount In Dispute:	\$.00		

*Click on PartyID hyperlink to see Alternative name for the party.

Parties							
-- Litigants --							
ID	LName	FName	MI	Type	Address	Initial Service Completion	Attorney
AC	Allegheny County	---	---	Plaintiff	No Default Address Available	(412)6441120	--
@1691452	Pennsylvania Office of Open Records	---	---	Interested Party	No Default Address Available	--	--
@677363	Second Chance Inc.	---	---	Interested Party	204 North Highland Avenue Pittsburgh PA 15206	--	--
@1691450	Parsons	James	---	Defendant	400 Ardmore Boulevard Pittsburgh PA 15221	--	--
@1691451	WTAE-TV	---	---	Defendant	400 Ardmore Boulevard Pittsburgh PA 15221	--	--
-- Attorney --							
ID	LName	FName	MI	Type	Address	Phone	
56864	Wojcik	Michael	H	Plaintiff's Attorney	445 Fort Pitt Blvd. Suite 300 Pittsburgh PA 15219	(412)3501120	
76027	Strassburger	David	A	Defendant's Attorney	444 Liberty Ave Suite 2200 Pittsburgh PA 15222	--	
@1698308	Buglione	Audrey	---	Attorney	No Default Address Available	--	
65457	Sosso Jr.	Anthony	R	Attorney	35th Floor FreeMarkets Center 210 Sixth Avenue Pittsburgh PA 15222	--	
-- Non Litigants --							
ID	LName	FName	MI	Type	Address	Phone	
@880854	Re	Noreen	A	Court Reporter	Court Reporter County Office Building Pittsburgh PA 15219	--	

JOBRIEN	O'Brien	W.	Terrence	Judge	705 City County Building Pittsburgh PA 15219	(412)3505898
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*Click on DocketType hyperlink to see Judgments for that Docket.
Document numbers in the DOCUMENT column may not be consecutive.

Docket Entries				
Filing Date	Docket Type	Docket Text	Filing Party	Document
04/08/2010	Order of Court	Dated 04/08/10, it is Ordered that Petitioner, obtain the names, birth dates and hire dates of all employees of A Second Chance, Inc. who provide services to Allegheny County pursuant to Allegheny County's agreement with A Second Chance, Inc. and provide such information to respondents within 30 days of the above date. O'Brien J. Copies mailed on 04/08/10.	O'Brien W. Terrence	Document 15
02/01/2010	Brief	of Respondents James Parsons and WTAE-TV	Parsons James	Document 14
01/19/2010	Brief in Support	of petition for judicial review of a final determination of the PA office of open records.	Second Chance Inc.	Document 13
01/19/2010	Reply to New Matter	of respondents James Parsons and WTAE-TV	Second Chance Inc.	Document 12
01/15/2010	Brief		Allegheny County	Document 11
01/11/2010	Notice of Proof	Of filing or delivery	Re Noreen A	Document 9
01/11/2010	Transcript of Proceedings	conciliation on Dec 15,2009	Re Noreen A	Docket Type Not Viewable from Internet
01/04/2010	Answer and New Matter	To ASCI petition for review of a final determination of the PA office of open records	WTAE-TV	Document 8
12/14/2009	Brief		Parsons James	Document 7
12/07/2009	Petition	To intervene as a petitioner	Second Chance Inc.	Document 6
12/04/2009	Motion & Order	Dated 12/04/2009 Motion for Admission Pro Hac Vice is granted and Stephen H. Yuhan is admitted to practice before the Allegheny Court of Common Pleas in the above captioned matter. Wettick, J. 2 notice sent 12/07/2009	Parsons James	Document 5
11/18/2009	Answer	To respondents' new matter	Allegheny County	Document 4
11/05/2009	Record	Of appearance	Pennsylvania Office of Open Records	Document 3
11/04/2009	Answer and New Matter	To petition for review of a final determination of the Pennsylvania Office of open records	Strassburger David A	Document 2

10/08/2009	Statutory Appeal	Notice of appeal of Pennsylvania Office of Open Records. Notice sent 10/13/09.	Allegheny County	Document 1
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Notice of Appeal was served upon all persons indicated below on this 3rd day of May, 2010, by United States Mail, first class, postage prepaid, which service satisfies the requirements of Pa.R.A.P.

121:

Audrey Buglione, Esq.
Hearing Officer
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Office of General Counsel
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The Honorable Judge W. Terrence O'Brien
Court of Common Pleas of Allegheny County
705 City-County Building
Pittsburgh, PA 15219

Allegheny County Office of Court Reporters
415 County Office Building
Pittsburgh, PA 15219

By



Anthony R. Sosso, Jr., Esquire
Counsel for Petitioner
A Second Chance, Inc.



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JAMES PARSONS	:	
and WTAE-TV	:	
Complainant	:	
	:	
v.	:	Docket Nos. AP 2009-0670
	:	
	:	
ALLEGHENY COUNTY	:	
DEPARTMENT OF	:	
ADMINISTRATIVE SERVICES,	:	
Respondent	:	
	:	

INTRODUCTION

Mr. James Parsons, a reporter for WTAE-TV, (the “Reporter”) submitted a request to the Allegheny County Department of Administrative Services (the “County”) seeking the payroll list of employees for one of the County’s contractors pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The County granted in part, but denied the portion of the request that sought the name of the employees, dates of birth and hire dates stating that it did not have possession of those records. The Reporter timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the Reporter’s appeal is **granted** and the County is required to take further action as set forth below.

FACTUAL BACKGROUND

On July 15, 2009, the Reporter submitted a right-to-know request to the County seeking the payroll list of employees for A Second Chance, Inc. The Reporter stated that he considered A Second Chance to be a contractor that performs an essential governmental function for Allegheny County Department of Human Services. He specifically requested that the payroll list include the full name of each employee, date of birth, job position/title, salary, and hire date. He asked that the record be provided in electronic format if it existed in that format. (“Request”). On July 27, 2009, after extending the deadline to respond, the County responded by granting the job position/title and salary information and provided it in electronic format. The County denied access to the name, date of birth and hire date for each employee. The County asserted that it was not in possession of that information and was not required to create a record that did not exist, citing Section 705 of the RTKL.

On August 3, 2009 the OOR received the Reporter’s appeal. In support of his appeal the Reporter stated that “Allegheny County contracts with A Second Chance to provide kinship (foster) care to children in Allegheny County.” He referred to A Second Chance’s Web site <http://www.asecondchance-kinship.com/index2.htm> which states that A Second Chance is a non-profit corporation that became a subcontracting agency of the County in 1994. The Reporter argued that the County is responsible for obtaining public information from its contractors citing *Wintermantel v. Multi-Purpose Stadium of Lackawanna County*, OOR Dkt. AP 2009-0184, *appeal upheld by SWB Yankees, LLC. v. Wintermantle, et al.*, (Lackawanna Cnty., September 9, 2009) and *Berrett v. East Stroudsburg University of Pennsylvania*, OOR Dkt. AP 2009-0100.

On September 4, 2009,¹ T. H. Johnson, Right to Know Officer for the County, provided information in support of the County's position. He reiterated the County's assertion that it did not have the requested information and "is not required by applicable state regulation or directive to maintain [the] information." The County stated that it has an office of Children and Youth Services within its Department of Human Services. He advised that the "Pennsylvania Department of Public Welfare (DPW) through its Office of Children Youth and Families (OCYF) establishes the fiscal and contractual documentation requirements that a county children and youth services agency must follow in connection with any expenditure of federal or state funds through a contract between the county children and youth services agency and a service provider."

The County referred to DPW-OCYF Bulletin No. 3170-09-01 which became effective on July 1, 2009 and establishes the fiscal and contractual documentation requirements. Relevant portions of the Bulletin were provided. The Bulletin states that a service provider must provide the county CYS agency the prior year's audited employee roster consisting of job title or position title. The Bulletin further provides that the roster can include either the employee name or a unique identifier as a substitute for the employee's name. Bulletin, pg. 21. The County stated that the 2007/2008 payroll roster provided by A Second Chance included employee numbers in lieu of names.² The County asserted that the provided payroll list represented "the full and complete contract information that County DHS is legally obligated by DPW-OCFY to maintain and that Second Chance is legally obligated by DPW-OCYF to provide." It argued that state

¹ On August 31, 2009 the OOR asked the Reporter, who is the sole holder of the authority to extend, for permission to extend the deadline for issuance of the Final Determination in order to allow the County additional time to provide information in support of its denial. The OOR also asked the County to provide the legal and factual basis for its denial. The Reporter agreed to extend the deadline and a deadline was set for September 16, 2009.

² The County noted that it provided only the most recent payroll list as specific dates were not indicated in the Request. It advised that a 2006/2007 payroll list also exists and that it contains employee names. The County offered to make this list available to the Reporter upon his written request.

regulation governs the specific contractual information that must be maintained by County DHS, thus the Reporter's appeal is "in essence a demand that the County create or compile a record for him based upon information that it does not possess."

The County addressed the Reporter's contention that it must obtain the information from A Second Chance and found the "governmental function" argument and prior OOR decisions "inapposite." The County argued that the "question here is not whether Second Chance performs a governmental function for the County, but what is the extent of the County's legal duty to require a provider to supply particular information." The County cited 55 Pa. Code §§ 3170.92, 93 and stated that DPW has "absolute authority to set standards for the operation of a county children and youth services agency," including the power to establish recordkeeping and financial reporting requirements for the county and the service provider. It argued that the Bulletin was an "example of DPW-OCYF's exercise of that plenary power." The County stated that as a condition for receiving Title IV-E or Act 148 funding through a county CYS agency a service provider is required to provide certain limited information to the agency. The County argued that the Bulletin "does not compel a service provider to provide its employees' names; rather, it gives a service provider *the option* of providing employee names." The County also stated:

Through the exercise of its regulatory authority, DPW-OCYF in essence has established what is "public" information, that is, information required to be supplied by a service provider to a children and youth services agency (and therefore available for public inspection) and what is "private" information, that is, information that does not have to be supplied by a service provider to a children and youth services agency and that the service provider can keep private (and therefore exempt from public inspection). See, Section 305(a)(3) of Right to Know Law. (Presumption that a record is public does not apply if the record is exempt from disclosure by state regulation).

The County summarizes its position as follows: “In short, regardless of whether Second Chance performs a governmental function or not, the County simply has no basis to legally compel Second Chance to provide it with information that DPW-OCYF has determined by regulation can remain private and need not be provided to a local agency.”

The Reporter responded that the regulations promulgated by DPW are an “attempt to correct audit findings” and “were not created for the purpose of determining what is required to be disclosed when a public record request is made.” He pointed out that the state regulation cited by the County “is silent on what constitutes a public record. However, state law – namely the Right to Know Act – explicitly states what constitutes a public record.”

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The County is a local agency subject to the RTKL and its obligations of mandatory disclosure. *See* 65 P.S. §67.102, §67.302.

The RTKL defines a “record” as follows: “Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document,” 65 P.S. §67.102.

The RTKL defines a “public record” as follows: “A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege,” 65 P.S. §67.102 (emphasis added). Records

sought in a right-to-know request are presumed by law to be public unless an agency asserts one of these three grounds for withholding the record. *See* 65 P.S. §67.305.

An agency is not required to create a record that does not exist or is not in its possession. 65 P.S. §67.705. However, Section 67.506(d)(1) provides as follows:

“A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency for purposes of this act.”

The County does not dispute that A Second Chance performs a governmental function. It admits that it contracts with A Second Chance to provide children and youth services for the County. Therefore, Section 67.506(d) applies. However, the County argues that Section 705 applies and there is no legal requirement that it obtain the requested records from A Second Chance because DPW Bulletin does not require A Second Chance to provide that information to the County.

The Bulletin addresses the information necessary to “identify expenditures within the Federal Title IV-E and State Act #148 regulations and to calculate appropriate . . . funding requests for children in out of home placement settings.” *See* Bulletin, pg. 2. It does not govern the permissibility of providing the requested names, dates of birth and hire dates of the service provider employees or whether such information is public. The fact that the DPW-OCYF does not compel A Second Chance to provide employee names to the County for purposes of financial audits or tracking expenditures does not determine whether the employee names and other payroll information is public under the RTKL. The County does not point to any Federal or State Law or regulation that requires that the requested information be kept confidential or non-public. In fact, the County points out that service providers have an option to provide the employee names and that A Second Chance has done so in the past.

As no arguments regarding exemptions were made, the County's only defense in this matter is that the records are in the possession of a private entity with which it has a contract and that it has no legal duty to require the entity to supply the requested records. For the reasons set forth above, the County does have has a legal duty to retrieve the requested records from A Second Chance because they are public records of the County pursuant to Section 506(d)(1).

CONCLUSION

For the foregoing reasons, Reporter's appeal is **granted** and the County is required to retrieve the requested records evidencing the name, date of birth and hire date of A Second Chance employees from A Second Chance and provide them to the Reporter. 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: September 15, 2009



AUDREY BUGLIONE, ESQ.
APPEALS OFFICER

Sent to: Jim Parsons
Timothy Johnson