

**DANIEL P. BEISLER**

Attorney at Law

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JUN 27 2011

*June 23, 2011*

Audrey Buglione, Esquire  
Appeals Officer  
Pennsylvania Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

*Re: Daniel Carey v. Clairton City School District  
SA-11-000613*

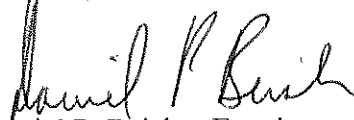
Dear Ms. Buglione:

Enclosed please find true and correct copy of Petition for Review filed on behalf of Clairton City School District at No. SA-11-000613 filed in the Court of Common Pleas of Allegheny County, Pennsylvania on June 23, 2011.

In speaking with the Clerk at the Department of Court Records for Allegheny County, I was advised that the matter will be forwarded to Judge Robert Gallo who will review the matter and assign it to another Judge.

Should you have any questions, please contact this office.

Sincerely,



Daniel P. Beisler, Esquire  
Solicitor, Clairton City School District

DPB:aod

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JUN 27 2011

CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

IN THE MATTER OF:	:	NO. SA-11-000613
DANIEL CAREY	:	
	:	
vs.	:	TYPE OF PLEADING:
	:	PETITION FOR REVIEW
	:	PURSUANT TO SECTION 1302
CLAIRTON CITY SCHOOL DISTRICT	:	OF THE RIGHT-TO-KNOW LAW
	:	(ACT 3 OF 2008)
	:	
	:	FILED ON BEHALF OF:
	:	CLAIRTON CITY SCHOOL DISTRICT
	:	
	:	COUNSEL OF RECORD
	:	FOR THIS PARTY:
	:	
	:	DANIEL P. BEISLER, ESQUIRE
	:	PA ID NO. 37532
	:	1001 ARDMORE BLVD, STE. 100
	:	PITTSBURGH, PA 15221
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN THE MATTER OF: : NO.  
DANIEL CAREY :  
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vs. : TYPE OF PLEADING:  
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 :

**PETITION FOR REVIEW PURSUANT TO SECTION 1302 OF THE  
RIGHT-TO-KNOW-LAW (ACT 3 OF 2008)**

1. Petitioner, Clairton City School District (the "District"), is a school district located in Allegheny County, Pennsylvania, and is a local agency as that term is defined by the Right-to-Know law.

2. Daniel Carey is an individual with a mailing address of 10 South 19<sup>th</sup> Street, Pittsburgh, Pa 15203.

3. On March 29, 2011, Mr. Carey filed with the District a Right-to-Know Request asking for copies of "payroll registers for the Superintendent and Assistant Superintendent for time period July 1, 2010 through the present." Said request is attached hereto and marked Exhibit "1," and made a part hereof.

4. On April 5, 2011, Debra Masley, Administrative Assistant to the Superintendent and Open Records Officer, sent a letter to Mr. Carey denying his request. The letter, a copy of which is attached hereto as Exhibit "2" indicated that the request was considered a "redundancy" as previous requests had been made by Mr. Carey for the same type of information including the following:

- a. A January 18, 2011 request for information on administrative compensation;

- b. A January 26, 2011 request for compensation and benefit details for the Superintendent, Assistant Superintendent, Business Manager, Superintendent Secretary, Assistant Superintendent Secretary and all employees covered by the District Act 93 Agreement for all years from the start of the current Act 93 Agreement forward, including any agreements for the future;
- c. A February 14, 2011 request for the Retirement Agreements for all Act 93 employees, Confidential Secretaries, Superintendent, Assistant Superintendent and Business Manager for all years from the start of the current Act 93 Agreement, including any agreements for the future.

5. Mr. Carey filed an Appeal to the Office of Open Records of the April 5, 2011 denial.

6. In response to the Appeal, the Clairton City School District indicated that the payroll information being requested had already been supplied through Mr. Carey's previous requests and that this request, in addition to being redundant, would require the School District to redact certain information including addresses and Social Security numbers.

7. On May 25, 2011, the Office of Open Records, through its Appeal Officer, Attorney Audrey Buglione, issued a Final Determination which granted the Appeal. Said Final Determination is attached hereto, marked Exhibit "3," and made a part hereof.

8. The Final Determination, although granting the Appeal, allows the District to redact Social Security numbers and home addresses of any public school employees. However, the School District believes that other information, such as voluntary deductions or voluntary contributions present potential violations of privacy for the public school employees subject to this request. The School District further believes that involuntary deductions may raise privacy issues as well concerning such matters as child support and bankruptcy for which the public school employees' right to privacy should be protected.

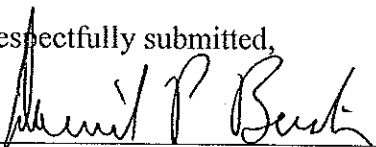
9. The Clairton City School District has been fully responsive from the outset to the request from Mr. Carey, a business agent for the PSEA, in providing administrative

compensation information and all relevant information concerning administrative compensation has been provided to the PSEA.

10. Notice of the filing of this Petition has been given to the requestor and to the Office of Open Records.

WHEREFORE, Petitioner asks this Honorable Court to review the proceedings in this matter and that the Court enter an Order providing that the District shall not be required to respond to the Request regarding the payroll registers for July 1, 2010 through the present.

Respectfully submitted,



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appealed, disputing the Request was redundant because there may be a discrepancy between the stated salary and what is actually paid. The OOR invited the parties to supplement the record.

On May 11, 2011, the District responded that it had previously provided all information concerning the salaries earned by the administrators in response to a January 18, 2011 request (list of 2010-2011 salaries provided), a January 26, 2011 request for "compensation and benefit details..." (a detailed salary/degree list was provided), and a February 14, 2011 request for Retirement Agreements. It contends the instant request seeks the same information as the earlier requests. The District argues that "payroll registers" will only provide additional information that would need to be redacted such as Social Security numbers and addresses. It provides the Affidavit of Debra Masley, District Open Records Officer, stating that "no further information other than that which has already been previously presented to PSEA is contained in the payroll registers..." The Requester does not object to withholding the addresses and Social Security numbers.

#### 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. Ct. 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 necessary, requisite information and evidence before it to properly adjudicate the matter.

The District is a local agency required to disclose public records. 65 P.S. § 67.102; 65 P.S. § 67.302. Records in possession of a local or Commonwealth 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)(1) states: “[t]he 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).

There is no dispute that the requested payroll register is a public record. The Requester does not contest the redaction of addresses and Social Security numbers. The only issue on appeal is whether the Request is “redundant.” The RTKL allows an agency to deny “repeated requests for that same record [where] the repeated requests have placed an unreasonable burden on the agency.” 65 P.S. § 67.506(a)(1). A denial pursuant to

Section 506 does “not restrict the ability to request a different record.” 65 P.S. § 67.506(a)(2).

The OOR has recognized that, in order for this provision to apply, 1) the request must be “repeated” and 2) the repeated request must place “an unreasonable burden on the agency.” *See Slate v. DEP*, OOR Dkt. AP 2009-1143, 2010 PA O.O.R.D. LEXIS 97. The evidence supports a finding that the Requester has sought records with salary information in the past. However, there is no evidence that he previously sought the “payroll registers.” It is possible that many different types of records will contain the same or similar information. A requester is statutorily permitted to seek different records with the same information. 65 P.S. § 67.506(a)(2). Further, there is no evidence that the Request placed an “unreasonable burden on the agency.” Therefore, the Request is not a “disruptive” request.

To the extent that responsive records contain the home addresses of any public school employees, the OOR is not ordering the release of any such addresses, and such addresses may be redacted from responsive records. *See PSEA v. OOR*, No. 195 MM 2010, 2010 Pa. LEXIS 2520 (Pa. Nov. 1, 2010) (reinstating a preliminary injunction prohibiting the release of home addresses for all public school employees).

#### CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted** and the District is required to provide the Requester with payroll registers, subject to the permissible redaction of Social Security numbers and the home addresses of any public school employees, within thirty (30) days. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal

to the Allegheny County Court of Common Pleas. *See* 65 P.S. § 67.1102(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: May 25, 2011**



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APPEALS OFFICER  
AUDREY BUGLIONE, ESQ.

Sent to: Daniel Carey; Debra Masley; Daniel Beisler, Esq.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

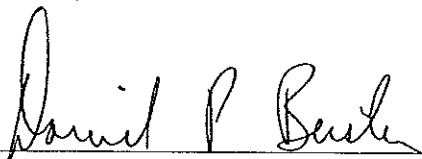
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CERTIFICATE OF SERVICE

I, Daniel P. Beisler, Esquire, Solicitor for the Clairton City School District, do hereby verify that a true and correct copy of the Petition for Review in the above matter was mailed by First Class mail, US postage prepaid this 23<sup>rd</sup> day of June, 2011 to the following addresses:

Daniel Carey, PSEA  
10 South 19<sup>th</sup> Street  
Pittsburgh, PA 15203

Audrey Buglione, Esquire  
Appeals Officer Commonwealth Keystone Building  
Pennsylvania Office of Open Records 400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225



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**ORDER OF COURT**

AND NOW, this \_\_\_\_ day of June, 2011, the Petition for Review presented by the Clairton City School District is received.

It is ORDERED that the parties may file legal Briefs in support of their respective positions on or before the \_\_\_\_ day of \_\_\_\_\_, 2011. Oral argument to be heard at a time and place to be established by further Order of Court.

BY THE COURT:

\_\_\_\_\_  
J.