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June 30, 2011

JUL 05 2011

Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

**RE: Butler Area School District v. Simon Campbell
AD No. 2011-40154**

Dear Sir/Madam:

Enclosed please find a copy of the Petition for Review of Administrative Agency Determination that I filed with respect to the June 6, 2011 Office of Open Records Final Determination.

Should you have any questions or need anything additional, please contact me.

Very truly yours,

DILLON McCANDLESS KING COULTER & GRAHAM L.L.P.



Ronald T. Elliott

RTE:rmp/Enclosures

cc: Dr. Edward Fink, Superintendent
Dr. Kathleen Nogay, Superintendent
Dr. Larry Henry, Superintendent
Michael Stahlman, Superintendent

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

BUTLER AREA SCHOOL DISTRICT

Petitioner

v.

SIMON CAMPBELL

Respondent

AD. No. 2011- 40154

PETITION FOR REVIEW OF
ADMINISTRATIVE AGENCY
DETERMINATION

Filed on Behalf of:
Butler Area School District

Counsel of Record for this Party:

Thomas W. King, III
Pa. ID No. 21580

Ronald T. Elliott
Pa. ID No. 71567

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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

BUTLER AREA SCHOOL DISTRICT	:	
	:	
Petitioner	:	
	:	
v.	:	AD. No. 2011- _____
	:	
SIMON CAMPBELL	:	
	:	
Respondent	:	PETITION FOR REVIEW OF
	:	ADMINISTRATIVE AGENCY
	:	DETERMINATION
	:	

PETITION FOR REVIEW

AND NOW comes the Butler Area School District (“Petitioner”) and files this Petition for Review of the Final Determination of the Pennsylvania Office of Open Records (“OOR”) in *Campbell v. Butler Area School District* (“WCASD”), OOR Docket No. AP 2011-0594, asserting as follows:

1. This Court has jurisdiction over this petition for review pursuant to Section 1302(a) of the Right-to-Know Law (“RTKL”), 65 P.S. § 67.1302(a).
2. This Court can independently review the evidence and is entitled to the exercise the broadest scope of review. *Prison Legal News v. Office of Open Records*, 992 A.2d 942 (Pa. Cmwlth. 2010), and *Bowling v. Office of Open Records*, 990 A.2d 813 (Pa. Cmwlth. 2010).
3. The OOR is not a party to this appeal because OOR does not have standing to defend its decision in *Campbell v. Butler Area School District*, OOR Docket No. AP 2011-0594.

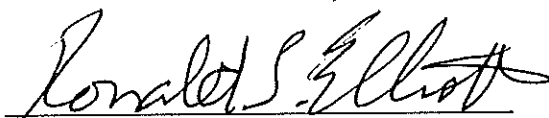
OOR is not aggrieved by the release of the school district's records, and nothing in Section 1310 of the RTKL, 65 P.S. § 67.1310, gives OOR party standing to defend its decision and participate as a party in this appeal. *East Stroudsburg University Foundation v. Office of Open Records*, 995 A.2d 496, 506-07 (Pa. Cmwlth. 2010).

4. Pursuant to Section 1303(b) of the RTKL, 65 P.S. § 67.1303(b), the Record on Appeal before this Court shall consist of the request, the agency's response, the appeal filed under Section 1101, the hearing transcript, if any, and the final written determination of the appeals officer. The OOR can provide a certified Record upon receiving notice from this Court.
5. A summary of the factual background to this dispute is contained in the OOR's Final Determination. See Exhibit 1.
6. A copy of the judicial Order at the heart of this case is attached as Exhibit 2.
7. Petitioner notes that the judicial Order at the center of this dispute does not require the redaction of home addresses of Pennsylvania Citizens who are not public school employees, and the Petitioner does not have a legal citation for withholding the home addresses of citizens who are not public school employees.
8. The Final Determination of the OOR constitutes a result that is impossible of execution and unreasonable because it requires the Petitioner to become an employment and residency checking policing entity for thousands of property owners.
9. Our courts and the OOR are required to presume that the General Assembly "does not intend a result that is absurd, impossible of execution or unreasonable". *See* 1 Pa. C.S. § 1922(1).

WHEREFORE, Petitioner Butler Area school district respectfully requests that this Honorable Court vacate the OOR's Final Determination in *Campbell v. Butler Area School District*, OOR Docket No. AP 2011-2011-0594, and provide such relief as it deems appropriate.

Respectfully submitted,

DILLON McCANDLESS KING
COULTER & GRAHAM, LLP

A handwritten signature in cursive script, appearing to read "Ronald T. Elliott", written over a horizontal line.

Thomas W. King, III
Ronald T. Elliott
Attorneys for the Butler Area School District.



pennsylvania
OFFICE OF OPEN RECORDS

June 6, 2011

Simon Campbell
668 Stony Hill Road #298
Yardley, PA 19067

Thomas King, Esq.
Butler Area School District
128 West Cunningham Street
Butler, PA 16007

RE: *Campbell v. Butler Area School District*, OOR Dkt. AP 2011-0594
– Hearing Request

Dear Parties:

On May 6, 2011, Mr. Campbell requested a hearing for the following reason:

The preliminary injunction issued by Judge Friedman and reinstated by the Pennsylvania Supreme Court was obtained by PSEA upon submitting false statements to a court. I request a hearing by OOR to develop a record to prove false statements were made by PSEA as I contend that the injunction can be lifted and the compliance difficulty over redactions thereby solved, once the facts have been gathered.

Upon due consideration of whether a hearing is necessary to resolve this appeal under the Right-to-Know Law, it is my determination that the request for a hearing is DENIED.

Very truly yours,

Appeals Officer
J. Chadwick Schnee, Esq.
jschnee@state.pa.us



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
SIMON CAMPBELL,	:	
Complainant	:	
	:	Docket No.: AP 2011-0594
v.	:	
	:	
BUTLER AREA SCHOOL DISTRICT,	:	
Respondent	:	

INTRODUCTION

Simon Campbell (the "Requester") submitted a request (the "Request") to the Butler Area School District ("District") seeking tax duplicates pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, ("RTKL"). The District partially denied the Request by redacting the addresses of all property owners based on 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 and the District is required to take further action as directed herein.

FACTUAL BACKGROUND

On March 8, 2011, the Request was filed, stating "Subject to applicable redactions required by law please send me, via electronic medium, the most recently received tax duplicate in the possession of the ... [D]istrict. If electronic medium is not

available then I will accept the tax duplicate in hard copy.” On March 14, 2011, the Requester confirmed his agreement to allow the District additional time to respond pending the Commonwealth Court’s resolution of the District’s Motion for Clarification filed with the Commonwealth Court in *PSEA v. Office of Open Records*, No. 396 MD 2009. On April 11, 2011, the Commonwealth Court denied the District’s Motion for lack of jurisdiction. On April 21, 2011, the District, while noting that “the requested tax duplicate is a public record in its entirety [in] two different statutes,” redacted the addresses on all records, stating

[T]he Injunction [reinstated by *PSEA v. OOR*, 195 MM 2010, 2010 Pa. LEXIS 2520 (Pa. Nov. 1, 2010)] applies to all public school employees and not just those employees of the ... District. We have no way of knowing if the names of the several thousand property owners on the requested tax duplicate could be public school employees of a different school district. The other problem is that even if we were somehow capable of identifying the employment status of every property owner, we would have no way of knowing if each property owner lives in the property such that [it] qualifies as a “home address” or instead treats it as an investment property. The wording and logic behind the reinstated preliminary injunction presents an impossible situation for the ... District to deal with, with respect to your request.

The ... District faces no confusion with any information on the requested tax duplicate other than with addresses. Given that the school district does not wish to incur liability for inadvertently releasing the home address of any public school employee, we have decided to partially grant and partially deny your request. Please find attached an Excel spreadsheet of the requested tax duplicate with the addresses of all property owners redacted. In accordance with the requirements of Section 903(2) of the RTKL, the legal citation for our redaction decision is Section 706, and the specific reason for our redaction decision is that the ... District does not know what else it is supposed to do.

On May 6, 2011, the Requester appealed to the OOR, challenging the “refusal to release ... the requested tax duplicate with *only* the home addresses of public school employees redacted.” The Requester also sought a hearing, stating

The preliminary injunction issued by Judge Friedman and reinstated by the Pennsylvania Supreme Court was obtained by PSEA upon submitting false statements to a court. I request a hearing by OOR to develop a record to prove false statements were made by PSEA as I contend that the injunction can be lifted and the compliance difficulty over redactions thereby solved, once the facts have been gathered.¹

The OOR invited both parties to supplement the record. Neither party did so. On June 6, 2011, the OOR denied the request for a hearing.

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, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The District is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial

¹ The original version was written in bold using all capital letters. This passage has been modified here for readability.

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).

In the present case, neither the District nor the Requester dispute that the home addresses of public school employees and retired public school employees are not subject to public access pursuant to the Supreme Court’s Order. The Requester challenges the District’s redactions as overbroad, while the District logically points out the difficulty of complying with the Order without knowledge of whether any responsive records contain protected home addresses.

Pursuant to the RTKL, all records within an agency’s possession are presumptively public, unless otherwise established. *See* 65 P.S. § 67.305(a); 65 P.S. § 67.708(a)(1). Here, the District indicated that the home addresses on a portion of the responsive records may be protected by the Order and the Requester does not challenge this assertion. While the Order unquestionably makes complying with certain RTKL requests extremely difficult and time-consuming, the District did not cite legal or evidentiary support establishing that addresses of individuals who are neither current nor

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Pennsylvania State Education :
Association, By Lynne Wilson, General :
Counsel, William McGill, F. Darlene :
Albaugh, Heather Kolanich, Wayne :
Davenport, Frederick Smith, Jamie :
McPoyle, Brianna Miller, Valerie :
Brown, Janet Layton, Korri Brown, :
Al Reitz, Lisa Lang, Brad Group and :
Randall Sovisky, :
Petitioners :

v. :

No. 396 M.D. 2009

Commonwealth of Pennsylvania, :
Department of Community and :
Economic Development, Office of Open :
Records, and Terry Mutchler, Executive :
Director of the Office of Open Records, :
Respondents :

ORDER

AND NOW, this 28th day of July, 2009, Petitioner's request for a preliminary injunction is granted.

1. The release of the home addresses of all public school employees is hereby stayed until further order of this court.

2. The Office of Open Records is enjoined from directing the release of the home addresses of public school employees pursuant to the Right-to-Know Law until further order of this court.

NOTED FOR THE COURT

BY: _____

CLERK OF COURT

EX 2

3. The Office of Open Records is directed to take all reasonable steps necessary to notify public school districts of the Commonwealth of the existence of this litigation and that the release of employee home addresses is stayed until further order of this court.

Opinion to follow.


ROCHELLE S. FRIEDMAN, Senior Judge

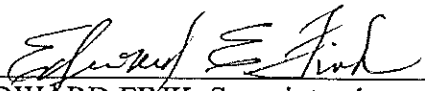
Certified from the Record

JUL 28 2009

and Order Exit

VERIFICATION

I, Edward Fink, Superintendent, hereby verify that the statements of fact set forth in the foregoing Petition for Review are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S.A §4904 relating to unsworn falsification to authorities.


EDWARD FINK, Superintendent
BUTLER AREA SCHOOL DISTRICT

Date: June 30, 2011

CERTIFICATE OF SERVICE

This is to certify that in the above reference case, complete copies of all papers contained in Petitioner's Petition for Review were served upon the following persons, by the following means and on the date(s) stated:

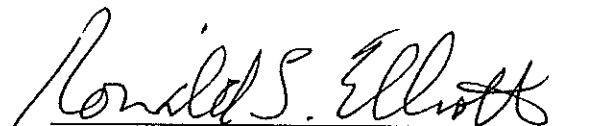
<u>Name</u>	<u>Means of Service</u>	<u>Date of Service</u>
Simon Campbell 668 Stony Hill Road No 298 Yardley, PA 19067 <i>Respondent</i>	First Class Mail and E-mail	June 30, 2011
Office of Open Records Commonwealth Keystone Building 400 North Street, 4th Floor Harrisburg, PA 17120-0225	First Class Mail	June 30, 2011

Respectfully submitted,

DILLON McCANDLESS KING COULTER &
GRAHAM, LLP

Date: 6-30-2011

By:



Thomas W. King, III, Esquire
Ronald T. Elliott, Esquire
Attorneys for Petitioner