



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**SIMON CAMPBELL,
Complainant**

v.

**WILLIAM PENN SCHOOL DISTRICT,
Respondent**

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Docket No. AP 2009-0475

INTRODUCTION

Simon Campbell (the “Citizen”) submitted a request to William Penn School District (the “School District”) seeking a list of all employees who pay fair share and their e-mail and home addresses pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The School District supplied its list of School District employees who pay fair share, but withheld their School District e-mail addresses and their home addresses. The Citizen timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the Citizen’s appeal is **granted**, and the School District is required to take further action as directed.

FACTUAL BACKGROUND

On April 29, 2009, the Citizen submitted his right-to-know request via facsimile to the School District seeking “copies of records that evidence the following:

1. The names of all fair share feepayers currently employed by the School District.
2. The name of the Bargaining Unit that represents each non-union employee working for the School District.

3. The school e-mail address of each non-union employee working for the School District.

4. The home address of each non-union employee working for the School District.

(the “Request”).

On May 6th, the School District responded to the Citizen, invoking the thirty-day extension. Joseph V. Otto, Open Records Officer (“ORO”) for the School District, responded on June 2nd within the thirty days granting the Request in part by providing the names of the non-union, and non-professional staff employees and the name of the Bargaining Unit. However, the School District denied the school e-mail addresses based upon lack of such a record. As to the home addresses, the ORO advised that the President/Stewards of each Bargaining Unit were contacted, and the Units denied access based upon privacy and personal safety (the “Denial”).

The Citizen timely appealed to the OOR on June 8, 2009, limiting his appeal to the Denial of home addresses only. In support, he advises that home address information exists in the payroll department and contends “there is no legal citation called ‘union bosses didn’t give me permission to do my job’” (the “Appeal”).

The OOR invited both parties to submit additional information, and requested the School District to support the basis for its Denial of home addresses given the Final Determinations issued on the subject. In response, the School District argued that the home addresses of its employees do not qualify as a record because addresses do not document a transaction or activity of the agency. The School District also cited two exceptions under Section 708(b), the personal security exception at (b)(1)(ii), and the personal identification information exception at (b)(6). The School District contends that common law protects privacy and against the risk of identity theft, citing *The President’s Identity Theft Task Force* report and webpage, www.idtheft.gov. The School District also cites the recognized constitutional right to privacy, the “right to be let alone,” which it contends extends to protect employees’ home addresses from disclosure.

The Citizen responded to the School District's submission. He contends that the claim that he does not request records is disingenuous because the School District uses records containing employee home addresses, such as W-2s. He argues that employee home addresses are available on property records and voter registration lists that are publicly available under 25 Pa. C.S. §1404(b). The Citizen also argues that criminals may obtain address information through these publicly available means such that there is no greater risk of identity theft due to the School District's release of such information. He contends the School District committed bad faith by approaching union officials for the basis of its Denial rather than responding with its own grounds. He then cites the attorneys' fees and penalty provisions of the RTKL.

The sole issue to be addressed on appeal is whether School District employee home addresses are public or protected. No other material was submitted.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The School District is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. §67.302. Records of a local agency are presumed to be "public" unless the record is: (1) exempt under Section 708(b); (2) protected by a privilege; or (3) exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. §67.305. The School District initially did not cite any grounds for withholding employee home addresses, noting that the Bargaining Units opposed their release for privacy and personal safety reasons. In response to the Appeal, the School District asserted two exemptions:¹ (1) Section 708(b), at (b)(1)(ii) for personal security, and (b)(6) for personal identification information; and, (2), another State law, *i.e.*, the Pennsylvania Constitution and the common law protection for privacy and the "right to be let alone." Each exception shall be addressed in turn.

¹ The School District also asserted that employee home addresses do not qualify as "records" as that term is defined in the RTKL. The OOR finds this argument lacks merit as payroll records contain addresses and qualify as records.

The OOR has issued Final Determinations that address the arguments raised by the School District with regard to privacy and personal security in *Green v. Pocono Mountain School District*, OOR Dkt. AP 2009-0103 and *Campbell v. Susquehanna County*, OOR Dkt. 2009-0372. Under Section 708(a), the School District bears the burden of proving its Section 708(b) exceptions apply by the preponderance of the evidence, meaning the “greater weight of the evidence.” *See Com. v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001). The School District did not submit sufficient facts to meet its burden or overcome the presumption of openness.

1. The School District did not establish that the personal security of its employees is placed at substantial and demonstrable risk as required under Section 708(b)(1)(ii).

Section 708(b)(1)(ii) protects from access “a record the disclosure of which...would be *reasonably likely* to result in a *substantial and demonstrable risk* ..[to] personal security of an individual.” (emphasis added). To show that this exception applies to protect employee home addresses, the School District must show each of the elements required for each piece of information. The School District did not submit any facts to support this exception and show that disclosure of home addresses would be “reasonably likely” to result in “substantial and demonstrable risk” to its employees’ personal security. The School District did not submit facts to meet the higher standard under the current RTKL which requires more than the “potential impairment” standard under the prior Right-to-Know Law, 65 P.S. §§66.1 *et seq.*, (“Old Law”).

The School District alleges the possibility of identity theft as its primary threat to personal security of its employees and its basis for this exception. However, the vague and general threat of identity theft is not connected to the release of the home address of any of the identified employees, and is not shown to be more than a potential impairment. The OOR has previously held that the personal security exception may be shown to apply to protect home addresses of identified employees provided sufficient facts demonstrating the harm are

presented. *See Campbell v. Susquehanna County*, (personal security exception applied to CYS employees). As the threat of identity theft has been asserted here, it does not qualify as either a substantial, or actual, risk of harm, nor as a demonstrable one. The School District submitted no facts to substantiate its assertion that identity theft may result from release of the home addresses at issue; no specific threats were offered, nor was the one identified threat (*i.e.*, identity theft) shown to be reasonably likely. As the School District failed to demonstrate a real risk of harm to personal security reasonably likely to result from release of home addresses, the OOR holds that the School District failed to meet its burden to show Section 708(b)(1)(ii) applies.

2. Section 708(b)(6) does not protect home addresses of agency employees.

The School District's assertion of Section 708(b)(6) to protect School District employees' home addresses is insupportable from strict construction of the RTKL. Notably absent from Section 708(b)(6)'s definition of "personal identification information" are home addresses, showing that they are not deemed "personal identification information" by the Legislature. That exception does not protect the home addresses of anyone other than law enforcement officers and judges, who are expressly covered. *See* 65 P.S. §67.708(b)(6)(i)(C).

The Statutory Construction Act provides "the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. §1921. Thus, it is critical to note that the Legislative Journal published Bill Information for the Regular Session 2007-2008, Senate Bill 1 that included a discussion on the record regarding proposed exemptions for "personal information," including home addresses, with the Bill's sponsor, Senator Dominic Pileggi. In response to questioning, Senator Pileggi stated that "the current law [referring to the Old Law] does allow for dates of birth and addresses in public records" and that "this is not an expansion of that law, but rather, it maintains present law," which shows the clear intent to limit protection for home addresses. *See Legislative Journal – Senate, page 1559.*

The School District advanced no legal support for construing Section 708(b)(6) to extend to School District employees and did not distinguish prior OOR Final Determinations holding the exception is reserved to law enforcement and judges only. *See Campbell v. Susquehanna County, supra* (holding only addresses of law enforcement employees are shielded by (b)(6)). Therefore, the School District failed to show Section 708(b)(6) protects its employees' home addresses, for which it bears the burden of proof. Because the exception does not protect home addresses of School District employees on its face, and the School District did not satisfy its burden of proof, the OOR finds the non-disclosure of home addresses on that basis is improper.

3. The State Constitution 'privacy right' does not clearly protect home addresses.

The School District asserts the Pennsylvania Constitution, and interpretive decisional law of the appellate courts, protects home addresses of agency employees. The School District cites Article I, Section 8 of the Constitution, *Security from Searches and Seizures* which states:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

PA. CONST., Art. I, §8. A right to privacy in a home address is not explicit within this provision.

However, the School District asserts a common law and constitutional right to privacy, defined as a "citizen's right to be let alone." [*School District's June 22nd Submission*, p. 3.] The School District cites *Stenger v. Lehigh Valley Hospital Center*, 530 Pa. 426, 609 A.2d 796 (1992) as support. In *Stenger*, the Supreme Court recognized that the constitutional privacy right is not absolute and engaged in a balancing test, weighing the interest in the confidentiality of the information against the interest in disclosure of the alleged confidential information. At issue in *Stenger* was disclosure of blood donor and collection information. The Court held that such information fell within the protected zone of privacy as health information, and *after* making such a finding, balanced the private interest against the public interest in disclosure.

The School District does not cite a single case that holds an individual has a right to privacy that can be enforced against disclosure of his or her home address. The School District skips this crucial step in its analysis; prior to engaging in a balancing test, the type of information at issue must be shown to be protected as “private” at the constitutional level. *Stenger* does not hold that home address information rises to the level of constitutional protection, like the right to privacy in one’s medical information or information about one’s extramarital sexual activities. *See Stenger, supra* at 437, 609 A.2d at 802 (citing *Fabio v. Civil Service Comm’n of Phila.*, 489 Pa. 409, 414 A.2d 82 (1980)).

None of the cases cited by the School District construe a constitutional right to privacy in one’s home address to establish that such a right trumps the presumption of openness. The RTKL provides that “if the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply,” 65 P.S. §67.3101.1. The RTKL further specifies that the presumption of public nature shall not apply if “the record is exempt from disclosure under any other ... State law...” 65 P.S. §67.305(a)(3). In this case, the constitutional provision cited does not *a priori* protect home addresses from public view. As the OOR reasoned in *Green v. Pocono Mountain School District*, the appellate cases upholding a right to privacy in one’s home address in the RTKL context, do not stem from the Constitution.² In *PSU v. SERB*, the Supreme Court rejected the invitation to separate their “right to privacy analysis from our personal security exception analysis, [under the RTKL as] it is clear that no such division is warranted.” 594 244, 257, 935 A.2d 530, 538 (2007).

² The OOR notes that the provision cited as affording a constitutional “right to privacy” other than Article I, Sec. 8 cited by the School District here is Article I, Section 1, *Inherent Rights of Mankind* which provides:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation and of pursuing their own happiness.

The OOR awaits clear guidance from the appellate courts protecting home addresses as “private” under the Constitution, particularly as home addresses have been released under the Old Law. *See Goppelt v. City of Philadelphia Revenue Dept.*, 841 A.2d 599, 603 (Pa. Commw. 2004)(releasing addresses in property records).

The School District fails to cite applicable authority to support its assertion that the Pennsylvania Constitution shields home addresses. The OOR shall not presume to find a constitutional right to privacy in information where none has been explicitly recognized by this Commonwealth's highest court. The OOR shall await a pronouncement by the appellate courts showing a clear intent to construe the constitutional right to privacy to shield home addresses from public access, and await presentment of legal authority that supports protection.

Based upon the arguments raised addressing the purely legal issue of whether home addresses of agency employees are "private" information as ordained by the Constitution, and the decisional law construing same, the OOR concludes the School District did not establish a valid legal basis for withholding home addresses of its employees in this Appeal.

CONCLUSION

For the foregoing reasons, the Citizen's Appeal is **granted**. The OOR concludes that the School District failed to meet its burden to show School District employee home addresses are protected from disclosure by the terms of the Pennsylvania Constitution, interpretive case law, or under Sections 708(b)(1) or (b)(6). Accordingly, the OOR directs the School District to release the home addresses of the identified non-union employees within thirty (30) days.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal to the Delaware County Court of Common Pleas. 65 P.S. §67.1302(a). All parties must be served with notice of the appeal, and the OOR shall be served notice and have an opportunity to respond according to court rules as per Section 1303. This Final Determination shall be posted at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED: July 8, 2009



**LUCINDA GLINN, ESQ.
APPEALS OFFICER**

