



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**SIMON CAMPBELL,
Complainant**

:

:

:

:

v.

:

Docket No.: AP 2009-0434

:

:

**YORK COUNTY
Respondent**

:

:

INTRODUCTION

Simon Campbell (the “Citizen”) filed a right-to-know request (the “Request”) with York County (the “County”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (the “RTKL”). The Citizen sought copies of the names and addresses of all fair share feepayers currently employed by the County. The County redacted some of the home addresses from the records provided, such that the request was partially denied. Mr. Campbell filed a timely appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the Citizen’s appeal is **partially granted and partially denied**, and the County is directed to proceed as set forth below.

FACTUAL BACKGROUND

On April 29, 2009, the Citizen filed the Request with the County seeking records relating to “fair share feepayer” information. The County indicated that it would require an additional thirty days to respond to the Request. On May 15, 2009, the County

provided copies of the requested records with a number of home addresses redacted. The County stated that the records relating to law enforcement personnel were redacted pursuant to 65 P.S. 708(b)(6). The County also stated that “[e]mployees of Juvenile Probation, Adult Probation, Domestic Relations, Court Administration, and DJ offices are under the authority and control of the President Judge. As a result, their addresses are not subject to disclosure.”

The County properly advised the Citizen of his right to appeal. The Citizen filed a timely appeal with the OOR challenging only the redaction of the employees “under the authority and control of the President Judge.” The Citizen claims that no such exception exists under the RTKL.

The OOR contacted the County for clarification of factual and legal support for the County’s position. The County indicated that the employees of juvenile probation, adult probation, domestic relations, and the prison deal with potentially dangerous populations and are similarly situated to the caseworkers in *Campbell v. Susquehanna County*, OOR Dkt. No. 2009-0372.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. §67.503(a). BCCC is a local agency subject to the RTKL. See 65 P.S. § 67.302.

Section 102 of the RTKL, defines the term “record” as:

“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. § 67.302

The RTKL provides further clarity in defining a “public record” as:

“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.

Section 708 of the RTKL clearly states that the burden of proof rests with the public body to demonstrate that the record is exempt. In pertinent part, section 708 states:

(a) Burden of proof. —

(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.

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. West 2004). *See also Commonwealth v. Williams*, 615 A.2d 716 (PA. 1992).

The County assert that these records are records of the Judiciary and therefore not subject to disclosure. However, the RTKL states that a record in the possession of an agency is presumed to be a public record unless: (1) the record is exempt under Section 708; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other federal or State law or regulation or judicial order or decree. *See* 65 P.S. 67.305. The County has the records at issue, and therefore they are records of the County and subject to disclosure under this law. While the Judiciary also may have copies of

these records, this does not relieve the County from providing the records requested under the law.

The County provided limited legal support for its position and made no analysis for how release of the home addresses of the named employees is exempted under the RTKL. The OOR views the personal security and safety of all public employees as vitally important. As noted by the County, the OOR has already determined that probation officers qualify as law enforcement and thus, their addresses are exempted from release pursuant to 65 P.S. 708(b)(6). *See Purcell v. City of Philadelphia*, OOR Dkt. No. 2009-0263, *see also Campbell v. Susquehanna County*, OOR Dkt. No. 2009-0372.

Other than a passing reference to an OOR Final Determination, the County has not presented any factual or legal support under the RTKL or offered any other support or explanation of its reasons for redacting the home addresses of County employees that work within Domestic Relations, Court Administration, and DJ Offices under the authority and control of the President Judge. The OOR has held that the mere specter of harm and a “reasonable fear” is not sufficient to meet the threshold for the personal security exception. *Campbell v. Susquehanna County*, OOR Dkt. No. 2009-0372. To protect home addresses under this exception, an agency must be able to point to concrete and recitable examples of a risk of substantial and demonstrable harm, such as through physical intrusion by the perceived threat. *Campbell v. Susquehanna County*, OOR Dkt. No. 2009-0372. While these employees may face the same risk as the Children and Youth Services caseworkers in *Campbell v. Susquehanna County*, the County failed to provide any concrete and recitable examples of a risk of substantial and demonstrable harm. The OOR concludes here as it did in *Purcell v. City of Philadelphia*, OOR Dkt. 2009-0263 that law enforcement officers include, at a minimum, the following:

1. Officers who have the authority to arrest or issue citations in the course of their agency duties. *See e.g., Com. v. Marks Contracting, LTD*, 850 A.2d 873 (Pa. Commw. 2004).

2. Department of Environmental Protection field investigators. *Com. v. Marks Contracting, LTD*, 850 A.2d 873 (Pa. Commw. 2004).

24

3. Corrections Officers. *Com. v. Nauss*, 421 Pa. Super. 220, 617 A.2d 805 (1992).

4. Sheriffs and their deputies. *Commonwealth v. Dobbins*, 594 Pa. 71, 934 A.2d 1170 (2007).

5. Probation officers *Campbell v. Susquehanna County*, OOR Dkt. No. 2009-0372.

6. Truant officers, dog law enforcement officers, S.P.C.A. agents, and municipal code enforcement officers. *Com. v. Nauss*, 421 Pa. Super. 220, 617 A.2d 805 (1992).

As such, the County has failed to meet its burden. Thus it is ordered to provide an unredacted release of addresses for personnel that do not qualify as law enforcement officers or judges.

CONCLUSION

For the foregoing reasons, the Citizen's appeal is **partially granted and partially denied**. The County is directed to provide un-redacted copies of the requested records to the extent that none of the employees qualify as law enforcement officers or judges. 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 Court of Common Pleas, York County. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S. §67.1301. The parties are further advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

FINAL DETERMINATION ISSUED June 25, 2009



APPEALS OFFICER
NATHANAEL J. BYERLY, Esq.