



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

In the Matter of :
WILLIAM BLASI, Complainant :
v. : **Docket No. AP 2009-0067**
 :
PEN ARGYL :
SCHOOL DISTRICT, Respondent :

INTRODUCTION

Mr. William Blasi submitted a request to Pen Argyl School District (“School District”) seeking twenty types of records pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The School District responded to the majority, but denied three based on exceptions to the RTKL. Mr. Blasi filed a timely appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, Mr. Blasi’s appeal is **denied**, and the School District is not required to take any further action.

FACTUAL BACKGROUND

On January 13, 2009, Mr. Blasi requested twenty enumerated types of information from the School District, including employment, income, and coaching and student information, of which only the following three remain at issue:

- (8) Copies of each of the class rosters of all classes (including “German”) taught by Dwight Repsher during the Fall 2008 and the Spring 2009 term in the Pen Argyl School District. (“Repsher Class Rosters”);

(14) With respect to the school district's requirement that all coaches provide a plan of improvement for the teams they coach, for every Pen Argyl Area School District basketball coach (any level of boys and girls teams) and baseball coach (any level for boys teams) employed during the 2007-2008 and 2008-2009 seasons, ("Coach Plans");

(15) Please provide me all the names and mailing addresses of each and every parent or guardian who has a child or children currently attending a school in the Pen Argyl Area School District this academic year. I do not want the names of the children, just the names and addresses of the responsible adults. (Contact information is required for a direct mailing to the parents/guardians of students to inform them of educational issues in our district, gather support to overthrow the school board, and to seek out responsible, educated board nominees with a stake in the educational system. ("Parent/Guardian Names and Addresses")

("Request").¹

The School District timely responded within five business days on January 20, 2009, and disclosed most of the records. The School District made available without redaction records sought in 4, 5, 6, 7, 9, 10, 11, 12, 13, 16, 17, 18, 19 and 20, and with redaction, records sought in 1, 2 and 3. Regarding 8, 14 and 15, the School District stated that the records were "Denied, with explanation." However, the written explanation was not provided to Mr. Blasi because it was maintained with the copies of records awaiting Mr. Blasi's pick up at the School District. The School District denied the requests as follows: (8) Repsher Class Rosters under Section 708(b)(30); (14) Coach Plans under Section 708(b)(7)(ii); and, (15) Parent/Guardian Names and Addresses under Section 708(b)(30)("Denial"). The Denial referred to prior denials issued on 10/28/08 and 12/03/08 when the same information had been requested previously by Mr. Blasi.

Mr. Blasi timely appealed to the OOR, which was received on February 10, 2009. Mr. Blasi stated as his grounds for appeal that the information is required. For (8) Repsher Class Roster, he notes that names of students are released to the newspapers for honor roll students. For (14) Coach Plans, he asserts that the fact coaches are evaluated based upon their improvement plans is immaterial and the public has a right to know of their incompetence. For

¹ For convenience, the numbers used in the Request shall refer to the records included within that designation.

(15) Parent/Guardian Names and Addresses, he advises the names are necessary for recruitment of board of education candidates, and contends First Amendment free speech issues are implicated. Although Mr. Blasi objected to the fees, he did not base his appeal upon that objection and has not supported any facts to show that the fees charged are not reasonable when they are within the OOR Fee Schedule limits.

Because Mr. Blasi did not include a copy of the Denial with his Appeal, on February 25, 2009, the OOR requested the School District to supplement the record to include it as well as the prior denials to which the Denial refers as additional grounds for refusing access to (14) and (15). The School District supplemented the record as requested on February 27, 2009. In those earlier denials, the School District cited privacy and safety as grounds for protecting the Parent/Guardian names and addresses requested in (15). The School District supplemented the record with additional explanation to support its legal grounds for its Denial on March 4, 2009. No additional materials were supplied by Mr. Blasi in response.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for Commonwealth and local agencies. 65 P.S. §67.503(a). The School District is a local agency subject to the RTKL and required to disclose public records. 65 P.S. §67.302. Records in possession of a local agency like the School District are presumed to be “public” unless: (1) the record is exempt under Section 708(b); (2) the record is protected by a legal privilege; or (3) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. §67.305. Here, the School District asserted grounds under Section 708(b)(7) for (14) and Section 708(b)(30) for (8) and (15), as well as safety and privacy concerns. The OOR notes that the School District should have sent to Mr. Blasi its exceptions in writing as per 65 P.S. §67.903, and should do so in the future.

Because each of the exceptions the School District asserts fall within Section 708(b), 65 P.S. §67.708(b), the School District bears the burden of proving by a preponderance of the evidence that the information it seeks to protect is exempt under the cited exception. *See* 65 P.S. §67.708(a). To prove by “preponderance of the evidence” means to prove by the “greater weight of the evidence.” *Commonwealth v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001).

The School District properly denied Mr. Blasi’s Request for (8) Repsher Class Roster because the record on its face constitutes a “record identifying the name, home address or date of birth of a child 17 years of age or younger,” which is expressly protected from disclosure under Section 708(b)(30). Mr. Blasi did not refute that (8) constitutes a record containing names of juveniles. Therefore, the Repsher Class Roster information is protected under this exception.

The School District likewise properly denied access to the Coach Plans pursuant to Section 708(b)(7)(ii), 65 P.S. §67.708(b)(7). Both parties admit that Coach Plans are utilized in order to evaluate the performance of coaches, so the fact that Coach Plans are part of their performance evaluations is undisputed. The School District further states that the improvement plans are used in a series of reviews which is part of the determination of whether to renew a coach’s annual appointment or not. Section 708(b)(7)(ii) states in pertinent part that “records relating to an agency employee... performance rating or review” may be protected. 65 P.S. §67.708(b)(7)(ii). Accordingly, the Coach Plans, which both parties acknowledge constitute a part of the performance review are properly protected here.

The School District withheld the names and addresses of parents and guardians of its students based upon privacy and safety concerns and Section 708(b)(30), 65 P.S. §67.708(b)(30). The School District argues that home addresses of all parents and/or guardians of students is another means of requesting all the home addresses of students. Although Mr. Blasi states that

he is not requesting the names of students, Section 708(b)(30) does not require that the name *and* address be requested in order to qualify for protection under this exception. Strict construction of this exception shows that a record containing home addresses of a child 17 years or age or younger are exempt from public access. Mr. Blasi requests specifically only the addresses of parents or guardians of “a child or children” in the Pen Argyl Area School District. [*See Request No. (15).*] Because the records sought, as described by Mr. Blasi, constitute records that identify the home address of a child, they are protected under Section 708(b)(30). The School District failed to support its assertion of privacy or safety grounds for protecting the information with any competent evidence, and therefore cannot establish grounds apart from Section 708(b)(30) to protect the Parent/Guardian Names and Addresses sought in (15).

CONCLUSION

For the foregoing reasons, Mr. Blasi’s appeal is **denied**. The OOR concludes that the School District properly applied the exemptions it cited under Section 708(b), and, there being no material facts disputed, met its burden of proof in applying the law to the undisputed facts. Accordingly, the School District properly excepted (8), (14) and (15) from disclosure here.

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 Northampton County Court of Common Pleas. 65 P.S. §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. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED: March 11, 2009



**APPEALS OFFICER
LUCINDA GLINN, ESQ.**