



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

:

KATHLEEN REHBEIN

:

and PENNSYLVANIA ASSOCIATION

:

OF SCHOOL RETIREES,

:

Complainant

:

:

v.

:

Docket No.: AP 2009-0759

:

:

NORTHERN LEHIGH

:

SCHOOL DISTRICT

:

Respondent

:

INTRODUCTION

Ms. Kathleen Rehbein (the “Requester”), on behalf of the Pennsylvania Association of School Retirees (“PARS”), filed a right-to-know request with Northern Lehigh School District (the “District”) seeking copies of records containing the name and home address for all individuals who have retired from the District from 2004 to the present pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (the “RTKL”). The District denied the request referencing a temporary injunction prohibiting release. The Requester filed a timely appeal with the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the Requester’s appeal is **granted in part** and **denied in part**, and the District is required to take further action as set forth below.

FACTUAL BACKGROUND

On July 31, 2009, the Requester filed a request for copies of the records containing the name and address of all individuals who have retired from the District from the years 2004 to the present. On August 5, 2009, Michael W. Michaels, Superintendent of the District, responded by denying the request “pursuant to the ruling dated July 28, 2009, from the Commonwealth Court of Pennsylvania, granting an injunction against the release of names and addresses of public school employees.” The District enclosed a copy of the preliminary injunction.

On August 26, 2009 the OOR received a timely filed appeal from William W Warren, Jr., Esquire on behalf of the Requester. In support of her appeal the Requester stated the “injunction prohibits the release of home addresses for current public school employees, and not addresses for retirees.” The Requester added that there is “no other justification for the refusal to release these home addresses under applicable law.” The Requester referred to *Carroll v. Harrisburg School District*, OOR Dkt. AP 2009-0442 (issued June 25, 2009) as support for its position that the names and home addresses of retirees are public records.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The District 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 (emphasis added).

The RTKL expressly protects only the home addresses of judges, law enforcement and minors. 65 P.S. §§67.708(b)(6)(C) and §708(b)(30).

The OOR has issued multiple final determinations regarding whether home addresses constitute public records under the RTKL or may otherwise properly be withheld: *Green v. Pocono Mountain School District*, OOR Dkt. AP 2009-0103 (rejecting arguments that Section 708(b)(1)(ii), (b)(6), and State or United States Constitution support redaction of third party contractors names, home addresses, and tax exemptions in request for certified payrolls); *Green v. Bethlehem Area School District*, OOR Dkt. AP 2009-0061 (discussing whether application of Section 708(b)(6) or the State Constitution protects private employee home addresses and determining that neither support redaction); *Gribbin v. Pennsylvania Dept. of Conservation and Natural Resources*, OOR Dkt AP 2009-341 (home addresses of private employees of third party contractors are not exempt under 708(b)); *Malley/Leet (Sheet Metal Workers) v. Office of the Budget*, OOR Dkt AP 2009-327 (names of private employees of third party contractor are not exempt under 708(b)(6)). *See also*, *Greater Pennsylvania Regional Council of Carpenters v. Pocono Mountain School District*, OOR Dkt. AP 2009-0166; *Pry v. Indiana University of*

Pennsylvania, OOR Dkt. AP 2009-0119; *Pry v. Butler County Community College*, OOR Dkt. AP 2009-0070; *Campbell v. Berwick*; OOR Dkt. AP 2009-221; *Campbell v. Souderton Area School District*, OOR Dkt. AP 2009-269; *Campbell v. William Penn School District*, OOR Dkt. AP 2009-0475; *Purcell v. City of Philadelphia*, OOR Dkt. AP 2009-0263; *Agre v. DGS*, OOR Dkt. AP 2009-0371; and *Carroll v. Harrisburg School District*, OOR Dkt. AP 2009-0442.

In the instant matter, the District denied the request for home addresses on the basis that release is prohibited by judicial order or decree as permissible by 65 P.S. §67.102. On July 28, 2009, the Commonwealth Court issued a temporary injunction (“Injunction”) in which Senior Judge Rochelle Friedman stated in part that **“the release of home addresses of all public school employees is hereby stayed** until further order of this Court.” (emphasis added). *See Pennsylvania State Education Association, et al v. Office of Open Records, et al*, No. 396 M.D. 2009. The Commonwealth Court subsequently issued *Pennsylvania State Education Association, et al v. Pennsylvania, et al.*, 2009 Pa. Commw. LEXIS 132, (decided August 6, 2009) (“Opinion”) ordering that the “majority opinion filed on August 6, 2009, shall be designated OPINION rather than MEMORANDUM OPINION, and shall be reported.” The Injunction and Opinion prohibit the OOR from directing the release of those home addresses and also prohibits school districts from releasing the records. *Id.*

The OOR does not have a regulation, policy or procedure that governs the situation where the home addresses of only one segment of public employees are exempt from disclosure pursuant to a temporary order. In the absence of a regulation, policy or procedure, 65 P.S. § 67.1102(b)(3) grants authority to the OOR to “rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute.”

On July 30, 2009 the OOR posted to its website an advisory from its Executive Director, Terry Mutchler, stating that the OOR will make “no distinction between the protection of home addresses of public school employees and other employees . . . [and] will issue no final determinations directing the release of public employee home addresses [] pending resolution of this matter by the Commonwealth Court.” *See, Advisory Regarding Home Addresses of Public Employees*, July 30, 2009, available at <http://openrecords.state.pa.us>.

Subsequent to the injunction the OOR has received numerous appeals related to requests for the addresses of school employees and public employees. The OOR has asked each requester who filed such an appeal to extend the deadline for issuance of the final determination until after the Commonwealth Court issues a decision regarding the public status of school employee home addresses. The Requester holds the sole authority to extend the deadline for issuance of a final determination. 65 P.S. §67.1101(b)(1). On September 24, 2009 the Requester denied the OOR’s request for an extension of time to issue this final determination.

While the OOR remains committed to its position, as set forth in its prior final determinations, that home addresses, save those specifically exempted by the RTKL, are public records subject to disclosure, the OOR also endeavors to respect the spirit of the orders and guidance it receives from the Commonwealth Court. Neither the Injunction nor the Opinion specifically defines the term “employee” except to the extent that the Opinion identifies each of the Plaintiffs collectively as “Employees.” *Id.* Nor, as suggested by the Requester, did the Injunction or Opinion specify whether the injunction was applicable only to *current* employees. PSEA is a named Plaintiff. PSEA’s members include current and retired school employees. *See* PSEA website, <http://www.psea.org>.

The injunction does not apply only to those school employees that are members of PSEA, but all school employees; therefore, the OOR finds that the injunction also applies to the release of addresses of all retired employees and not just those who are members of PSEA. Accordingly, because the RTKL provides for the denial of access to records that are exempt from disclosure under a judicial order, this appeal, as it relates to school employee home addresses, is denied. The Requester is not precluded from submitting a new request for the addresses when a final order is issued by the Commonwealth Court regarding the status of school employee home addresses.

The appeal as to the denial of the names of the retired public school employees is granted. A record of the agency is presumed to be a public record. 65 P.S. §67.305. The agency bears the burden of proving that its records are not public. 65 P.S. §67.708(a). The District provided no legal or factual grounds for the denial of names other than referring to the preliminary injunction. The injunction does not prohibit the release of school employee names. Therefore, the District has failed to meet its burden of proof and is required to provide the Requester with records reflecting the names of the retired school employees.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**.

The appeal for the names of the retired public school employees is **granted** and The District is required to provide the Requester with records reflecting the names of the retired school employees.

The appeal for the home address for all individuals who have retired from the District from 2004 to the present is **denied** and the District is not required to take any further action.

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 Lehigh 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 AND MAILED: September 25, 2009



AUDREY BUGLIONE, ESQUIRE
Appeals Officer

Sent to: William Warren, Jr., Esquire, Michael W. Michaels