

The City advised that 41 pages were being made available for inspection, from which tax amounts, as per the LTEA, and information relating to citizen complaints regarding tax refunds under Section 708(b)(17), was redacted (“Denial”).

The Requester timely appealed the redactions on December 14th. He contends that the City does not specify the reason for each redaction, and that from the surrounding unredacted material, he does not believe the redactions are proper (the “Appeal”).

The City supplemented the record on appeal to include a notarized affidavit made subject to 18 Pa. C.S. §4904, by Debra Bowman, City Finance Manager (“Affidavit”). The City Finance Manager attests that she is the custodian of records for taxes levied by the City, and the tax returns. She described her redactions from the 41 pages of correspondence in the Affidavit. She explains that some of the correspondence pertained to complaints to the Mayor about tax refunds, which she addressed in correspondence to Rose Harr, the Vice President/Community Relations of Keystone Municipal Collections (“Keystone”). She advised that four e-mails detail the discussions about the investigation and resolution of two citizen complaints.

Ms. Bowman also attests that her e-mails to and from Ms. Harr, and Larry Hilliard of the City, dated in August and September of 2009 observe the level of tax remittances from employers for earned income taxes and local service taxes compared to other years. She further advises that her e-mails in early September and late October 2009 relate to the amount of taxes remitted. She explains the material redacted from these e-mails was garnered from filed returns.

Assistant Solicitor Fruhwirth explains the application of the exceptions to the redactions under the cited exemptions. She contends the e-mails related to the investigations conducted based upon citizen complaints are protected under Section 708(b)(17). She cites two cases that have interpreted the LTEA as a statutory exemption from access in the context of the RTKL,

Scranton Times, L.P. v. Scranton Single Tax Office, 736 A.2d 711 (Pa. Commw. 1999) and *Juniata Valley Sch. Dist. v. Wargo*, 797 A.2d 428 (Pa. Commw. 2002).

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The City 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 City cites a statutory exemption and the noncriminal investigation exception to justify the redactions. Each is addressed in turn.

1. The LTEA Protects “Confidential Return Information.”

The City contends that redactions from many of the e-mails provided for the Requester’s inspection are exempted by statute, namely the LTEA. Section 6913(V)(f) of the LTEA states:

Any information gained by the officer, his agents, or by any other official or agent of the taxing district, **as a result of** any declarations, returns, investigations, hearings or verifications required or authorized by the ordinance or resolution, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

53 P.S. §6913(V)(f)(emphasis supplied). The Commonwealth Court has interpreted this provision as a statute that protects records from release to the public. *See Scranton Times, supra; Juniata Sch. Dist., supra*. The Commonwealth Court clarified that “not only are tax records not permitted to be released, but any ““information” gathered from those records cannot be divulged.” *Scranton Times*, 736 A.2d 714. The Affidavit advises that some of the e-mails contain the amount of tax remittances, and other information that is gained as a result of the tax returns filed pursuant to law. Information gained as a result of the returns filed is expressly exempt, and the redactions described in the Affidavit at ¶5C are proper.

The Finance Manager also attested that the information she redacted as described in ¶5B was based upon and a result of information obtained from the confidential tax information. The amounts of tax remittances and any other information from the material filed, including comparisons to prior years, as described in ¶5B are properly exempt under the LTEA. Tax remittance information is the precise type of information this provision is designed to protect.

2. Information related to investigation of citizen complaints is excepted by (b)(17).

The City asserted that correspondence relating to the investigations of citizens' two complaints regarding refunds from Keystone are protected by Section 708(b)(17). Section 708(b)(17) protects in pertinent part "a record of an agency relating to a noncriminal investigation, including: "(i) complaints submitted to an agency..." and "(ii) investigative materials, notes, correspondence and reports...". 65 P.S. §67.708(b)(17).

Under Section 708(a), the City bears the burden of proving its asserted exception by a preponderance of the evidence, meaning the "greater weight of the evidence." *Com. v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001). The City's Affidavit clearly substantiates that the City Finance Manager corresponded with Keystone regarding two citizen complaints, and that the correspondence pertained to the investigation and resolution of the two complaints made to the Mayor's Officer about tax refunds. As the complaints and correspondence relating to the investigation of those complaints are expressly protected under this exception, the City met its burden of proof here. Thus, the City's redactions as described in ¶5A of the Affidavit are proper.

3. The City's Denial was sufficient in stating the applicable redactions.

The Requester contends that the City did not adequately justify its redactions from the 41 pages because the City did not specify which exception applied to which correspondence. In essence, the Requester contends that the City is required to submit a redaction log so that each redaction is explained, and each has a citation to the law. In this case, two exemptions are

asserted. The Requester asserts that he cannot discern which one applies based on the context of the unredacted material. The RTKL does not require an agency to provide a “redaction log” to a requester in order to satisfy its obligations for a proper denial under Section 903.

Section 903 requires the agency to set forth “the specific reasons for the denial, including a citation of supporting legal authority.” The City cited the specific reasons for the redactions, and cited the appropriate legal exemptions by citing a statute, including full legal citation, and an exception under the RTKL by name and legal citation. The City Denial thus satisfies the RTKL.

CONCLUSION

For the foregoing reasons, the Requester’s Appeal is **denied**.

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. §67.1302(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 website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: January 12, 2010



LUCINDA GLINN, ESQ.
APPEALS OFFICER

Sent to: Jarrett Renshaw of and for *Morning Call*; Frances Fruhwirth, Esq., for City