



FINAL DETERMINATION

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| IN THE MATTER OF | : | |
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| MS. COURTNEY L. ANDERSON and | : | |
| <i>THE HERALD</i> | : | |
| Complainants | : | Docket No.: AP 2009-0502 |
| | : | |
| v. | : | |
| | : | |
| SHARON SANITARY AUTHORITY | : | |
| Respondent | : | |

INTRODUCTION

Ms. Courtney L. Anderson, a news reporter for *The Herald*, filed a right-to-know request (the “Request”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (the “RTKL”) with the Sharon Sanitary Authority (“the Authority”) seeking access to delinquent sewer accounts. The Authority denied the Request citing the Fair Credit Extension Uniformity Act. Ms. Anderson (the “News Reporter”) timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **granted** and the Authority is directed to take further action as set forth below.

FACTUAL BACKGROUND

The Request was sent to the Authority on June 3, 2009. On June 10, 2009, Bette L. Kepics, the Open Records Officer responded denying access based upon the Fair Credit Extension Uniformity Act, 74 P.S. 2270.1, *et. seq.* ("FCEUA"). The Authority defends denial of access in part as follows:

The Fair Credit Extension Uniformity Act defines the terms "consumer", "creditor" and "debt." The City of Sharon Sanitary Authority fits within the definition of "creditor", it being a person ("Person" is not defined in the Fair Credit Extension Uniformity Act, but it is defined to include "any government entity" in the Statutory Construction Act of 1972 (1 Pa.C.S.A. 1991)) that conducts business within the Commonwealth to whom a "debt" is owed, a "debt" being defined as " ... past due obligation...of a consumer to pay money ... as a result of a purchase... of...services...for personal, family or household purposes... ". The user fees charged by the Authority are assessments specifically permitted by the Municipality Authorities Act at 53 Pa CSA 5607(d)(9), and are a charge for sewage transportation and treatment services provided for household purposes, and hence a "debt" within the meaning of the Fair Credit Extension Uniformity Act.

While the Act admonishes that we not consider "the intended use of the public record by the requestor " (Section 302(b)) it also adds the caveat " ... unless otherwise provided by law." Certainly the conduct of the Authority in releasing consumer accounts to a requestor who identifies herself as a Herald staff writer, inexorably leads to the conclusion that the natural consequences of our conduct of releasing delinquent account information would be its publication in "The Herald", and thus a clear violation by us of Section 4(b)(4)(iii) of the Fair Credit Extension Uniformity Act.

Thus the Authority believes that our conduct in releasing for inspection and copying the accounts of delinquent "consumers" would subject it and its Board to penalties prescribed by 73 P.S. 2270.5(a) and 73 P.S. 201-8(b), those penalties potentially being up to \$3,000 per violation.

The OOR asked the News Reporter to respond to the Authority's legal argument that the requested records are subject to the FCEUA. An extension of time for issuing a

Final Determination was agreed upon and William G. McConnell, Jr., Esquire provided a formal response on behalf of the News Reporter and *The Herald*, in part as follows:

As you are aware, the Act was designed to permit the scrutiny of the acts of public officials and to make them accountable for their use of public funds. *Buehl vs. Pennsylvania Department of Corrections*, 955 A.2d 488 (Pa. Cmwlth. 2008). The purpose of the Act is to allow any individual or entity access to public records to discover the workings of government. *Sapp Roofing Co., Inc. vs. Sheet Metal Works International Association, Local Union No. 12*, 713 A.2d 627 (Pa. Super. 1998)...

The Act clearly provides for public access to any account, voucher, or contract dealing with the receipt or disbursement of public funds by a public agency. Thus, financial records, including the accounts of local agencies, have been held by the courts almost without exception to be public records subject to inspection and disclosure under the Act. Denying public access to an agency's accounts and financial records would completely defeat the purpose and intent of the Act by preventing the public from being able to scrutinize the agency's use and stewardship of public funds.

The Commonwealth Court has repeatedly upheld the public's right to inspect delinquent accounts under the Act. In the case of *Pennsylvania Land Title Association vs. East Stroudsburg Area School District*, 931 A.2d 961 (Pa. Cmwlth. 2006), the Commonwealth Court held that a requester is entitled under the Act to access records containing the current figures of delinquent taxes, tax certifications, and tax liens. Moreover, in the case of *Goppelt vs. City of Philadelphia Revenue Department*, 841 A.2d 599 (Pa. Cmwlth. 2004), the Court held that the off-site mailing addresses of delinquent real estate taxpayers were public records under the Act and not exempt from disclosure for reasons of personal security or privacy.

...The Act clearly provides that the intended use by the Herald of the sewer account records is irrelevant in determining whether the record should be disclosed and is not a basis upon which the Authority may deny access to such records. The fact that the Authority is concerned that the Herald might use its access to the account records to publish a list of the names of delinquents in its newspaper and possibly subject the Authority to potential liability under Section 2270.4(b)(4)(iii) of the FCEUA is not a proper basis under the Act for a denial of public access. Furthermore, not only is the intended use of the public record by the requester irrelevant in determining whether the record should be disclosed, the identity and affiliation of the requester is likewise irrelevant. In this case, the fact that

the requester is an employee of a local newspaper as opposed to an individual that is not employed by the media is irrelevant and may not be a consideration in determining whether the record should be disclosed...

It is also important to note that unlike such statutes as the federal Privacy Act, the Public Welfare Code, and the Local Tax Enabling Act which do create a statutory right of confidentiality or privacy in the subject matter of certain information contained in public records, the FCEUA does not create a statutory right of confidentiality or privacy in the accounts of a public agency. To the contrary, the relevant section of the FCEUA only prohibits a creditor from "engaging in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt, including the publishing of a list of consumers who allegedly refuse to pay debts." Thus, the Authority's position that the FCEUA creates a statutory right of confidentiality in its sewer account records which exempts such records from public inspection and disclosure under the Act is in error.

LEGAL ANALYSIS

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

The RTKL defines a "record" as follows: "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. §67.102. A "public record" is defined as follows: "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

The Authority cites FCEUA for the argument that delinquent sewer accounts are “exempt from being disclosed under...State law...” The Authority argues that FCEUA’s definitions of “consumer,” “creditor” and “debt” are met and that the following language precludes release of the requested records:

A creditor may not engage in any conduct the natural consequence of which is to harass, oppress or abuse any **person in connection with the collection of a debt**. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

...The publication of a list of consumers who allegedly refuse to pay debts... (73 P.S. §2270.4(b)(4)(iii)) (emphasis added).

The FCEUA, as described in section 2270.2 (“Scope of act”) establishes “what shall be considered unfair methods of competition and unfair or deceptive acts or practices **with regard to the collection of debts**” (emphasis added) and the specific conduct prohibited in 73 P.S. §2270.4(b)(3) must occur “in connection with collection of a debt.” We find that maintaining records of public sewer usage, billing and payment are not activities related to debt collection. These are activities of a public agency and, if FCEUA is applied to a request for access to records documenting those activities, the purpose of the RTKL would be thwarted and citizens deprived of access to any agency billing information.

Even if the Authority proved the applicability of FCEUA, publication of a list of consumers who allegedly refuse to pay debts has not been established as “the natural consequence” of fulfilling the Request because the Authority has provided no evidence

and cited no cases where the FCEUA was applied to a governmental agency. The Authority argues that because the requester is a news reporter, publication of a list of delinquent users is a natural consequence of disclosing the records requested. There is no evidence from which to conclude that use of the information will have any particular consequences. Moreover, the OOR has repeatedly held that the status of the record and not the requester controls in determining whether or not a record must be disclosed, see *Selepack v. DOC* OOR Dkt. AP 2009-0462, *Rech v. Dept. of Education*, OOR Dkt. AP 2009-0034; *Hawkins v. Pa. Dept. of Labor & Industry*, OOR Dkt. AP 2009-0139 and *Sunshine v. Dept. of Corrections*, OOR Dkt. AP 2009-0322. In those cases, citizens had a personal interest in the requested records and the OOR held that the only records accessible pursuant to the RTKL are “public records” available to all citizens regardless of their interest or stake in the information. As the News Reporter argues, Pennsylvania courts have held that the delinquent accounts of a government agency are public record, see e.g. *Goppelt vs. City of Philadelphia Revenue Department*, 841 A.2d 599 (Pa. Cmwlth. 2004).

The Authority concedes that section 67.302 prohibits agencies from denying right-to-know requests due to the intended use of the public record “unless otherwise provided by law.” The FCEUA does not prohibit the release of any particular information, and exists to govern acts and practices of creditors and debt collectors regarding debt collection methods, 73 P.S. §2270.2. The News Reporter argues that FCEUA does not create a right of confidentiality or privacy in the accounts of a public agency as is found in other statutes. The OOR has previously considered other laws that do expressly provide for confidentiality: *Fenton v. PHFA*, OOR Dkt. AP 2009-0208

(Gramm-Leach-Bliley Act, 15 U.S.C. §6801 *et. seq.*); *Cooley v. PBPP*, OOR Dkt. AP 2009-0496 (Board of Probation and Parole Regulations, 37 Pa. Code §61.20); *Baldwin v. PPUC*, OOR Dkt. AP 2009-0545 (Public Utility Code, 66 Pa.C.S. § 1508); *Mayercheck v. Dept. of Banking*, OOR Dkt. AP 2009-0109 (Pennsylvania Banking Code, 71 P.S. § 733-302(A)); *Selig v. Dept. of State*, OOR Dkt. AP 2009-0288 (The Medical Care and Reduction of Error Act, 40 P.S. §1303.907(a)); *Hahn v. Methacton School District*, OOR Dkt. AP 2009-0153 (Family Educational Records Privacy Act, 20 U.S.C. 1232g). In each of these cases, confidentiality was expressly required due to the nature of the record.

Without explicit language requiring confidentiality, the FCEUA's scope reaches only methods and practices "with regard to the collection of debt" and prohibits harassment, oppression and abuse "in connection with the collection of a debt." As we do not view financial record-keeping at a public agency to be an activity associated with debt collection, delinquent sewer accounts are not protected by FCEUA and are public record.

CONCLUSION

For the foregoing reasons, this appeal is **granted**. The Authority shall provide the requested records within thirty (30) days.

The parties are advised that this is a final determination. Within thirty (30) days of the mailing date of this determination, it may be appealed to the Mercer County Court of Common Pleas. In the event of an appeal for judicial review, all parties must be served with notice of the appeal. The Office of Open Records shall be served notice in

accordance with Section 1301 and have an opportunity to respond to any appeal for judicial review.

The parties are advised that this Final Determination will be posted on the Office of Open Records website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED ON: August 21, 2009



APPEALS OFFICER
DENA LEFKOWITZ, Esq.

Sent to: William G. McConnell, Jr., Esquire (counsel for the Citizen);
Bette L. Kepics, ORO