



**FINAL DETERMINATION**

**IN THE MATTER OF:** :  
 :  
**MR. RON STIDMON,** :  
**Complainant** :  
 :  
**v.** : **Docket No.: AP 2009-0170**  
 :  
**BLACKHAWK SCHOOL DISTRICT** :  
**Respondent** :

**INTRODUCTION**

Mr. Ron Stidmon (“the Citizen”) filed a Right-to-Know request (“the Request”) with Blackhawk School District (“the Agency”), pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. The Citizen sought information related to litigation of grievances filed by teaching staff. The Agency denied the Request. The Citizen timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth below, the appeal is **granted in part and denied in part** and the Agency is directed to take further action as set forth below.

**FACTUAL BACKGROUND**

Mr. Ron Stidmon filed the Request on February 24, 2009 seeking “all documents related to litigation about grievances by teaching staff.” Eric Brandenburg, Open Records Officer (“ORO”) responded on February 26<sup>th</sup>, 2009 stating that litigation and grievance matters are confidential and exempt under the RTKL. He added, “The only

information allowed would be amounts paid out to date. If that is part of your request, please let me know.” No information was provided informing the Citizen of the legal or factual basis for the denial or information on how to appeal the decision. The records requested were not set forth in the Agency’s response. The Citizen clarified the Request on February 26, 2009 acknowledging privacy issues associated with grievances and stating that he sought only the number of grievances settled, the number pending, and dollar amounts related to each dispute (both resolved and pending). The Agency denied the Request on March 4, 2009, except for informing the Citizen that \$154,168.51 had been awarded but did provide the number of grievances this sum represented and, again, did not provide a basis for the partial denial except for a reference to sections 708 and 903 of the RTKL. No information was provided to the Citizen regarding the process to appeal as required by law.

The Citizen wrote to the Agency again on March 3, 2009 requesting information for the designated appeals officer as required under the RTKL and received, in response, the address and website of the OOR. No information was provided regarding the deadline.

The Citizen appealed to the OOR on March 11, 2009 on the basis that he specifically stated that he did not want personal information on any teacher or school and itemized the information sought as will be set forth below. He again clarified his position on March 16, 2009 stating that the only information sought is financial and statistical.

The Agency responded on April 6, 2009 stating that the Citizen’s request was insufficiently specific because it failed to identify a time period for the records sought. It also argued that it is not required to create a record under Section 67.705 of the RTKL.

Because the parties appeared desirous of resolving this appeal, the Citizen was permitted to amend his request only to specify the time frame only for the records sought, with no objection from the Agency. The Citizen clarified that he seeks the following records related to grievances from January 1 2008 though February 26, 2009:

1. Number of suits settled and outstanding
2. Dollar amount awarded
3. Remaining dollar amount to be resolved; and
4. Amount spend on legal fees

The Agency responded on April 24, 2009 as follows:

1. This information is not financial in nature and the District does not maintain a list of these in any event.
2. The total amount for teachers is \$154,168.51.
3. The amount being litigated is speculative and so there is no record which can be produced to respond;
4. The amount spent on legal fees between the dates of 01/01/08 - 02/26/09 is \$4,736.94.  
The Law Office of Daniel R. Delaney was paid \$4,331.94 and McClain, Young and Patterson was paid \$405.00.

The remaining issues between the parties after the Agency's response above are: 1) the number of grievances settled and outstanding and 2) the current amount being litigated during the time frame set forth above. Accordingly, the undersigned wrote to the Agency as follows:

“The definition of record includes "information regardless of physical form or characteristics..." so if the District has information regarding this, it must be produced. This is not a requirement that the District create a record, but I must be sure that no information exists that could be provided in response to Mr. Stidmon's request. I will need you to provide a sworn statement that the District has no records/information related to Mr. Stidmon's request for the number of lawsuits settled and outstanding between 1/08/09 - 1/26/09... Please provide a sworn statement if it is your position that the District possesses no information responsive to this request by Friday May 1.”

The Agency did not provide a sworn statement and instead followed up with a letter dated April 30, 2009, denying access to the number of grievances pending, citing section 67.708(b)(ii). The Agency interprets this paragraph to include only the final award or order of an arbitrator as a public record. Also, the Agency argues that grievances do not necessarily seek monetary compensation and that assigning a value to a grievance before it is concluded would be speculative. The Agency stated that one grievance had been resolved during the period specified by the Citizen.

### **LEGAL ANALYSIS**

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The Agency 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 record in the possession of a Commonwealth 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, 65 P.S. 67.305. The agency bears the burden of proof to demonstrate by a preponderance of the evidence that the record is not subject to disclosure. 65 P.S. §67.708. 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 (8<sup>th</sup> ed.). *See also* Commonwealth v. Williams, 615 A.2d 716 (PA. 1992).

The exemption cited by the Agency is Section 67.708(b)(ii) which exempts the following:

(ii) In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.

The RTKL, at section 903, imposes requires upon an agency that denies a request:

If an agency's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority.
- (3) The typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued.
- (4) Date of the response.
- (5) The procedure to appeal the denial of access under this act.

### **The Agency did not Comply with Requirements for Denying a Request**

As set forth above, the denial letters of February 26, 2009 and March 4, 2009 failed to comply with (1), (2) and (5) above. The Citizen had to request from the Agency the process for appealing the Agency's decision after the Request was denied.

### **The Number of Grievances Pending is not Exempt**

The Citizen does not seek arbitration exhibits, transcripts or opinions, the information exempted by Section 67.708(b)(8)(ii) of the RTKL and cited by the Agency as the basis for denial of access. He seeks the number of grievances settled and outstanding and the current dollar amount being litigated during the time period

specified. The Agency initially responded that it does not maintain a list and is not required to create a record (see letters of April 6, and April 24, 2009). When asked for a sworn statement that the information does not exist, the Agency responded with a letter explaining the grievance process and providing the dollar amount for one grievance resolved during the time period in question (see letter of April 30, 2009). It would not provide the number of pending grievances or verify that it has no information related to that request. Section 67.708(b)(8)(ii) of the RTKL does not exempt such information from disclosure and the Agency has failed to meet the burden of proving that it is applicable to this Appeal.

**The Dollar Amount Associated with Pending Grievances is Speculative**

The Citizen seeks “remaining dollar amount to be resolved” in pending cases and the Agency responded that such information is speculative and that “sometimes the resolution involves the expenditure of funds and sometimes not.” The OOR agrees that this request calls for speculation and the Agency’s explanation is persuasive that no records exist to satisfy this request.

**CONCLUSION**

For the foregoing reasons, this appeal is **granted in part and denied in part** and the Agency is required to supply the number of teacher grievances pending and resolved between from January 1, 2008 though February 26, 2009. It is not required to respond to the request for the “remaining dollar amount to be resolved.”

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 Beaver 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 ON MAY 20, 2009:**

A handwritten signature in black ink, appearing to read 'Dena Lefkowitz', written in a cursive style.

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APPEALS OFFICER  
DENA LEFKOWITZ, Esq.