

- (2) Names of district employees or board members permitted to sign checks;
- (3) Names of district employees or board members who are bonded, those bond amounts and the annual costs of those bonds to the district; and
- (4) Line item budgets showing actual revenues and all expenditures, including all checks written for the 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 school years.

(the “Request”). He asked that anything available electronically be sent to his e-mail address.

After invoking the thirty-day extension,¹ on October 13th, Paul Sroka, the Open Records Officer (ORO) advised that existing responsive records would require prepayment of \$5,000 due to the required redactions from the records, and thus could not be provided in electronic format, as further explained in its counsel letter dated October 13th (“Counsel Letter”). The School District denied the records sought in parts (2) and (3) above as non-existent, advised that part (1) required redaction under Section 708(b)(6) for personal identification numbers, and that the budget items in (4) also required redaction of personal identifiers under (b)(6) and (b)(30) of the RTKL, under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. §1232g, and HIPAA (Health Insurance Portability and Accountability Act), and protection for school employee home addresses in accordance with the injunction issued in *PSEA, et al v. OOR, et al*, No. 396 MD 2009 (the “Denial”). The School District advised that upon prepayment of the \$5,000 fee, the printed redacted records would be provided.

The Requester timely appealed the Denial challenging the estimated fee and the infeasibility of providing the requested records electronically (“Appeal”). The Requester argues that the information requested may be provided with redactions in accordance with Section 706, to the extent any information is protected. The Requester contends that the information can be

¹ The Requester had filed an earlier appeal, OOR Dkt. AP 2009-0828, related to the same Request before the thirty-day extension elapsed. That appeal was dismissed as premature because the School District contended it would be providing a substantive denial, including reasons for redaction, within the thirty days. As the OOR determined in *Renshaw v. City of Allentown*, OOR Dkt. AP 2009-1013, an agency cannot refuse to provide grounds for its allegedly required redactions within its denial, and require payment before supplying its reasons for requiring redaction.

saved into an Excel file, but asserts that saving the information in that format is not required. In support, the Requester submitted an affidavit of W. Scott Ardisson, a certified computer examiner (CCE) who performs computer forensic investigations and electronic discovery (“Ardisson Affidavit”). Mr. Ardisson attests in the affidavit that the requested records are able to be exported and provided by electronic means via CD. He attests the information is stored in the MUNIS and Pentamation systems, which are electronic database accounting management systems that enable information to be retrieved and exported.

Mr. Ardisson contends that providing the data in electronic form does not jeopardize the integrity of the information, and that the integrity of the information could be validated through the use of a digital signature. He contends that the School District could use a digital signature or “hash value” as is done in electronic discovery processes to address any concerns with alteration.

The Solicitor for the School District requested an extension of time in order to obtain an affidavit from a computer expert to counter the Ardisson Affidavit. As a result, an extension for the Final Determination was granted. Upon agreement of the parties, to permit time to reach an amicable resolution, the Final Determination date was extended to December 31, 2009.

Prior to the record closing, Trib Total Media supplemented the Ardisson Affidavit with a second affidavit from Mr. Ardisson based upon his visit to the School District to review the MUNIS and Pentamation accounting systems on November 30th. He attests that he was able to show the School District the systems’ capability for retrieval and export of the information in electronic reports and delimited text files, which are standard formats for retrieving data. He further explains that the report of all checks written or received over a specific timeframe was able to be redacted in Excel by replacing the sensitive information with “XXX” or the word “redacted.” The payroll/salary reports are available on the MUNIS system. The Pentamation

system also permitted exporting in a delimited text format, and permitted redaction by deleting the data column that contained Social Security numbers. He attests that Pentamation has the capability of generating reports in .rpt files which are “plain text files that are easily exportable and may be redacted by searching for and replacing sensitive information.” (“On-Site Opinion”).

The School District Solicitor supplemented the record addressing the existence of the records in the medium requested, being an “electronic” medium (“Solicitor letter”). The Solicitor argues that data for the 2005-06 school year is not available in electronic medium because it has been archived off-site. The Solicitor argues the data no longer exists in any manner which can be accessed by the School District without entering a new contract with the software vendor, such that 2005-06 data is only available in printed form. With regard to records for 2006-07 and 2007-08 school years, the Solicitor maintains the records cannot be provided in an electronic medium which permits redaction of nonpublic information. He contends the MUNIS records cannot be properly redacted through a search and retrieval as Mr. Ardisson suggests because that presumes knowledge of each type of nonpublic information that the electronic record contains without viewing the record as a whole. With regard to Pentamation records, corresponding to the 2008-09 and 2009-10 school years, the School District argues that the RTKL does not require it to download the data into Excel and redact it electronically.

The School District supplied a verification of Jack Okorn, its Information Technology Coordinator, that the statements within the Solicitor’s letter are true and correct to the best of his knowledge (“Okorn Verification”). The School District submitted a letter from Cypher & Cypher, Certified Public Accountants, regarding the necessity for redaction from the financial records of any sensitive information. The School District also supplied a sworn notarized statement of its

ORO that the facts within the Solicitor's letter are true and correct to the best of his knowledge ("ORO Affidavit").

Trib Total Media challenges the School District's Denial as to Parts 1 and 4 of its Request. The parties have not disputed the type of redactions at issue, (*i.e.*, personal identifiers listed in Section 708(b)(6), or (b)(30), or of account numbers, or home addresses of school employees, or student names), thus the propriety of these claimed redactions has not been challenged. The Appeal is limited to whether the School District may defend its Denial as to Parts 1 and 4 based upon Section 705, due to its alleged inability to copy the electronic records into an electronic medium given the need for redaction.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The School District qualifies as a local agency subject to the RTKL and its obligations of mandatory disclosure. *See* 65 P.S. §67.102, §67.302. Records of a local agency are presumed "public" unless the record is: (1) exempt under Section 708; (2) protected by a privilege; or (3) exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. *See* 65 P.S. §67.305. The School District asserts the requested records require redaction of information protected under FERPA, HIPAA and exceptions for personal information under Section 708(b), including (b)(6) for personal identification and financial information, and (b)(30) personal information of a minor (name, address, birth date).

The two types of information requested, *i.e.*, payroll information and line budget items, including expenditures, checks in and out, are public with minimal redaction. The alleged redaction grounds are not challenged in this Appeal, and therefore, need not be addressed. The parties dispute whether the information requested in Parts 1 and 4 exists in a particular medium, and secondarily, given its existence, how that information must be provided to the Requester.

Section 701 provides that “a record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists.” 65 P.S. §67.701. In this case, the Requester clearly sought the records at issue electronically. The School District did not deny that the records sought in Parts 1 and 4 of the Request exist electronically. Therefore, there is no dispute that the records exist electronically. The RTKL further provides that for records maintained electronically, the duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media, unless the requester specifically requests the more expensive medium. 65 P.S. §67.1307(d). The School District argues that its obligation to provide records in the “medium” in which it exists must be construed as legally distinct from any format in which it exists. As neither term is defined in the RTKL, the plain meaning of the terms is consulted.

“Medium” is the “what” of the information, whereas the format is “how” the information is depicted. “Medium” is defined as the substance through which something is transmitted or carried, a “means,” such as on paper or on a hard-drive or on a database or over the Internet. The term would include a CD or DVD or video tape as potential substances that carry information. “Format” is the structuring or organization of information, which could be a spreadsheet or a list, or another mechanism of presenting or displaying the information at issue. The plain meaning is the “plan for organization and arrangement of a specified production.” *See American Heritage Dictionary*, 2d ed. The difficulty with discerning the requirements for producing information that is stored in a database, and organized by fields rather than manila folders, is that the database serves as an organization system for locating the information, and can be manipulated to ease retrieval such as through implementing “queries” for specific information. The act of querying a database to obtain specific information does not constitute creation of a record under

Section 705 any more than having the records custodian review a series of file cabinet indices to find the precise file with the information requested.

Section 705 provides that “an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. §67.705. However, the fact that records require redaction before they can be provided to a requester does not constitute creation of a record, even though the record may not have previously existed in that redacted form. Section 706 explains redaction as follows:

if an agency determines that a public record ...contains information which is subject to access as well as information which is not subject to access, the **agency’s response shall** grant access to the information which is subject to access and deny access to the information which is not subject to access... The agency may not deny access to the record if the information which is not subject to access is able to be redacted.

65 P.S. §67.706. Because a redacted record does not constitute a record created or compiled in order to fulfill a right-to-know request, to construe these provisions consistently, an agency must recognize that the process of redaction cannot equate to compilation prohibited by Section 705.

The School District does not contest the basic public nature of the records at issue—payrolls and salaries, line item budget expenditures— and acknowledges its obligation to provide the record in redacted form.

Thus, the School District must provide the records in the medium in which they exist, as well as redact only the protected portions. This Final Determination addresses how the records need to be provided as far as format and medium, given the redactions needed. As the burden of production, duplication and redaction falls upon the School District, the burden of proof rests upon the School District to justify why it cannot provide the records to the Requester electronically. The types of records, as maintained by the School District, are addressed below.

1. 2005-06 School Year (MUNIS system) Records Cannot Be Provided Electronically.

The School District asserts that the payroll and line item budget/checking records corresponding to the 2005-06 school year are not electronically available because the District had not maintained a software contract with MUNIS, and thus the information may only be viewed or printed. [See *Okorn Verification*.] The information remains electronically available, but with limited capabilities because the School District no longer maintains the MUNIS system, and now uses the Pentamation system for this data. The Ardisson Affidavit, and Supplement do not contest that the information archived from the School District servers, and moved offsite to an entity with whom it no longer has a contractual relationship, can be provided in an electronic *and* redactable form. The School District no longer maintains the information electronically in a manner in which it can be queried. The School District IT Coordinator advised that the information for 2005-06 is unavailable for electronic review.

The Requester has not disputed that the information that would appear on the print screen version available for 2005-06 data contains personal identifiers and account numbers that would be subject to redaction. As the only available evidence on this point shows that the information is no longer manipulable electronically through the database for that school year, the School District may satisfy the Request for 2005-06 school year data by providing it in hard-copy with the nonpublic information outlined in its Denial redacted.

2. 2006-07 and 2007-08 Records Must Be Made Available Electronically.

The School District admitted that it continues to maintain the 2006-07 and 2007-08 records requested electronically. The reason the School District has not provided access to the records electronically is predicated upon two arguments: (1) Section 701(b) does not permit access to agency computers; and (2) electronic redaction is not required by the RTKL. The

RTKL does not contemplate that an agency (or its employees) must make its computers available for inspection. *See* 65 P.S. §67.701(b). Therefore, the School District is correct that the Requester cannot view the information on its computers or run queries to obtain the information sought. Electronic redaction may be required if the records exist electronically because the RTKL requires redaction in addition to requiring an agency to provide the information requested in the medium requested, as long as it exists in that medium.

In the instant case, the School District argued that the records for 2006-07 and 2007-08 cannot be electronically redacted, and thus need to be printed into hard-copy, an alternate medium, in order to redact the information. The record reflects that the Requester's computer forensic expert visited the School District and tested the MUNIS and Pentamation capabilities on November 30th. In his on-site examination of the MUNIS database, Mr. Ardisson was able to export reports from the database in delimited text files that can be viewed in Excel. He attested that the information was viewable in Excel and could then be redacted by replacing the personal information with XXX or "redacted." He explains that the act of exporting to a printer, to create a hard-copy record to be manually redacted, is no different from exporting to download into Excel and redact by replacing the characters in the record. Each record, after redaction, would need to be duplicated at a cost to the Requester. But the Excel redacted copy could be saved to an electronic medium such as a CD to provide the records to the Requester.

The OOR finds the affidavit and On-Site Opinion of Mr. Ardisson persuasive and compelling evidence to show the capabilities of the systems. This affidavit and opinion was not provided in the abstract, but rather was based upon a thorough on-site review of the system in consultation with the IT Coordinator for the School District, Mr. Okorn. It is important to note here that the District had no obligation to permit such an on-site inspection. However, when it

did, Mr. Ardisson showed the ORO how the electronic redaction could be performed by downloading the information into an electronic medium rather than to a printer. Had Mr. Ardisson not been able to show the capabilities of the systems themselves and attest to the specific systems' capabilities based upon real use of the School District's software and equipment, the OOR would not have found the Requester's IT expert opinions sufficient.

During his inspection and demonstration of the capabilities of the MUNIS system, Mr. Ardisson explains that "after browsing through several reports and system menus, we were able to export a check reconciliation report in a delimited text file." [*On-Site Opinion*, ¶5.] The School District was under no obligation to permit the Requester's IT expert to access its computer systems; indeed, Section 701(b) provides that such access to an agency's computer is not afforded by the RTKL, and the OOR cannot compel such a demonstration. However, the School District permitted access to its systems, and the Requester showed that the records could be redacted electronically.

The School District does not contend that the electronic redaction as explained by Mr. Ardisson is not feasible, merely that it is not required because it requires electronic download into Excel, and keystrokes to perform redaction rather than manual black or white out of the information.

The reports that are contained within the MUNIS system that contain the information requested, such as the job/salary report, and the payroll history report and check reconciliation reports, exist electronically. Therefore, the School District needs to furnish the records electronically absent a reason that electronic duplication is not possible. The School District did not demonstrate that the records cannot be electronically redacted and presented in a manner that would not permit the viewing of the redacted information. Therefore, the School District is

required to provide the 2006-07 and 2007-08 records to the Requester in electronic medium. The electronic format of the information may be presented in a manner that would maximize security of the redacted information, even if that entails the School District saving and supplying the data in another computer program such as .pdf.

The School District argued that electronic retrieval would not permit a line-by-line redaction of all of the protected information. There has been no factual development by the School District regarding the capabilities or limitations upon the electronic data it maintains to show that a line-by-line redaction is not possible by viewing the information on a screen as opposed to in a printed copy. As explained by Mr. Ardisson, the information may be viewed in Excel and then electronically redacted. Absent support that electronic redaction would not permit the School District to thoroughly review all of the information contained within its electronic records, the OOR cannot uphold the School District's refusal to provide and duplicate the record in the medium in which it exists. *Accord* 65 P.S. §67.1307(d).

This Final Determination relies upon the On-Site Opinion provided by Mr. Ardisson, the IT expert consulted by the Requester to hold that electronic redaction of records maintained upon the two systems used by the School District is feasible. He opined that both MUNIS and Pentamation permitted electronic redaction once the information was downloaded. Ultimately, the School District did not demonstrate that the records could not be provided in the electronic medium in which they are maintained, and redacted electronically once downloaded. The downloading of records onto an electronic medium and utilizing functionality of the computer programs available, which Mr. Ardisson has attested can be performed, does not constitute creation of a record.

3. 2008-09 and 2009-10 School Year (Pentamation) Records Exist Electronically.

There is no dispute between the parties that the records for 2008-09 and 2009-10 school years exist electronically in Pentamation system. The School District contends that it cannot be compelled to provide the information requested electronically because it does not currently maintain or format the information in the manner requested. As the OOR held in *Commonwealth Education Organization v. Department of Education*, OOR Dkt. AP 2009-0488, an agency's selections from drop-down menus do not qualify as creation or compilation of a record precluded under Section 705. Nor does presenting a query constitute creation of a record.

The Ardisson Affidavit and On-Site Opinion showed that the Pentamation system has sufficient flexibility to permit the School District to submit a query to ensure that the information retrieved is only the public information requested. After performing his on-site inspection, Mr. Ardisson explained that the data could be exported from Pentamation in a delimited text format, and be viewed in Excel. He further attested that he showed the School District how a column of data containing a Social Security number could be redacted. The School District did not supply information to counter the opinions about querying and exporting of the information in order to accomplish its redactions electronically.

Rather than contesting the factual feasibility of electronic redaction from the Pentamation system, the School District argued that the RTKL does not require an agency to format its data in order to provide electronically redacted records. While conceding that its IT Coordinator advised that Pentamation permits the School District to download information into an Excel spreadsheet that can be electronically redacted, the School District argues it has no obligation to do so. The OOR disagrees.

The School District must disclose the public records. The School District maintains the records electronically, and thus may either export the records to a printer to be manually redacted, or export the records to Excel to be electronically redacted. The School District has no basis for refusing to export the records to Excel, as that does not require access to its computers as prohibited by Section 701(b), nor creation/compilation of a record as prohibited by Section 705.

As to the School District's contention that the electronic redactions would permit the data to be manipulated by an end-user, such speculation of what may be happen to the public record being disclosed subsequent to its disclosure is beyond the purview of the OOR. The OOR notes that the RTKL does not require data-scrubbing software, and does not preclude an agency from providing the records in a "format" that would not permit manipulation or corruption of the record.

Lastly, it is important to emphasize that this Final Determination is highly fact specific and does not set forth a general rule for agencies. In this instance, the agency was not required to permit the type of inspection that the School District permitted here. But the School District did, and the on-site inspection reflected that it was in fact possible to obtain the information electronically as requested.

CONCLUSION

For the foregoing reasons, the Requester's Appeal is **granted in part and denied in part**. To the extent that records exist electronically, and can be redacted electronically with named data fields, they cannot be withheld under Section 705. Therefore, the records maintained in Pentamation system that are retrieveable and redactable electronically, must be provided in electronic form to the Requester, within thirty (30) days. Likewise, the School District did not show that the 2006-07 and 2007-08 records cannot be reliably electronically redacted, and therefore, they must also be provided in electronic media. However, the records that are no longer maintained electronically by the School District for 2005-06 need not be provided in electronic form, and may be provided in hard-copy for the approved per page fee.

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 Washington County Court of Common Pleas. 65 P.S. §67.1302(a). All parties must be served with notice of the appeal. The OOR shall be served notice and have an opportunity to respond according to court rules as per Section 1303. This Final Determination shall be posted at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: December 31, 2009



LUCINDA GLINN, ESQ.
APPEALS OFFICER

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