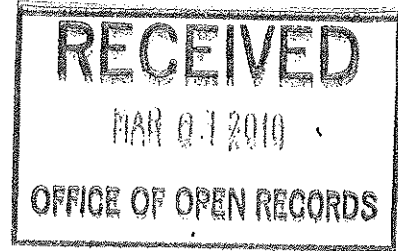


# Pittsburgh Post-Gazette

Editorial Department  
34 Blvd. of the Allies, Pittsburgh, PA 15222  
FAX (412) 263-2014



## Fax

To: Terry Mutchler From: Bill Schackner  
 Fax: 717-425-5343 Pages: 18 including cover sheet  
 Phone: 717-346-9903 Date: 2/26/10  
 Re: petition for reconsideration CC:

Urgent     For Review     Please Comment     Please Reply     Please Circulate

● Comments:

This transmission represents my filing of a petition for reconsideration in AP2010-0046 i.e. Bill Schackner v. Edinboro University. The petition itself ~~is attached~~ is contained in the ~~17~~ 17 pages that follow

February 25, 2010

Ms. Terry Mutchler  
Executive Director  
Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
Harrisburg, PA 17120

Dear Ms. Mutchler:

**RE: Petition for reconsideration of the denial of a request made by  
Bill Schackner, Docket No. AP 2010-0046**

Bill Schackner, in accordance with 1 Pa. Code § 35.241, asks the Pennsylvania Office of Open Records to reconsider its denial of his appeal in the matter of Bill Schackner v. Edinboro University, Docket No. AP 2010-0046. Mr. Schackner asserts that the office's final determination of February 16, 2010 (Exhibit A), is based on error of fact and/or law.

By way of background, Mr. Schackner is a reporter with The Pittsburgh Post-Gazette. Edinboro University of Pennsylvania is a state-owned university supported by tax dollars. On October 26, 2009 Edinboro trustees voted during a public meeting to rename one of the university's campuses as "Edinboro University in Meadville - The Joseph T. Buba Center," in recognition of an estate gift from Joe and Eleanor Buba.

Mr. Schackner subsequently sought the dollar value of the gift and/or documents containing such from Edinboro, but his request on December 31, 2009 was denied. He then filed an appeal (Exhibit B) with the Pennsylvania Office of Open Records that contained a copy of his original request and other supporting documentation.

In a legal analysis that formed the basis for denying Mr. Schackner's appeal, Appeals Officer Nathanael J. Byerly cited 65 P.S. § 67.708(b)(13), as well as the Pennsylvania Right to Know Office's previously stated opinion in Berrett v. East Stroudsburg University.

Specifically, Mr. Byerly wrote:

"As we said in Berrett, '(t)o the extent that records related to specific donors were requested, that information is exempt if disclosure would reveal their identity.'"

From the above quotation, the words "identity" and "reveal" are of particular importance with regard to the current case involving Mr. Schackner.

In his request, Mr. Schackner seeks only the dollar value of a gift and/or access to any document that would contain such. He does not seek the "identity" of the donor. The exemption to Pennsylvania's Right to Know Law cited by Mr. Byerly makes no mention whatsoever of dollar value, and indeed, there is no legitimate justification for withholding it under that law.

The act of providing a gift's monetary value does not reveal the identity of whoever provided the gift. Even if that were somehow not true, in this particular case, releasing the dollar value could not possibly have the effect of revealing the donor's identity. That is because the university, itself, already had revealed the donors' identities, two months before Mr. Schackner made his initial request.

The university did so in both a resolution approved during an October 26, 2009 trustees meeting, and later, in a December 10, 2009 news release issued by the university. Both documents identified the donors by name and included personal and professional background about them. Mr. Schackner's appeal to the Open Records Office (Exhibit B) referenced the resolution and news release and provided copies of both documents.

What's more, it is clear that releasing the dollar value Mr. Schackner seeks could not possibly "confirm/disclose the identity" of the donors, as Mr. Byerly wrongly asserts it would. That is because the university itself already had confirmed/identified the identities of the donors, publicly, through successive documents it chose to disseminate on October 26, 2009 and later on December 10, 2009. It disseminated those documents weeks before Mr. Schackner made his initial request to Edinboro on December 31 of that year.

As stated above, Edinboro University is a state-owned institution supported by tax dollars. As such, the public has a clear stake in the university and a legitimate right to know details of its operation, including details that formed the basis for a decision by Edinboro trustees to change the name of one of the school's campuses by naming it for a private individual.

Mr. Schackner's request seeks material that is clearly public under the Pennsylvania Right to Know Law, as stated in Mr. Schackner's appeal (Exhibit B). Indeed, the only basis cited by Mr. Byerly for denying his appeal was an incorrect application of 65 P.S. § 67.708(b)(13).

Therefore, we respectfully ask that the Pennsylvania Office of Open Records reverse the denial and instruct Edinboro University of Pennsylvania to provide Mr. Schackner with the requested information.

Sincerely,

Bill Schackner  
Staff Writer



dated January 8, 2010, the University denied the Request stating that the requested records are not records of an entity subject to the RTKL. The University implied that the records were in the possession of the Edinboro University Foundation, Inc. (the "Foundation") when it stated that while the University is a Commonwealth agency, the Foundation is not an agency subject to the RTKL. The University also pointed to 65 P.S. § 67.708(b)(13) as support for its denial. The Requester filed a timely appeal to the OOR on January 14, 2010.

In the appeal, the Requester argues that the University has contracted with the Foundation to provide a governmental function and the requested records directly relate to that function. He states that the gift's value formed the basis for a decision by school trustees to rename its facilities. He compares this case to the OOR's determination in *Berrett v. East Stroudsburg University*.

In response, the University argues that the Foundation is not an agency subject to the RTKL and that the donation is not subject to disclosure pursuant to 65 P.S. § 67.708(b)(13). The University also presented the notarized certification of Valerie Hayes, the University's Open Records Officer. Ms Hayes stated that to the best of her knowledge, the donation was not intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency.

The University points out that the Requester sought the amount only and that any information regarding the donor is not subject to disclosure. The University argues that this is so even if the donor name and information was made public through either the public action of the University Council of Trustees or in a press release. The University

asserts that it has the discretion under 65 P.S. § 67.506(c) to determine whether to release the information.

The OOR also asked the University to address § 506(d) in relation to a recent OOR determination in *Pry v. Office of the Budget*, OOR Dkt. 2009-0975, where the OOR has adopted the test set forth by Judge Nealon in *SWB Yankees LLC v. WINTERMANTEL, et. al., Lackawanna CCP No. 09 CV 3691* (on appeal in the Commonwealth Court). The University states that this issue is a red herring and that the OOR ignored a conflicting Erie County Court of Common Pleas decision that adopted the government or proprietary function test.<sup>1</sup> The University contends that there is no continuing need to brief the issue until a Court with jurisdiction over a Commonwealth agency renders a decision on this issue and attached a portion of its brief filed in the *Berrett* case as the bases to support the governmental or proprietary test

The University also states that the OOR has failed to follow Pennsylvania precedent when it comes to the relationship between independent IRS 501(c)(3) organizations and the State System Universities. The University cited to *Berrett v. East Stroudsburg University* OOR Dkt. 2009-110 where the OOR determined that *Dynamic Student Services v. State Systems of Higher Education*, 697 A.2d 239 (PA 1997) is not controlling as it was decided under the previous RTKL with no comparable provision related to documents held by agency contractors.

---

<sup>1</sup> The OOR is well aware of the Erie County Court of Common Pleas decision. However, the OOR has elected to adopt the test devised by Judge Nealon in *SWB Yankees*.

### LEGAL ANALYSIS

The Office of Open Records is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. §67.503(a). The University is a Commonwealth agency subject to the RTKL. See 65 P.S. § 67.301.

Section 708 of the RTKL states that the burden of proof rests with the public body to demonstrate by a preponderance of the evidence that the record is exempt. 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. West 2004). *See also Commonwealth v. Williams*, 615 A.2d 716 (PA. 1992).

The University does not deny that any contract exists between the University and the Foundation, nor does it give any factual background outlining the relationship between the University and the Foundation or how the actions conducted by the Foundation fall outside § 506(d). Instead, it attached a portion a brief submitted to the Commonwealth Court in the *Berrett* case. The RTKL provides the OOR no mechanism to stay a Final Determination while a similar issue is examined by the Court. Therefore, OOR Final Determinations remain final orders until further guidance from the Commonwealth Court. RTKL § 1101(b)(3) ("The determination by the appeals officer shall be a final order."). Accordingly, agencies must meet their burden of proof in these cases. The University has failed to meets its burden and the requested records are available pursuant to § 506(d), subject to any applicable exemptions.

The University argues that even if the requested records are public records under section 67.506(d), they are exempt pursuant to 65 P.S. § 67.708(b)(13) as follows:

Records that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or

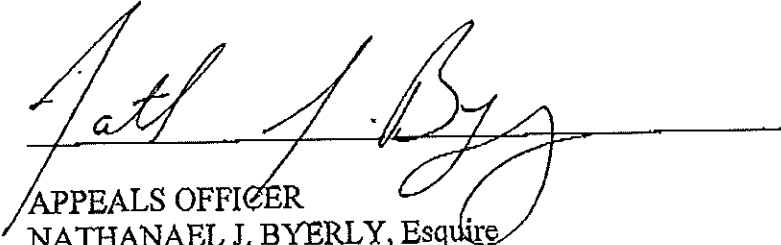
restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor

The OOR agrees. As we said in *Berrett*, “[t]o the extent that records related to specific donors were requested, that information is exempt if disclosure would reveal their identity.” Such is the case here as the Requester seeks records showing the amount of a specific gift given by the Bubas. If the University were to provide the record, it would confirm/disclose the identity of an individual who had lawfully made a donation. It is not required to do so under the RTKL.

**CONCLUSION**

For the foregoing reasons, the Requester's appeal is **denied**. The University 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 Determination, either party may appeal to the Commonwealth Court. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S. §67.1301. The parties are further advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

**FINAL DETERMINATION ISSUED AND MAILED** February 16, 2010

  
APPEALS OFFICER  
NATHANAEL J. BYERLY, Esquire

Final Determination Sent To:  
Bill Schackner  
Michael S. Ferguson, Esquire



# pennsylvania

OFFICE OF OPEN RECORDS

Executive Director  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

**Re: Right to Know Law Appeal - Denial or Partial Denial by Agency**

Dear Executive Director:

This is an appeal under the Pennsylvania Right to Know Law, 65 P.S. §67.101. I requested documents from Edinboro University of Pennsylvania. The Agency denied or partially denied my request for information. I am appealing the denial of my request, under section 1101 of the Law and provide the following information in accordance with the Law:

Requester's name: Bill Schackner  
Address/City/State/Zip: 34 Blvd of The Allies  
Date of Right to Know request: Dec. 31 2009 Date of Agency Response: Jan 8 2010  
Telephone and fax number: 412-263-1977 (fax) 412-263-2014  
Concise statement of facts (may attach additional pages if necessary)

Name and address of Agency: Edinboro University of Pennsylvania

Name and title of the Agency official who denied the request for information:  
Valerie Hayes, agency open records officer

Description of the records requested: see attached answer sheet

List any grounds upon which the requester asserts that the record is a public record:  
see attached answer sheet

Address any grounds relied upon by the Agency for denial of the request:  
see attached answer sheet

Respectfully Submitted, Bill Schackner (must be signed)

Required documents to include with appeal – copies of original RTK request, Agency denial

ANSWER SHEET

CONCISE STATEMENT OF FACTS:

I am a reporter with the Pittsburgh Post-Gazette.

I am writing to appeal a decision by Edinboro University of Pennsylvania to deny my Open Records Law request. Specifically, my request seeks the right to access/copy any documents that would show the dollar value of a gift by Joseph and Eleanor Buba that prompted Edinboro to rename its Meadville campus in their honor. (The letter of denial and my original request are attached as "Exhibit A" and "Exhibit B" respectively).

DESCRIPTION OF RECORDS REQUESTED:

My request to Edinboro on Dec. 31, 2009 sought "the option to review/copy any documents that would spell out the value of the gift" from Joseph and Eleanor Buba that led to the renaming.

GROUND UPON WHICH THE REQUESTER ASSERTS THAT THE RECORD IS A PUBLIC RECORD:

The records I seek are presumptively public under Pennsylvania's Right to Know Law, and no exemption allows the records to be withheld.

Edinboro, a member of the State System of Higher Education, is a state-owned university, an "agency," supported by tax dollars and subject to Pennsylvania's Right to Know Law. Financial records are covered under the Right to Know Law, and to the extent that the value of the gift is described in any agency financial record, that information is public. Agency e-mails are also covered by the law, along with other internal/external correspondence pertaining to agency business, as well as meeting packet materials prepared for use by university trustees.

Your office already has found in the case of Berrett vs. ESU that non-profit foundations of State System of Higher Education universities can be covered under section 506 of the Right to Know Law.

In this case, the Edinboro University Foundation is a covered entity pursuant to Section 506 as a party with whom the agency has contracted to provide a governmental function, and the requested records directly relate to that function (See attached letter, "Exhibit C")

Additionally, the gift's value formed the basis for a decision by school trustees at the state-owned, publicly supported university to rename one of its facilities. As evidence of that, I cite a copy of a trustees proclamation from Oct. 26, 2009 ("Exhibit D") provided on Dec. 10 by the university, as well as a Dec. 10 news

*Continued next page*

ANSWER SHEET - continued

release ("Exhibit E") from the university, announcing that the renaming had occurred "in recognition of" the gift and its size.

The Right to know Law's Section 102 defines a 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 dataprocessed or image-processed document."

ADDRESS GROUNDS RELIED  
UPON BY AGENCY IN DENYING REQUEST:

In denying my request, the university advanced flawed arguments:

1) The letter of denial implies that the records in question belong to the Edinboro University Foundation, an entity it asserts is not covered by Pennsylvania's Right to Know Law. As stated above, your office has determined in Berrett vs. ESU that such foundations can be covered under Section 506.

As noted above and in the attached letter ("Exhibit C") the Edinboro University Foundation is a covered entity pursuant to Section 506 as a party with whom the agency has contracted to provide a governmental function, and the requested records directly relate to that function.

2) The university cites 65 P.S. Section 67.708(b)(13) as justification for denial. However, that portion of the law makes no mention of dollar amount or gift value. It refers instead to information that would identify a donor. As stated above, Edinboro itself already publicly identified the donors by name. (See attached "Exhibit D" and "Exhibit E")

**Bill Schackner**

**From:** Valerie Hayes [vhayes@edinboro.edu]  
**Sent:** Tuesday, January 12, 2010 11:35 AM  
**To:** Bill Schackner  
**Cc:** vhayes@edinboro.edu  
**Subject:** FW: information request from Pittsburgh Post-Gazette

Here is the original email that I sent on January 8, 2010.

Please confirm receipt of this email.

**From:** Valerie Hayes [mailto:vhayes@edinboro.edu]  
**Sent:** Friday, January 08, 2010 11:59 AM  
**To:** bschackner@post-gazette.com  
**Subject:** RE: information request from Pittsburgh Post-Gazette

Edinboro University of Pennsylvania  
Reeder Hall  
219 Meadville Street  
Edinboro, PA 16444

Exhibit  
A

January 8, 2010

Bill Schackner  
Staff Writer  
Pittsburgh Post-Gazette  
412-263-1977

Dear Mr. Schackner,

Thank you for writing to Edinboro University of Pennsylvania (the "University") with your request for information pursuant to the Pennsylvania Right-To-Know law.

On December 31, 2009 you requested "the dollar value of the gift from alumnus Joseph and Eleanor Buba that was announced on Dec. 10 and is connected to a decision by school trustees to rename Edinboro's Meadville facility for the donor." Your request is denied as the records you requested are not the records of an entity subject to the Right to Know Law.

The Right to Know Law applies to local agencies, Commonwealth agencies, and judicial and legislative agencies.

A Commonwealth agency is defined as any of the following: "Any office, department, authority, board, multistate agency or commission of the executive branch; an independent agency; and a State-

affiliated entity. The term includes (i) The Governor's Office, (ii) The Office of Attorney General, the Department of the Auditor General and the Treasury Department, (iii) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function." 65 P.S. section 67.102.

The University is a constituent member of the Pennsylvania State system of Higher Education, a body corporate and politic constituting a public corporation and government instrumentality of the Commonwealth of Pennsylvania. See 24 P.S. section 20-2001-A. Therefore, the University is a Commonwealth agency under the Right to Know Law.

The Edinboro University Foundation, Inc. (the "Foundation"), is not an agency subject to the Right-to-Know Law.

Additionally, 65 P.S. section 67.708(b)(13) excludes donor information from disclosure under the Right-to-Know Law.

You have a right to appeal this denial of information in writing to Terry Mutchler, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4<sup>th</sup> Floor, Harrisburg, PA 17120.

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response. Section 1101. If you have further questions, please call me.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

Valerie O. Hayes, J.D., M.S.W.  
Agency Open Records Officer  
814-732-2167

Exhibit  
B

**From:** bschackner@post-gazette.com [mailto:bschackner@post-gazette.com]  
**Sent:** Thursday, December 31, 2009 5:28 PM  
**To:** openrecords@edinboro.edu  
**Subject:** information request from Pittsburgh Post-Gazette

Valerie Hayes  
Director of Social Equity and University Ombudsperson  
Edinboro University of Pennsylvania

Ms. Hayes:

My name is Bill Schackner. I'm a reporter with the Pittsburgh Post-Gazette. Amy Neil in university relations suggested that I contact you regarding a request for information pertaining to a recent gift made to Edinboro University of Pennsylvania.

Specifically, I am looking for the dollar value of the gift from alumnus Joseph and Eleanor Buba that was announced on Dec. 10 and is connected to a decision by school trustees to rename Edinboro's Meadville facility for the donor.

As you know, the information is public under the state's Right to Know Law.

I would like the option to review/copy any documents that would spell out the value of the gift. If there is a cost associated with producing any such copies, please notify me first before filling my request so we can discuss those charges. My phone number is (412) 263-1977.

If you choose to deny my request in whole or part, please cite the specific language within the Right to Know Law that you base your decision on.

If you have any questions, please do not hesitate to contact me.

Thank you for your assistance

Bill Schackner

Bill Schackner  
Staff Writer  
Pittsburgh Post-Gazette  
(412)263-1977

Search

List Keywords

Current Students Prospective Students Alumni Faculty & Staff Visitors

About Us

Academics

Admissions

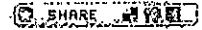
Campus Life

myEdinboro

Apply Now

Welcome  
Statements  
Board of Directors  
Frequently Asked Questions  
Foundation Facts

## Welcome to the Edinboro University Foundation



Home > Welcome

Dear Friends,

Edinboro University  
Foundation  
Alumni House  
210 Meadville Street  
Edinboro, PA 16444  
(814) 732-2992  
(814) 732-2996

The Edinboro University Foundation is a 501(C)(3) non-profit foundation created on August 5, 1998. Like most colleges and universities throughout the United States, the University recognized the need to create a separate legal unit for the purpose of receiving and managing private gifts, and in turn, investing those gifts for the University.

The Foundation and University have created a relationship that is helping meet critical needs in the interest of its priorities, including enhancing enrollment and retention; enhancing technology campus-wide, and enhancing diversity. The Foundation proudly supports the University in Building Partnerships for Excellence and Civility.

We hope you will help to model civic and philanthropic behaviors by making a contribution that will benefit our students. As direct beneficiaries of your philanthropy, our students will learn first-hand of the importance and value of philanthropy in our society.

There are many gift opportunities, including endowed scholarships, facility naming opportunities, as well as unrestricted donations to support programs that may otherwise not exist. Please know that we are appreciative and fortunate to have community leaders, alumni, faculty, staff and friends of the University who understand the importance of supporting public education.

Edinboro University Foundation  
*Mr. Dennis Frampton, Chair*

Edinboro University  
*Mr. Bruce Q. Whitehair, Vice President for University Advancement*

Dr. Jeremy D. Brown, President  
EDINBORO UNIVERSITY OF PENNSYLVANIA  
210 MEADVILLE STREET  
EDINBORO, PENNSYLVANIA 16444  
888-660-6090 • 614-732-2000



[CONTACT US](#) | [CALENDARS](#) | [OPEN RECORDS](#) | [CAMPUIS DIRECTORY](#)

Exhibit  
C

**Council of Trustees**

**Naming Opportunity at Edinboro University in Meadville Center – The Meadville Center and Ross Hall**

**“Edinboro University in Meadville – The Joseph T. Buba Center”  
and  
“Eleonora C. Navari Buba Computer Laboratory”**

Whereas, Joseph T. Buba is a past graduate of Edinboro University who achieved success in operations of Fortune 500 companies, including Boeing, Generac Power Systems, Homelite, John Deere, McCulloch, and Textron;

Whereas, Eleonora C. Navari Buba, who met Joseph at Edinboro University, graduated cum laude from Ohio University, and worked in the information technology industry for several diverse corporations, retiring recently from Ingersoll Rand Company;

Whereas, Joe and Eleonora have long been advocates and supporters of Edinboro University through the *Joe and Eleonora Buba Scholarship for Manufacturing Engineering & Technology*;

Whereas, the Bubas believe that engineering and technology programs of today will help create and define information technology and manufacturing job opportunities of the future; and it is their hope that their philanthropic example will not only provide financial assistance to deserving students, but also encourage and motivate charitable responsibility in others;

Whereas, Joe and Eleonora have now created an irrevocable promise to provide a major, multiple-million dollar estate gift to Edinboro University; then

**BE IT RESOLVED**, therefore, in consideration of their mutual commitment and dedication to Edinboro University, the facility at 789 Bessemer Street in Meadville, Pennsylvania, shall be renamed, “Edinboro University in Meadville – The Joseph T. Buba Center” and the largest computer laboratory in Ross Hall shall be named “Eleonora C. Navari Buba Computer Laboratory” in perpetuity.

Unanimously adopted by the Council of Trustees on this 26<sup>th</sup> day of October, 2009.

\_\_\_\_\_  
**Harold C. Shields, Chairperson**  
Council of Trustees

\_\_\_\_\_  
**Virginia L. McGarvey, Vice Chair**  
Council of Trustees

\_\_\_\_\_  
**Raymond L. Dombrowski, Secretary**  
Council of Trustees

Exhibit  
D

Search

List Keywords

Current Students Prospective Students Alumni Faculty & Staff Visitors

About Us

Academics

Admissions

Campus Life

myEdinboro

Apply Now

## News Detail



Home > News Archives > December 10, 2009 8:39:00 AM

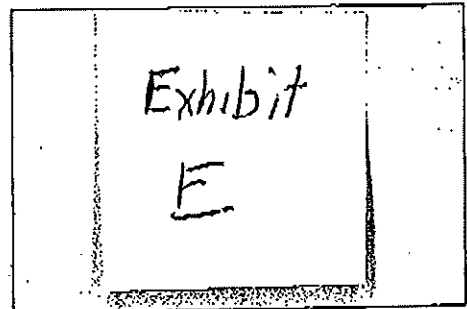
### EDINBORO UNIVERSITY RECEIVES LARGEST GIFT IN 152-YEAR HISTORY MEADVILLE FACILITY AND COMPUTER LABORATORY NAMED AFTER DONORS

12/10/2009



Edinboro University receives largest gift in 152-year history  
Meadville facility and computer laboratory named after donors

MEADVILLE, Pa. - Edinboro University President Jeremy D. Brown today announced the university has received the largest gift in its 152-year history. The announcement was made at an event at Edinboro University's Meadville facility.



The multi-million dollar estate gift is from alumnus Joseph and Eleonora Buba. Although the Bubas have requested that the exact figure not be released, University officials confirmed the estate gift is the largest in university history.

In announcing the gift, President Brown said the multiple seven-figure commitment was made during a record-breaking year at Edinboro. "We have record student numbers, record retention, and now, a record-breaking gift. Joe and Eleonora's extraordinary act of philanthropy will have a far-reaching impact on Edinboro University and the people and communities it serves."

Joe and Eleonora are longtime Edinboro benefactors. In recognition of the largest estate gift in University history, President Brown officially renamed the Meadville facility "Edinboro University in Meadville - The Joseph T. Buba Center".

In addition to the renaming of the Meadville facility, 789 Bessemer Street, the Ross Hall computer lab - the largest computer lab on Edinboro's main campus - will be named "The Eleonora C. Navari Buba Computer Laboratory."

Prior to unveiling the signage designating the new name of the Meadville facility, Joe remarked, "Words cannot express what it means to have this building dedicated in my honor. Eleonora and I believe that engineering and technology programs are the key to creating job opportunities of the future. It is also our hope that our support will not only provide financial assistance to deserving students, but also encourage and motivate charitable responsibility in others."

The Bubas have long been advocates and supporters of Edinboro University. In 2006 they established the Joe and Eleonora Buba Scholarship for Manufacturing Engineering & Technology at Edinboro University. The scholarship is awarded annually to an incoming freshman pursuing an A.E.T. in Manufacturing Engineering Technology, B.S. in Industrial Trade and Leadership or a B.A. in Physics.

"This latest act of generosity demonstrates the Bubas' unwavering support of Edinboro University and their shared vision for our educational goals," said President Brown.

Joe and Eleonora Buba are both Pittsburgh natives. They met in December 1969 at Edinboro University and recently celebrated their 38th wedding anniversary.

Joe grew up in Braddock Hills, and earned a teaching degree from Edinboro in 1969. He credits his father and mother for encouraging him to pursue higher education, while also instilling a strong work ethic. Eleonora graduated from Ohio University in 1971 with a degree in Spanish & Latin American Studies.

Joe began teaching at North Braddock Junior High School after graduation, but discovered teaching was not his calling. Instead, his career has focused on the manufacturing and engineering sector where his creative talents, management skills, and innovation led to increased responsibilities at a variety of corporations including Boeing, Textron Aerostructures, and McCulloch Corporation. He retired as Senior Vice President of Operations at Generac Power Systems, Inc., leaving a legacy of leadership and commitment to manufacturing excellence and customer service.

While at Ohio University, Eleonora remembers using a typewriter as computers were not common on campus. In Seattle, she began her career in information technology and computers were being introduced in the workplace. She continued her career, advancing in positions at Vanderbilt University Medical Center and Deloitte & Touche, First Union National Bank and retired from Ingersoll-Rand after 13 years as an application analyst. Her career allowed her to travel extensively, including Latin America, where her degree and fluency in Spanish complemented her work in the information technology field.

On Friday, Dec. 11, Eleonora Buba, will tour the computer laboratory named in her honor.

Friday evening at Erie's Bayfront Sheraton Hotel, the Bubas will also be honored during the 2nd Annual Presidential Scholarship Gala, an Edinboro fundraiser supporting the President Jeremy D. Brown Millennium Leader Scholarship.

# Pittsburgh Post-Gazette

Editorial Department  
34 Blvd. of the Allies, Pittsburgh, PA 15222  
FAX (412) 263-2014

*signed letter  
only  
3 pg's incl  
covers*

## Fax

To: Terry Mutchler From: Bill Schackner

Fax: 717-425-5343 Pages: 18 including cover sheet

Phone: 717-346-9903 Date: 2/26/10

Re: petition for reconsideration CC:

Urgent     For Review     Please Comment     Please Reply     Please Circulate

• Comments:

*This transmission represents my filing of a petition for reconsideration in AP2010-0046 i.e. Bill Schackner v. Edinboro University. The petition itself ~~is attached~~ is contained in the ~~17~~ 17 pages that follow*

February 25, 2010

Ms. Terry Mutchler  
Executive Director  
Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
Harrisburg, PA 17120

Dear Ms. Mutchler:

**RE: Petition for reconsideration of the denial of a request made by  
Bill Schackner, Docket No. AP 2010-0046**

Bill Schackner, in accordance with 1 Pa. Code § 35.241, asks the Pennsylvania Office of Open Records to reconsider its denial of his appeal in the matter of Bill Schackner v. Edinboro University, Docket No. AP 2010-0046. Mr. Schackner asserts that the office's final determination of February 16, 2010 (Exhibit A), is based on error of fact and/or law.

By way of background, Mr. Schackner is a reporter with The Pittsburgh Post-Gazette. Edinboro University of Pennsylvania is a state-owned university supported by tax dollars. On October 26, 2009 Edinboro trustees voted during a public meeting to rename one of the university's campuses as "Edinboro University in Meadville – The Joseph T. Buba Center," in recognition of an estate gift from Joe and Eleanor Buba.

Mr. Schackner subsequently sought the dollar value of the gift and/or documents containing such from Edinboro, but his request on December 31, 2009 was denied. He then filed an appeal (Exhibit B) with the Pennsylvania Office of Open Records that contained a copy of his original request and other supporting documentation.

In a legal analysis that formed the basis for denying Mr. Schackner's appeal, Appeals Officer Nathanael J. Byerly cited 65 P.S. § 67.708(b)(13), as well as the Pennsylvania Right to Know Office's previously stated opinion in Berrett v. East Stroudsburg University.

Specifically, Mr. Byerly wrote:

"As we said in Berrett, '(t)o the extent that records related to specific donors were requested, that information is exempt if disclosure would reveal their identity.'"

From the above quotation, the words "identity" and "reveal" are of particular importance with regard to the current case involving Mr. Schackner.

In his request, Mr. Schackner seeks only the dollar value of a gift and/or access to any document that would contain such. He does not seek the "identity" of the donor. The exemption to Pennsylvania's Right to Know Law cited by Mr. Byerly makes no mention whatsoever of dollar value, and indeed, there is no legitimate justification for withholding it under that law.

The act of providing a gift's monetary value does not reveal the identity of whoever provided the gift. Even if that were somehow not true, in this particular case, releasing the dollar value could not possibly have the effect of revealing the donor's identity. That is because the university, itself, already had revealed the donors' identities, two months before Mr. Schackner made his initial request.

The university did so in both a resolution approved during an October 26, 2009 trustees meeting, and later, in a December 10, 2009 news release issued by the university. Both documents identified the donors by name and included personal and professional background about them. Mr. Schackner's appeal to the Open Records Office (Exhibit B) referenced the resolution and news release and provided copies of both documents.

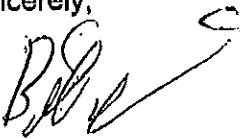
What's more, it is clear that releasing the dollar value Mr. Schackner seeks could not possibly "confirm/disclose the identity" of the donors, as Mr. Byerly wrongly asserts it would. That is because the university itself already had confirmed/identified the identities of the donors, publicly, through successive documents it chose to disseminate on October 26, 2009 and later on December 10, 2009. It disseminated those documents weeks before Mr. Schackner made his initial request to Edinboro on December 31 of that year.

As stated above, Edinboro University is a state-owned institution supported by tax dollars. As such, the public has a clear stake in the university and a legitimate right to know details of its operation, including details that formed the basis for a decision by Edinboro trustees to change the name of one of the school's campuses by naming it for a private individual.

Mr. Schackner's request seeks material that is clearly public under the Pennsylvania Right to Know Law, as stated in Mr. Schackner's appeal (Exhibit B). Indeed, the only basis cited by Mr. Byerly for denying his appeal was an incorrect application of 65 P.S. § 67.708(b)(13).

Therefore, we respectfully ask that the Pennsylvania Office of Open Records reverse the denial and instruct Edinboro University of Pennsylvania to provide Mr. Schackner with the requested information.

Sincerely,



Bill Schackner  
Staff Writer

< TX >									File
Date	Time	Destination	Mode	TXtime	Page	Result	User Name	No.	
Feb. 22.	4:55PM	4123912762	G3TESM	0'16"	P.	1 OK		0176	
	4:56PM	917247753425	G3TESM	0'18"	P.	1 OK		0176	
Feb. 23.	3:36PM	4122014840	G3TESM	0'32"	P.	1 OK		0185	
	3:37PM	INDIANA TOWNSHIP	G3TESM	0'21"	P.	1 OK		0185	
	4:35PM	16108919985	G3TESM	0'15"	P.	1 OK		0188	
Feb. 24.	10:42AM	5703484225	G3TESM	0'22"	P.	2 OK		0191	
	10:57AM	6108631011	G3TESM	0'22"	P.	2 OK		0192	
Mar. 1.	10:13AM	7246561325	G3TESM	0'15"	P.	1 OK		0252	
	10:14AM	7246543424	G3TESM	0'18"	P.	1 OK		0252	
	12:32PM	814 724 8755	G3TESM	0'15"	P.	1 OK		0255	
	12:33PM	8143364225	G3TESM	0'26"	P.	1 OK		0255	
	3:12PM	5703484225	G3TESM	0'56"	P.	6 OK		0273	

< RX >									File
Date	Time	Sender	Mode	RXtime	Page	Result	User Name	No.	
Feb. 23.	9:57AM	610 344 5471	G3RES	0'42"	P.	2 OK		0178	
	11:19AM		G3RES	1'07"	P.	8 OK		0180	
	11:40AM		G3RES	1'20"	P.	6 OK		0182	
	12:15PM	12345678912345789	G3RED	0'34"	P.	2 OK		0184	
	3:58PM		G3RES	0'50"	P.	2 OK		0187	
Feb. 24.	10:33AM	610 820 6693	G3RES	0'24"	P.	2 OK		0190	
	11:23AM	7176715252	G3RES	1'10"	P.	7 OK		0194	
	11:30AM	7176715252	G3RES	1'33"	P.	7 OK		0196	
	4:15PM	4123503311	G3RED	18'53"	P.	39 OK		0199	
	4:36PM	4123503311	G3RED	2'55"	P.	6 OK		0201	
Feb. 25.	8:24AM		G3RES	0'33"	P.	3 OK		0203	
	9:33AM	2153866463	G3RS	0'54"	P.	2 OK		0205	
	11:40AM	570 585 5100	G3RES	1'44"	P.	8 OK		0207	
	2:32PM	6102755290	G3RES	1'50"	P.	12 OK		0209	
	2:56PM		G3RES	0'42"	P.	4 OK		0211	
Feb. 26.	3:47PM	COMMONWEALTH COURT	G3RES	0'27"	P.	2 OK		0213	
	4:24PM	4123912762	G3RES	2'32"	P.	9 OK		0215	
	8:27AM	4122014840	G3RES	1'05"	P.	4 OK		0217	
	10:02AM	INDIANA TOWNSHIP	G3RES	1'01"	P.	5 OK		0219	
	10:07AM		G3RES	1'39"	P.	11 OK		0221	
	11:57AM	COM ON CRIME	G3RES	1'07"	P.	8 OK		0223	
	1:36PM		G3RES	0'43"	P.	2 OK		0225	
	1:54PM	7249380830	G3RES	2'50"	P.	14 OK		0229	
	2:11PM	7249380830	G3RES	2'53"	P.	14 OK		0233	
	3:03PM	610 820 6693	G3RES	2'11"	P.	16 OK		0235	
Feb. 27.	11:57AM	6106833087	G3RED	4'24"	P.	11 OK		0237	
	12:03PM	6106833087	G3RED	4'24"	P.	11 OK		0239	
	12:11PM	6106833087	G3RED	0'50"	P.	2 E		0241	
	12:14PM	6106833087	G3RED	1'14"	P.	3 E		0243	
	12:17PM	6106833087	G3RED	1'34"	P.	4 E		0245	
	12:21PM	6106833087	G3RED	2'40"	P.	7 OK		0247	
	12:26PM	6106833087	G3RED	4'34"	P.	12 OK		0249	
Feb. 28.	1:14PM	5709291776	G3RD	4'45"	P.	4 OK		0251	
Mar. 1.	11:07AM	8143364225	G3RES	0'18"	P.	1 OK		0254	
	2:20PM		G3RES	2'40"	P.	4 OK		0270	
	3:02PM	6102922164	G3RED	3'43"	P.	18 OK		0272	
	3:31PM	POST-GAZETTE CITY D	G3RES	2'59"	P.	18 OK		0276	
	3:53PM	POST-GAZETTE CITY D	G3RES	0'39"	P.	3 OK		0278	

TX Count 000096

RX Count 000760

# : Batch  
M : Memory  
S : Standard  
Y : Reduction  
Q : RX Notice  
□ : Folder

C : Confidential  
L : Send later  
D : Detail  
H : Stored/D. Server  
A : RX Notice

\$ : Transfer  
@ : Forwarding  
F : Fine  
\* : LAN-Fax  
Ⓜ : Mail

P : SEP Code  
E : ECM  
U : Super Fine  
+ : Delivery  
<-> : IP-FAX



VIA EMAIL AND FIRST CLASS US MAIL

March 9, 2010

Bill Schackner  
Pittsburgh Post-Gazette  
34 Boulevard of the Allies  
Pittsburgh, PA 15222

RE: Petition for Reconsideration received March 1, 2010 / OOR Dkt. AP  
2010-0046

Dear Mr. Schackner:

We are in receipt of your Petition for Reconsideration dated February 25 in connection with the Office of Open Records Final Determination in *Schackner v. Edinboro University*, OOR Dkt. AP 2010-0046. We hereby deny your Petition.

Sincerely,

A handwritten signature in black ink, appearing to read "mw" with a long horizontal stroke extending to the right.

Corinna V. Wilson  
Chief Counsel

cc: Terry Mutchler, Executive Director, Office of Open Records  
Michael S. Ferguson, Esq., Edinboro University