



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**PATRICIA STOVER,
Complainant**

:

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:

:

v.

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Docket No.: AP 2010-0301

:

**CONEMAUGH TOWNSHIP,
Respondent**

:

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INTRODUCTION

Patricia Stover (the “Requester”) filed a right-to-know request (the “Request”) pursuant to the Right-to-Know Law (the “RTKL”), 65 P.S. §67.101, *et. seq*, with the Conemaugh Township (the “Township”) seeking redacted copies of W-2’s and 1099’s issued by the Township in 2009. The Township partially granted and partially denied the Request. The Requester timely appealed to the Office of Open Records (“OOR”).

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

FACTUAL BACKGROUND

The Requester filed the Request with the Township on March 9, 2010. She sought copies of all W-2 and 1099’s issued by the Township for the year 2009. In a letter dated March 16, 2010, the Township extended the time to respond to the Request for W-2’s as permitted by the RTKL.

On March 29, 2010, the Township provided the Requester with redacted copies of the 1099's but denied the Request for the W-2's stating that they are not public records under the RTKL because they are exempt under federal law. The Township also stated that the W-2's are exempt under 65 P.S. § 67.708(b)(6)(i)(a) because they contain personal information.

On April 8, 2010, the Requester filed a timely appeal with the OOR. In response to the appeal, the Township argued that W-2's are not subject to release under the RTKL. The Township cited as support a Monroe County Court of Common Pleas decision which overruled the OOR's determination in *Campbell v. Pocono Mountain School District*, OOR Dkt. 2009-0390. The Court held that W-2's must be looked at as a whole and protected in their entirety. The Monroe County Court reasoned that the W-2 contained personal financial information and is therefore exempt under 65 P.S. 67.708(b)(6)(i)(A). The Township argues alternatively that W-2's contain personal financial information which is exempt under 65 P.S. § 67.708(b)(6)(i)(A).

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 Township is a local agency subject to the RTKL. See 65 P.S. § 67.302.

Section 708 of the RTKL clearly 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 (8th ed. West 2004). See also *Commonwealth v. Williams*, 615 A.2d 716 (PA. 1992).

The OOR has previously determined that W-2 tax forms are public record and subject to release. See *Campbell vs. Berwick Area School District* AP 2009-0212, *Campbell vs. Souderton* OOR Dkt. 2009-0269, *Zeldenrust vs. Pocono Mountain Sch. District* OOR Dkt. 2009-0305, *Campbell vs. Souderton Area School District* OOR Dkt. 2009-0269, *Campbell vs. Colonial School District* OOR Dkt. 2009-0350, *Campbell vs. Boyertown School District* OOR Dkt. 2009-0230; *Campbell v. Pocono Mountain School District*, OOR Dkt. 2009-0390. The legal analysis and holding in these Final Determinations are incorporated and adopted herein as OOR precedent.

The Township provides no legal support that the Monroe County Court of Common Pleas decision should be binding precedent here. As the Township is not located in Monroe County, the OOR is not bound by the Court's decision in this appeal.

CONCLUSION

For the foregoing reasons, this appeal is **granted**. The Township shall provide redacted copies of the requested W-2's in accordance with the OOR's previous Final Determinations. The Township is permitted to redact the home addresses of each employee. 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 Indiana County Court of Common Pleas. 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 May 10, 2010



**APPEALS OFFICER
NATHANAEL J. BYERLY, ESQUIRE**

Sent to:
Patricia Stover
Robin L. Harman



pennsylvania

OFFICE OF OPEN RECORDS

May 14, 2010

Patricia Stover
808 Hopewell Avenue
Saltsburg, PA 15681

Robin Harman
Open Records Officer
Conemaugh Township
16980 Rt 286 Highway West
Saltsburg, PA 15681

Re: Stover v. Conemaugh Township, OOR Dkt. # AP 2010-0301

Dear Ms. Stover and Ms. Harman:

A Final Determination was issued in the above-referenced appeal on May 10, 2010 that contained an error. When the Final Determination was issued it stated that the Final Determination should be appealed to the Washington County Court of Common Pleas, instead of the correct court the Indiana County Court of Common Pleas.

An Amended Final Determination is enclosed. The 30-day time frame for filing an appeal from this decision is not altered by this amendment.

We apologize for this error.

Respectfully,

Nathanael J. Byerly, Esquire
Appeals Officer



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NATHANAEL J. BYERLY, ESQUIRE**

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