



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF:</b>	:	
	:	
<b>JASON KOLLOCK,</b>	:	
	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2010-0651</b>
	:	
<b>FALLS TOWNSHIP,</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

Jason Kollock, (the “Requester”) filed a right-to-know request with Falls Township (the “Township”) pursuant to the Right to Know Law (the “RTKL”), 65 P.S. §67.101, *et. seq.* seeking records related to the employment of Detective Joseph Coffman. The Township did not respond and the Requester filed a timely appeal with the Office of Open Records (the “OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**.

**FACTUAL BACKGROUND**

On July 1, 2010 a request was submitted to the Township seeking records related to Detective Joseph Coffman as follows:

1. History of Training Type specific & dates to said Training
2. Education and Course type & dates
3. History & dates of Promotions

4. Any Internal Affairs Reports & Outcome of Investigation w/dates.

(“Request”). After receiving no response from the Township the Requester appealed to the OOR asserting that this is the second request that he has made.<sup>1</sup> On July 28, 2010 the Township responded to the appeal asserting that the personnel files records were exempt pursuant to section 708(b)(6)(i)(A). The Township provided the Affidavit signed under penalty of perjury by Peter Gray, Township Manager & Open Records Officer stating that the “personnel file contains the following: payroll records; medical information, social security number; employee benefit information; pension information; support/alimony records; hiring letter/start date; and W4/W2 Forms.” Mr. Gray noted that the file also contains internal memorandums noting the start date of Detective Coffman’s employment and date of promotion to detective, which the Township provided copies to the requestor.

The Township advised that it maintains a grievance file and/or Internal Affairs (IAD) investigation records which it asserts are exempt by section 708(b)(7) and (b)(17). In support, it provides the sworn Affidavit of Police Chief William J. Wilcox stating as follows: “[T]hese files contain only grievance materials and/or documents pertaining to the discipline of an employee. The IAD file also is a record relating to a non-criminal investigation of an employee.” The Township also addressed a request for “case specific background history.” However, that request was not the subject of this appeal and is not discussed here.

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<sup>1</sup> The Requester provided a copy of a denial letter dated June 28, 2010 with an envelope postmarked July 14, 2010. However, the Township later advised that the Requester had made two similar requests and the June 28, 2010 letter was in response to the first request. On appeal the Township advised that it had sent a thirty-day extension letter in response to the July 1, 2010 Request. However, when asked to provide a copy of the letter the Township was unable to provide one and advised that it had mistakenly asserted that such a letter had been provided. Therefore, the appeal is a timely appeal of a deemed denial.

Finally, the Township acknowledged that it maintains a training file, which contains information such as the education, training, and course work completed by Detective Coffman which it claims exempt by section 708(b)(7). On August 4, 2010 the Requester submitted information clarifying his request. However, it was not considered in the appeal as the record closed on August 2, 2010.

### **LEGAL ANALYSIS**

The RTKL is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. §67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing.

The Township is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. §§67.102 and 302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305. An agency bears the burden of proving the applicability of any cited exemptions, *See* 65 P.S. §67.708(b). Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record

is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. §67.708(a). 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.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

- 1. History of Training Type specific & dates to said Training**
- 2. Education and Course type & dates**
- 3. History & dates of Promotions**

The Township acknowledges that it has records responsive to Request 1, 2 and 3 which seeks training, education and course information as well as promotion information.

The Township argues the records are exempt by section 708(b)(6)(i)(A) and (b)(7).

Section 708(b)(6)(i)(A), exempts:

“(i) The following personal identification information:

(A) A record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number.”

65 P.S. §67.708(b)(i)(A). Section 708(b)(7) protects the following records relating to an agency employee:

- (i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual...
- (ii) A performance rating or review.
- (iii) The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a

- collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.
- (iv) The employment application of an individual who is not hired by the agency.
  - (v) Workplace support services program information.
  - (vi) Written criticisms of an employee.
  - (vii) Grievance material, including documents related to discrimination or sexual harassment.
  - (viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.
  - (ix) An academic transcript.

The Request seeks records that show the training types and dates, education and the types and dates of courses, as well as information regarding the dates and type of promotions earned. It does not seek letters of reference, performance ratings, workplace support services information, criticisms, grievance materials, discipline, demotion or discharge information. Nothing in sections 708(b)(6) or (7) specifically exempt training or education records except for the results of civil service tests administered by agencies (except the passing score of a test administered by a local agency) and academic transcripts. Records that reflect the type of training and the dates attended, the courses and education attended (but not the academic transcript) and the dates and types of promotions received are not protected by section 708(b)(7) and must be disclosed.

However, to the extent that those records contain information that is specifically exempt by section 708(b)(6) (Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number; home address of a law enforcement officer or judge) that information may be redacted.

#### 4. Any Internal Affairs Reports & Outcome of Investigation

Through the affidavit of Chief Wilcox, the Township has provided sufficient evidence to support withholding records responsive to Request subpart 4. This Request, on its face, seeks records of an investigation. Chief Wilcox also attests that the IAD file is a record relating to a non-criminal investigation of an employee and the Township asserts section 708(b)(7) and (17). There is no dispute that the request seeks records of a non-criminal investigation which are exempt by section 708(b)(17). However, to the extent a responsive record includes the *final action* of an agency that results in *demotion or discharge*, the record is expressly public pursuant to section 708(b)(7)(viii) and must be disclosed. The agency may redact any nonpublic information protected by section 708(b)(6).

#### CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and within thirty (30) days the Township is required to provide records responsive to requests subpart 1, 2, and 3, but may redact information protected by section 708(b)(6). The appeal is **denied in part** as the request sub-part 4, except the Township is required to provide any responsive records that reflect the final action of the agency that results in demotion or discharge subject to the redaction of information protected by section 708(b)(6). All other IAD records are protected by the non-criminal investigation exemption. 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 Bucks 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

§67.1302. 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:** August 18, 2010



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**APPEALS OFFICER  
AUDREY BUGLIONE, ESQUIRE**

**Sent to: Heather Matejik, Jason Kollock**