



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

DAVID LOOMIS,  
Complainant

v.

INDIANA UNIVERSITY OF PENNSYLVANIA,  
Respondent

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Docket No. AP 2010-0686

## INTRODUCTION

David Loomis (the “Requester”) submitted a request to the Indiana University of Pennsylvania (“University”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”), seeking financial records of the University’s Foundation, including donor records. The University withheld signatures under the personal security exception, donor records under Section 708(b)(13) and appraisals, estimates and evaluations and discussions under (b)(10) and (b)(22). The Requester timely appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the Requester’s appeal is **granted in part and denied in part**, and the University is required to take further action as directed below.

## FACTUAL BACKGROUND

On June 7, 2010, the Requester submitted a right-to-know request seeking

- amounts of pledges, including payments and dates, outstanding balances, records of transactions, fund transfers and correspondence related to donations for Kovalchick Convention and Athletic Complex for the period July 1, 2003, through June 30, 2010;
- the same information as it relates to the Residential Revival construction project at [the University];
- The Foundation Internal Revenue Service Form 990 filings for the same period;

- Minutes of meetings of the Foundation’s Board of Directors as they relate to raising and disbursing money during the same period.

(the “Request”).

After timely invoking a thirty-day extension, Robert Bowser, Open Records Officer (ORO), advised that the following information was redacted: signatures under the personal security exception, Section 708(b)(1)(ii) to prevent photo-shopping signatures; material not directly related to the function the Foundation was performing under contract; discussions that constitute predecisional deliberations under (b)(10)(i)(A) and are related to proceeding with a Residential Revival housing project under (b)(22), and donor identities from minutes under (b)(13) (“the Response”). The University advised that the records could be picked up at a cost of \$118.00.

The Requester timely appealed arguing that the information requested is public under *East Stroudsburg University v. OOR*, 995 A.2d 496 (Pa. Commw. 2010), in which similar records were deemed public (“Appeal”). He notes that the Response does not specify redactions sufficiently and argues he should not have to pay for redacted records in order to assess the redactions.

The OOR asked the University to supplement the record, describe the redactions, and substantiate how each of the asserted exceptions applies to the records sought. The OOR also asked the University to describe records withheld because they “did not directly relate” to the function performed by the Foundation, and to explain the function at issue and grounds for withholding any records on that basis considering *East Stroudsburg University, supra*. The University submitted no material in response.

### **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 University is a Commonwealth agency subject to the RTKL and required to disclose public records. *See* 65 P.S. §67.301. Records in possession of a Commonwealth 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). The University withheld records that it claims are not “directly related” to the governmental function the Foundation performs, and redacted parts of records based upon Sections 708(b)(1)(ii) (signatures), (b)(10)(i)(A) and (22) (discussions, reviews and evaluations regarding Residential Revival) and (b)(13) (donor identities in minutes).

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). In this case, the University did not substantiate any of its asserted exceptions, and thus does not meet its burden of proof.

The records sought in the Request are records related to donations for: the Kovalchick Convention and Athletic Complex and for the Residential Revival construction project. The Request also seeks records relating to disbursements of funds. In *East Stroudsburg University*, the Commonwealth Court held that records directly related to the function a University Foundation performs on behalf of a University for fund-raising constitutes a “governmental function” such that the records may be reached under Section 506(d). Records, including lists of donors, and their financial donations, are public other than the names of the donors. *East Stroudsburg University, supra*. From the face of the Request, it is apparent that it seeks records related to donations, primarily records that relate to the raising and disbursing of monies. Therefore, other than the names of the donors and personal identifying information that are exempt under (b)(13) and *East Stroudsburg University*, the requested records must be disclosed.

### CONCLUSION

For the foregoing reasons, the Requester’s Appeal is **granted in part and denied in part**. The Request is denied to the extent it seeks donor identities *i.e.*, names, from the requested records. The remaining records must be disclosed, without other redaction, to the Requester within thirty (30) days.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal or petition for review to the Commonwealth Court. 65 P.S. §67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: August 25, 2010**

A handwritten signature in cursive script that reads "Lucinda Glinn".

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**LUCINDA GLINN, ESQ.  
APPEALS OFFICER**

Sent to: David Loomis; Robert Bowser for University