



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF:

Thomas Hylton,
Complainant vs.

Docket No.: AP 2009-0043

Pottstown School District,
Respondent

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INTRODUCTION

Thomas Hylton filed a right-to-know request with Pottstown School District (“the District”), pursuant to the Right to Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. The District granted Mr. Hylton’s RTK request and sent copies of the requested documents which were redacted without explanation. Mr. Hylton timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth below, the appeal is **granted**.

FACTUAL BACKGROUND

On January 6, 2009, Mr. Hylton filed a RTK request seeking the following: “[a]ll invoices submitted to the Pottstown School District by the Pottstown School District solicitor from Dec. 1, 2003, to the present.”

On January 9, 2009, Mark Fitzgerald, Esquire timely responded on behalf of the District invoking a 30-day extension for legal review. On January 29, Mr. Fitzgerald again wrote to Mr. Hylton enclosing 744 pages of legal invoices at a charge of .10 per page. There was no mention of redaction and no explanation as to the reason.

On February 4, 2009, Mr. Hylton appealed to the Office of Open Records stating: “Requester received 744 pages of invoices, but material information relating to the work performed was redacted despite the fact that all or most of the information was a public record. The reason for the redaction was not given.” He states that “[u]nder the Right to Know law, the burden is on the agency to demonstrate the record is not a public record.”

On February 23, 2009, the School District’s counsel Mark Fitzgerald wrote to the Office of Open Records clarifying its position on the requested records and stating that even matters of general representation are covered by attorney-client privilege “to the extent that such representation impacts on one of the other areas covered by the executive session portion of the Sunshine Act or which is also contemplated within the revised Open Records law. Such areas include, but are not limited to pre-decisional deliberations, personnel issues exempted under 708(b)(7), pupil issues under FERPA, and the like.” Mr. Fitzgerald states, “Our review of the documents reveal that a majority of the 700+ pages of bills, including the litigation related bills, reflect information and examples described above.”

LEGAL ANALYSIS

Pursuant to section 67.503(a), the OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. §67.503(a). The District is a local agency subject to the RTKL, 65 P.S. §67.302.

The RTKL defines a “record” as follows: “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 data-processed or image- processed document,” 65 P.S. §67.102.

The RTKL defines a “public record” as follows: “A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege,” 65 P.S. §67.102.

Section 67.708 of the RTKL clearly states that the burden of proof rests with the public body to demonstrate that the record is exempt. In pertinent part, section 67.708 states:

(a) Burden of proof. —

(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.

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, 615 A.2d 716 (PA. 1992).

Providing redacted documents constitutes a partial denial, 65 P.S. §67.706.

Section 67.903 requires the following when a requester is denied access:

“If an agency’s response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority.
- (3) The typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued.
- (4) Date of the response.
- (5) The procedure to appeal the denial of access under this act.”

The District's response did not include reasons for denial, contact information for the open records officer, or the procedure to appeal denial of access. The records requested by Mr. Hylton were not described other than a brief reference to "solicitor's legal fees."

The District relies upon Schenck v. Twp. of Center, 893 A.2d 849 (Pa. Cmwlth. 2006) stating that it "supports the District's position that attorney legal bills are not a public record as defined by the Act. As the trial court determined, it was not necessary for a trial court to read every invoice and evaluate every described service for the presence of attorney work product. All information from the solicitor relating to pending or impending litigation was inaccessible."

Mr. Hylton requested all legal invoices from the District solicitor, not just those representing litigation services. All invoices were redacted and no information was provided regarding their status as litigation-related. In Schenck, the plaintiff also requested the solicitor's invoices. The township supplied those that "related to general legal services." For litigation matters, the township redacted the description of services and explained the reason with legal citation. Accordingly, the Schenck court only considered one issue – "whether the description of litigation-related legal services in a solicitor's invoice is shielded from access under the Act," 893 A.2d at 853. The Court held that they are protected.

In this case, the District has not provided sufficient information regarding the invoices provided in order to discern if redaction was appropriate. It also materially failed to comply with the requirements of the RTKL as set forth above. Finally, it failed to meet the burden of proving that its invoices are exempt from disclosure.


CONCLUSION

For the foregoing reasons, this appeal is **granted** and the District is required to supply legal invoices as requested by Mr. Hylton and without redaction with the exception of the following: any information related to an individual child or employee may be redacted in accordance with FERPA, the RTKL, section 67.708(b)(7)(30) and any other federal or Commonwealth statute that prohibits disclosure.

The parties are advised that this is a final determination. Within thirty (30) days of the mailing date of this determination, it may be appealed to the Montgomery County Court of Common Pleas. In the event of an appeal for judicial review, all parties must be served with notice of the appeal. The Office of Open Records shall be served notice in accordance with Section 1301 and have an opportunity to respond to any appeal for judicial review.

The parties are advised that this Final Determination will be posted on the Office of Open Records website at: <http://openrecords.state.pa.us>

FINAL DETERMINATION ISSUED March 3, 2009



APPEALS OFFICER
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