

February 17, 2009

Terry Mutchler, Executive Director
Commonwealth of Pennsylvania
Office of Open Records
400 North Street
Harrisburg, PA 17120

RE: Request for Advisory Opinion
W-2 Forms

Dear Ms. Mutchler:

The Pennsylvania School Boards Association is a voluntary membership association whose members include 500 school districts as well as many Intermediate Units, Career and Technology Schools and Community Colleges in Pennsylvania. It has come to our attention through several of our members that school districts have received requests under the Right-to-Know law for individual employee's W-2 forms. At least one school district provided the requested W-2 forms, redacting only the employees' Social Security numbers. It is our understanding the requester has made requests to other districts and we have been included in e-mails in which he indicates he intends to make more of these requests. At least one request is pending and the school district has taken a thirty-day extension hoping your office will comply with requests from PSBA and others for an advisory opinion.

In response to these requests, the Pennsylvania State Education Association has objected to release of W-2 forms, arguing they are not public records or, in the alternative, that much of the information contained in a W-2 form must be redacted. PSEA has communicated its objections to school districts throughout the state, including those which have not received requests for employees' W-2 forms. Because this issue is contentious and lends itself to a variety of legal interpretations, we are asking that your office issue an advisory opinion on the following issues as they relate to W-2 forms:

Whether individual employee W-2 forms prepared and issued by a public agency are subject to access under the Pennsylvania Right-to-Know Law?

If so, what information appearing on such forms is exempt from access pursuant to Section 708, and must be redacted pursuant to Section 706?

Terry Mutchler, Executive Director
February 17, 2009
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PSBA is aware that PSEA has requested the same questions be answered and provided their legal support for their positions in regard to these requests for W-2s. PSBA is not, by this request, taking a position on PSEA's legal arguments, but does request that the Office of Open Records expedite this opinion if possible. PSBA knows of no litigation involving this issue as it relates to any of these requests.

We appreciate your assistance in addressing this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily J. Leader", written over a horizontal line.

Emily J. Leader, Deputy Chief Counsel
PSBA Legal Services

EJL/cbj

VIA FIRST CLASS AND ELECTRONIC MAIL



February 17, 2009

Terry Mutchler
Executive Director
Office of Open Records
400 North Street
Harrisburg, PA 17120-0225

Re: Request for Advisory Opinion
Individual Employee W-2 Forms

Legal Division
400 North Third Street
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(800) 944-PSEA (7732)
Fax: (717) 255-7132
www.psea.org
James P. Testerman, *President*
Michael J. Crossey, *Vice President*
W. Gerard Oleksiak, *Treasurer*
John F. Springer, *Executive Director*

Dear Ms. Mutchler:

The Pennsylvania State Education Association (PSEA) is a professional and labor organization with over 150,000 members who are professional and support professional employees of public school and public health entities in the Commonwealth.

PSEA was made aware that several school districts received, and others will receive, requests to release the W-2 forms of individual employees and/or identified groups of employees in the form of a request under the Pennsylvania Right to Know Law. Our members are understandably outraged that their personal tax records containing personal information, including personal financial information, can be and have been provided to any person upon request under the Right to Know Law.

On behalf of its members, PSEA respectfully requests that the Office of Open Records address the following issues:

Whether individual employee W-2 forms prepared and issued by a public agency are subject to access under the Pennsylvania Right-to-Know Law.

If so, what information appearing on such forms is exempt from access pursuant to Section 708, and must be redacted pursuant to Section 706.

PSEA does not object to any school entity releasing the salaries of its employees. However, in PSEA's opinion, individual employee W-2 forms are confidential tax records prepared by law as a record for the individual employee. As such, W-2 forms are "personal financial records" and are not subject to access under the Right to Know Law. Furthermore, the records are protected personal information based on privacy considerations under Article I Sections 1 and 8 of the Pennsylvania Constitution.

In the alternative, PSEA asserts that all financial information on the W-2 form is "personal financial information" as defined in Section 102 of the Law, is exempt from access (as well as the Social Security number of the employee) pursuant to Section 708(b)(6)(i) of the Law, and must be redacted as provided for in Section 706 of the Law.

All financial information other than information entered in box 1 ("Wages, tips, other compensation"), box 3 ("Social security wages"), box 5 ("Medicare wages and tips"), box 16 ("State wages, tips, etc."), and box 18 ("Local wages, tips, etc.") is a report of disbursements of individual employee funds, and not a disbursement of agency funds, and therefore is "personal financial information" exempt pursuant to Section 708(b)(6)(i);


The financial information entered in boxes 1, 3, 5, 16, and 18 must be corrected to solely indicate that portion that represents the actual compensation or other payments or expenses paid by the employer to or on behalf of the employee pursuant to Section 708(b)(6)(ii);

The Social Security number of the individual employee is exempt from access pursuant to Section 708(b)(6)(i)(A);

The home address of the employee may be exempt from access pursuant to Section 708(b)(1)(ii) and Article I Sections 1 and 8 of the Pennsylvania Constitution. A separate request for an advisory opinion will be submitted whether the home address of a public employee is subject to access.

Thank you for your consideration of this exigent request. A memo in support of PSEA's position is enclosed with this formal request. Do not hesitate to contact me for more information or if you have any questions.

Sincerely,



Lynne L. Wilson
General Counsel

Pc: James P. Testerman, PSEA President
John Springer, PSEA Executive Director

February 12, 2009

To: Lynne L. Wilson, General Counsel
Richard E. Burrige, Legal Field Manager
Michelle F. Duggan, Staff Attorney

From: Katherine M. Voye, Associate Staff Counsel *KV*

RE: **Right-to-Know Access of Individual Employee W-2 Forms**

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John F. Springer, *Executive Director*

I. Issue

Whether individual employee W-2 forms are subject to access under the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101 et seq..

If so, what information if any on individual employee W-2 forms is exempt from access pursuant to Section 708, 65 P.S. § 67.708, and must be redacted pursuant to Section 706, 65 P.S. § 67.706.

II. Brief Answer

Individual employee W-2 forms are confidential tax records prepared by law as a record for the individual employee. As such, W-2 forms are "personal financial records" and are not subject to access under the Right-to-Know Law. The records are protected personal information based on privacy considerations under Article I Sections 1 and 8 of the Pennsylvania Constitution.

In the alternative, any information other than the name of the employee, and the name and address of the employer, are exempt and must be redacted:

All financial information other than information entered in box 1 ("Wages, tips, other compensation"), box 3 ("Social security wages"), box 5 ("Medicare wages and tips"), box 16 ("State wages, tips, etc."), and box 18 ("Local wages, tips, etc.") is a report of disbursements of individual employee funds, and not a disbursement of agency funds, and therefore is "personal financial information" exempt pursuant to Section 708(b)(6)(i);

The financial information entered in boxes 1, 3, 5, 16, and 18 must be corrected to solely indicate that portion that represents the actual compensation or other payments or expenses paid by the employer to or on behalf of the employee pursuant to Section 708(b)(6)(ii);

The Social Security number of the individual employee is exempt from access pursuant to Section 708(b)(6)(i)(A);

The home address of the employee may be exempt from access pursuant to Section 708(b)(1)(ii) and Article I Sections 1 and 8 of the Pennsylvania Constitution.¹

¹ The issue whether the home address of a public employee is subject to access is not addressed in this memo.

III. Discussion

A. Right-to-Know Exception for Personal Financial Information.

The Pennsylvania Right-to-Know Law requires that public records be accessible for inspection and duplication by a requesting individual. 65 P.S. § 67.701(a). A public record is defined as:

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. A record is defined very broadly as: “[i]nformation, 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.” 65 P.S. § 67.102.

Section 708 of the Law provides a detailed list of exceptions from the disclosure requirements of the Law. One exception is for “personal financial information.” 65 P.S. § 67.708(b)(6)(i)(A). Personal financial information is defined as:

An individual’s personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual’s personal finances.

65 P.S. § 67.102. Section 708 also says that “[t]he exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection . . . (6).” 65 P.S. § 67.708(c). A “financial record” is defined as:

- (1) Any account, voucher or contract dealing with:
 - (i) the receipt or disbursement of funds by an agency; or
 - (ii) an agency’s acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.
- (3) A financial audit report. The term does not include papers underlying an audit.

65 P.S. § 67.102.

The definition of public record under the new Law is broad. However, an individual employee W-2 form is not a record of a transaction or activity of an agency. It is not a “financial record” subject to disclosure because it is not a “disbursement” of funds by an agency, and does not accurately express the salary paid to the employee. The W-2 form is not created to record or express a disbursement of agency funds. The W-2 form is an individual’s record of tax return information, produced and issued by law on behalf of the employee. The form reports taxable income as defined by the respective tax codes, not necessarily salary or other payments or expenses paid to the employee. The W-2 form reflects the disbursement of the employee’s own money to the government and/or to other entities for individual tax purposes.

Assuming arguendo that the broad definition of public records under the Law would encompass W-2 forms issued by school district employers, the W-2 forms should be excluded under the exception for "personal financial information." The W-2 form only reflects an employee's salary to the extent defined by the respective federal, state and local tax provisions and Social Security Act. More accurately, the form only reflects taxable income actually or constructively received by the employee, and the employee's personal funds remitted to a government or other entity by the district on behalf of the employee. The W-2 form is foremost a personal financial record.

Individual income tax withholding is "information relating to an individual's personal finances." A W-2 form is a report of a transaction between an individual employee and an entity of the government, which is reported on behalf of the employee by the public employer. The form is a personal financial record. Public disclosure of such personal financial information not only is not required, such personal financial information is exempt and protected.

That W-2 forms are personal financial records is supported by the Internal Revenue Code and its requirement that the government keep tax information confidential. The Code requires that tax returns and related information be confidential, and disclosure of such documents be limited:

(a) General rule. Returns and return information shall be confidential, and except as authorized by this title—

- (1) no officer or employee of the United States,
- (2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section, and
- (3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), paragraph (6), (12), (16), (19), or (20) of subsection (l), paragraph (2) or (4)(B) or subsection (m), or subsection (n), shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

26 U.S.C. § 6103. A return is defined as:

[A]ny tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

26 U.S.C. § 6103(b)(1). Return information is defined as:

[A] taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being

or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, or liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense . . .

26 U.S.C. § 6103(b)(2)(A).

A W-2 form, when submitted to the Secretary of the Treasury as an attachment to a tax return, constitutes a “return” subject to the confidentiality provision of the Code. The form constitutes “return information” in these circumstances, as it contains a taxpayer’s identity and information about his or her taxable income as defined in the respective tax codes, and the taxes withheld. See Russell v. Bd. of Plumbing Examiners of the County of Westchester, 74 F. Supp. 2d 339, 348 (S.D.N.Y. 1999), aff’d 1 Fed. Appx. 38 (2d Cir. 2001) (unpublished) (a county board cannot require applicants to submit copies of their W-2s certified by the Treasury Department as a condition to the processing of their applications because the forms are protected as confidential).

The statute expressly prohibits disclosure of returns and return information by certain employees of the government who have access to tax returns and return information in the course of their employment. Although several courts have emphasized that “return” and “return information” under the statute is limited to that information which has “passed through the IRS” (see, e.g., Baskin v. U.S., 135 F.3d 338, 342 (5th Cir. 1998)), the Third Circuit Court of Appeals has found, “Congress intended, by amending section 6103, to protect the taxpayer’s right to privacy and confidentiality in return information, while at the same time to afford disclosure to those congressional committees and federal and state authorities which had legitimate needs for such information.” Grasso v. I.R.S., 785 F.2d 70, 75 (3d Cir. 1986) (citing Senate Rep. No. 94-938).

Even though the express prohibitions of the Code are intended to police the disclosure of returns and return information by specific government employees, the Code nevertheless establishes that there is a “norm of confidentiality” surrounding tax documents. Hrubec v. Nat’l R.R. Passenger Corp., 49 F.3d 1269, 1270 (7th Cir. 1995). See also Fed. Savings and Loan Ins. Corp. v. Krueger, 55 F.R.D. 512 (N.D. Ill. 1972) (opining that there is a “valid public policy against disclosure of income tax returns”).

Therefore, the Internal Revenue Code’s protection of tax documents as confidential indicates that W-2 form tax records are personal and private in nature, and would constitute “personal financial information” as opposed to agency “financial records.”² To require the disclosure of individual tax information of public employees as public record would violate the “norm of confidentiality” surrounding tax records. Hrubec, 49 F.3d at 1270.

² Pennsylvania income tax laws require that any information gained by the Pennsylvania Department of Revenue as a result of returns, investigations, hearings or verifications be confidential except for official purposes. 72 P.S. § 3402-506(C). The law makes it a crime for any state employee to divulge tax information set forth in a return or publish a return. 72 P.S. § 7353(f). The law also makes it a crime for “any person to print or publish in any manner whatsoever not provided by law, any return or any part thereof or source of income, profits, losses or expenditures appearing in any return.” 72 P.S. § 7353(f) (emphasis added). Similar laws exist for local taxing authorities. See, e.g., 53 P.S. §6913(V)(f), (IX)(c).

Allowing public disclosure of W-2 forms by public employers creates an irreconcilable paradox: W-2 forms would be public records prior to their filing, but become private, confidential information once they are submitted with a tax filing. It is illogical to prohibit disclosure of tax returns and return information by employees of some public agencies, who become privy to tax information from a taxing agency through their duties, while allowing any other government agency to freely disclose the confidential tax information that it has on file for each of its employees.³ A requester could not seek access of W-2 forms from the federal, state and local government taxing authorities because it is confidential; a requester should not be able to obtain that same information from a public employer by virtue of the Right-to-Know Law.

While the Internal Revenue Code does not expressly prohibit the disclosure of the W-2s by a public employer in these circumstances, its guarantee of confidentiality demonstrates that the information in W-2 forms constitutes "personal financial information" that is not subject to disclosure under the Right-to-Know Law.

That W-2 forms are personal financial records is also supported by the fact that the forms contain other personal and personal financial information which is exempt from disclosure by the Right-to-Know Law. The form contains an employee's Social Security number, which is expressly exempt. 65 P.S. § 67.708(b)(6)(i)(A). The form may contain information about "dependent care benefits." This information would be exempt under the exception for any information about an employee's dependents. 65 P.S. § 67.708(b)(6)(i)(B).

In addition, the W-2 form would include any amounts of personal employee contributions for statutory retirement plans (such as employee contributions to PSERS), and elective deferrals by an employee of the employee's salary to individual retirement accounts and/or medical spending accounts. The form may include employee non-taxable sick pay paid by a third-party and not the employer, employee disability insurance payments, union dues paid by the employee, and health insurance premiums paid by the employee. (See 2009 Instructions for Forms W-2 and W-3, Department of Treasury Internal Revenue Service Cat. No. 25979S.)

Finally, the amounts of salary and compensation reported for federal, Social Security, Medicare, state, and local purposes are not solely the salary and compensation paid to the employee. The amounts differ based on the respective definition of reportable, taxable income.

³ See Russell v. Bd. of Plumbing Examiners of the County of Westchester, 74 F. Supp. 2d 339 (S.D.N.Y. 1999), aff'd 1 Fed. Appx. 38 (2d Cir. 2001) (unpublished). A county required that applicants for licensure submit a certified copy of their W-2 forms. The Court emphasized that the Board could not itself have obtained a copy of the applicants' W-2 forms from the Treasury Department under Section 6103. Accordingly, the Board's requirement that the applicants obtain the form pursuant to an exception in the law for the taxpayer himself would "be an unjustified intrusion in the confidentiality of income tax returns which Congress has promised to federal taxpayers. The Board being unable to get the copies directly from the Treasury should not be permitted to do so indirectly by coercion." Russell, 74 F. Supp. 2d at 348. Even though the Board's policy did not involve a disclosure expressly prohibited by the Code, the Court still found that the records were protected as confidential.

B. The Constitutional right of privacy.

While a “privacy” exception is not explicitly cited in either the prior or the new version of the Law, the prior Law had been interpreted as protecting privacy interests. Hartman v. Dep’t of Conservation and Nat’l Res., 892 A.2d 897, 905 (Pa. Commw. Ct. 2006); Rowland v. Com., Pub. Sch. Emps.’ Ret. Sys., 885 A.2d 621, 628 (Pa. Commw. Ct. 2005), app. denied 587 Pa. 703, 897 A.2d 462 (2006). These interests are based on the constitutional right of privacy, as was recognized in Denoncourt v. Commonwealth, State Ethics Commission, 504 Pa. 191, 470 A.2d 945 (1983) (holding that there is a guaranteed right of privacy arising under Article I, Sections 1 and 8 of the Pennsylvania Constitution).

In Times Publishing Company v. Michel, 159 Pa. Commw. 398, 633 A.2d 1233 (1993), app. denied 538 Pa. 618, 645 A.2d 1321 (1994), the Commonwealth Court found that the failure to recognize a privacy exception to the Right to Know Law was “at odds” with the Pennsylvania Supreme Court’s holding in Denoncourt.

Under the prior version of the Law, courts used a balancing test to exclude personal information where the public interest in disclosure is outweighed by the individual’s interest in personal security and privacy. See Tribune-Review Publishing Co. v. Bodack, 875 A.2d 402 (Pa. Commw. Ct. 2005), aff’d 961 A.2d 110 (Pa. 2008); Sapp Roofing Company v. Sheet Metal Workers’ International Association, 713 A.2d 627 (Pa. 1998) (plurality); Hartman, 892 A.2d 897; Bargerion v. Dep’t of Labor & Indus., 720 A.2d 500 (Pa. Commw. Ct. 1998); Cypress Media, Inc. v. Hazleton Area Sch. Dist., 708 A.2d 866 (Pa. Commw. Ct. 1998), app. dismissed as improvidently granted, 555 Pa. 340, 724 A.2d 347 (1999); Rowland, 885 A.2d 621; Times Publ’g Co., 633 A.2d at 1239; Tribune-Review Publ’g Co. v. Allegheny County Hous. Auth., 662 A.2d 677 (Pa. Commw. Ct. 1995), app. denied 546 Pa. 688, 686 A.2d 1315 (1996). Such information would not be categorically excluded, but rather would be excluded where the individual’s privacy interests outweigh the benefit of disclosure. See Goppelt v. City of Philadelphia Revenue Dep’t, 841 A.2d 599 (Pa. Commw. Ct. 2004) (applying the balancing test and holding that the disclosure of addresses of delinquent taxpayers was required because of the weight of the public’s interest in disclosure).

Regardless of the change in the law, Pennsylvania courts have consistently maintained that individuals’ personal information is protected by the right to privacy. Should Pennsylvania courts continue to follow this framework, then the right of privacy may operate to bar the disclosure of all financial information contained in W-2 forms, as well as the home address of the employee.

Any failure to exempt records based on privacy concerns may violate the Pennsylvania Constitution. See Times Publishing Company v. Michel, 159 Pa. Commw. 398, 633 A.2d 1233 (1993), app. denied 538 Pa. 618, 645 A.2d 1321 (1994). Balancing an individual’s interest in privacy with the public’s interest in disclosure, in most if not all circumstances, the “norm of confidentiality” with respect to tax documents – including an individual employee’s W-2 form – outweighs any public interest in disclosure of personal tax and withholding information.

C. Redaction of Protected Personal and Personal Financial Information

Even if an individual employee's W-2 form is considered a public record that may be disclosed, most of the information must be redacted before the form is released to a requester.

The Social Security number of the employee is personal identification that must be redacted. 65 P.S. § 67.708(b)(6)(i)(A).

The amount of taxes withheld in boxes 2 ("Federal income tax withheld"), 4 ("Social security tax withheld"), 6 ("Medicare tax withheld"), 17 ("State income tax") and 19 ("Local income tax") is a record of the individual employee's personal funds withheld and transmitted to the respective taxing authority by the agency pursuant to the employee's authorization and/or as required by law. The amounts are a record of the individual employee's personal financial information and must be redacted. 65 P.S. § 67.708(b)(6)(i)(A).

Amounts entered in boxes 10, 12a-d and 14 include disbursements of individual funds and/or costs incurred by, but not disbursed to, the employee. Personal employee contributions for statutory retirement plans (such as employee contributions to PSERS), and elective deferrals of employee salary to individual retirement accounts and/or medical spending accounts are "personal financial information" and must be redacted. Amounts for employee non-taxable sick pay paid by a third-party and not the employer, employee disability insurance payments, union dues paid by the employee, and health insurance premiums paid by the employee are "personal financial information" and must be redacted.

Finally, the amounts entered in box 1 ("Wages, tips, other compensation"), 3 ("Social security wages"), 5 ("Medicare wages and tips"), 16 ("State wages, tips, etc."), and 18 ("Local wages, tips, etc.") are not "salary, actual compensation or other payments or expenses" disbursed to an employee.⁴ The amounts reported for federal, Social Security, Medicare, state and local differ based on the definition of reportable, taxable income as defined by the respective tax codes. The amounts reported are not a record of any transaction by the public agency employer, or disbursement to the employee. The amounts are merely a report of the taxable income actually or constructively received by the employee (again as defined by the respective tax code). As such, the amounts reported are "personal financial information" and must be redacted.

⁴ This memo does not purport that the salary of, or the cost to a public agency employer for, employees is not subject to access or should not be made known to and/or provided to the public. Section 708(b)(6)(ii) provides, "Nothing in this paragraph shall preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment related contract or agreement and length of service of a public official or an agency employee." 65 P.S. § 67.708(b)(6)(ii). That information, however, is available from other sources and furthermore is not accurately reflected in an individual W-2 form.



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

March 8, 2009

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Emily L. Leader, Deputy Chief Counsel
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RE: Request for Advisory Opinion - W-2 Forms

Dear Ms. Wilson and Ms. Leader,

Thank you for writing to the Office of Open Records ("OOR") with your request for an Advisory Opinion pursuant to the Right to Know Law, 65 P.S. §§67.101, *et. seq* ("RTKL"). You asked the OOR to interpret the RTKL and provide an opinion regarding the following issues:


1. Whether individual employee W-2 forms prepared and issued by a public agency are subject to access under the Pennsylvania Right to Know Law.
2. If so, what information appearing on such forms is exempt from access pursuant to Section 708, and must be redacted pursuant to Section 706.

The law defines a public record clearly and a W-2 form falls into that definition in that it documents a transaction of the agency. It is equally clear under the law that personal financial information and personal identification information may be redacted pursuant to section 708(b)(6). As such, the Office of Open Records does not believe that an advisory opinion would further the interpretation or implementation of this law.

Further, however, the Office of Open Records wishes to make its position clear regarding standing on the part of PSEA and PSBA, as raised by StopTeacherStrikes, Inc. The OOR established guidelines for requesting an advisory opinion, stating that the "purpose of an Advisory Opinion is to provide written guidance to an agency or requester that may be relied upon in taking action." In this context, a "requester" is one who requests an advisory opinion and is presumed to be seeking guidance prospectively, i.e.

before a right-to-know request is filed. The OOR accepts requests for advisory opinions from anyone governed by the RTKL, including but not limited to, individuals, corporate entities, membership associations, law firms and government agencies. As such, denying an advisory opinion in this instance had nothing to do with the fact that PSBA and PSEA requested the request.

Respectfully,



Terry Mutchler
Executive Director

Cc: Simon Campbell
Ronald P. Kalyan, Esquire at Fox Rothschild