pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JOSEPH TARANTO,	:	
Requester	:	
	:	
v.	:	**Docket No. AP 2016-1466**
	:	
GREATER JOHNSTOWN SCHOOL DISTRICT,	:	
Respondent	:	

INTRODUCTION

Joseph Taranto ("Requester") submitted two separate requests ("Requests") to the Greater Johnstown School District ("District") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking to inspect Pennsylvania Child Abuse History Clearance Certificates for independent contractors and third party employees. The District partially denied the Requests, arguing that personal identification information must be redacted from the requested records. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **denied**, and the District is not required to take any further action.

FACTUAL BACKGROUND

On July 8, 2016, the Requests were filed, seeking to inspect "Pennsylvania Child Abuse History Clearance certificates for All Independent Contractors from 2009 to present date" and "Pennsylvania Child Abuse History Clearance certificates for All Third Party Employees from 2009 to present date." On July 15, 2016, the District invoked a thirty-day extension of time to

respond to the Requests. *See* 65 P.S. § 67.902. On August 15, 2016, the District partially denied the Requests, indicating that the records would be available for inspection, subject to redaction of personal identification information. *See* 65 P.S. § 67.708(b)(6).

On August 29, 2016, the Requester filed two appeals with the OOR, stating that he would like to know the specific information to be redacted by the District.[1] The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On September 12, 2016, the District submitted two position statements, asserting that the Requester appealed to the OOR before inspecting the redacted records. The District also provided copies of e-mails exchanged between the District and the Requester in which the District attempted to set a date and time for the Requester to review the redacted records, and indicated that the total amount fees owed would be provided to the Requester before the inspection date. The Requester stated in the e-mails that he wanted to know what redactions were made to the records so that he could determine whether he would appeal. On October 26, 2016, the Requester indicated to the OOR that he did not inspect the redacted records.

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law 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

[1] The appeals were docketed at OOR Dkts. AP 2016-1466 and AP 2016-1467. Because the appeals involve the same parties and similar issues, the appeals are hereby consolidated into the above-referenced docket number.

actions." *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

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" and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The District is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. 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. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. 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 "such proof as leads the fact-finder … to find that the existence of a contested fact is more probable

than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The District argues that because the Requester has not yet inspected the redacted records, he has no basis for appeal. In *Indiana Univ. of Pa. v. Loomis*, a requester was granted access to redacted records; however, the requester did not pay the duplication fees assessed by the agency or retrieve the records, and appealed to the OOR challenging the redactions. 23 A.3d 1126 (Pa. Commw. Ct. 2011). The Commonwealth Court held that because the RTKL allows an agency to withhold access to records until all fees are paid, *see* 65 P.S. § 67.901, and the requester did not pay the copy fees for the redacted records, "the OOR should have denied his appeal." 23 A.3d at 1128. Therefore, because the Requester did not pay the duplication fees or inspect the redacted records, the appeal is denied. *See Kunkle v. Pa. Dep't of Envtl. Prot.*, OOR Dkt. AP 2013-1359, 2013 PA O.O.R.D. LEXIS 812; *Parker v. Pa. Dep't of Agriculture*, OOR Dkt. AP 2011-1238, 2011 PA O.O.R.D. LEXIS 843; *but see Pa. Dep't of Transp. v. Drack*, 42 A.3d 355, n.8 (Pa. Commw. Ct. 2012) (distinguishing *Loomis* because it "arose in the context of records in the possession of third parties).

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the District is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Cambria County Court of Common Pleas. 65 P.S. § 67.1302(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 as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal

adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.[2] This Final Determination shall be placed on the OOR website: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: October 28, 2016

/s/ Kathleen A. Higgins

APPEALS OFFICER
KATHLEEN A. HIGGINS, ESQ.

Sent to: Joseph Taranto (via e-mail only);
Michael Vuckovich (via e-mail only);
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[2] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).