



**FINAL DETERMINATION**

**IN THE MATTER OF** :  
 :  
**RUTH HOCKER** :  
**Complainant** : **Docket No.: AP 2009-0901**  
 :  
**v.** :  
 :  
**YOUNG SCHOLARS OF CENTRAL** :  
**PENNSYLVANIA CHARTER SCHOOL** :  
**Respondent** :

**INTRODUCTION**

Ruth Hocker filed three right-to-know requests with Young Scholars Charter School (the “Charter School”) pursuant to the Right to Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. The requests sought information related to qualifications of personnel, financial records and recommendations to the Board of Trustees. The Charter School denied the requests for various reasons, including lack of specificity and section 67.3101 of the RTKL. Ms. Hocker (the “Requester”) timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **granted in part and denied in part**. The Charter School is directed to take further action as set forth below.

## **FACTUAL BACKGROUND**

### **Procedural Status**

The procedural status and history of this appeal are detailed and require a comprehensive discussion as set forth here.

The Requester filed one request on August 30, 2009 (Request # 1) and two on October 1, 2009 (Request #'s 2 and 3). It is noted that Request #'s 2 and 3 are dated September 30, 2009, however they were emailed to the Charter School after business hours, at 7:40 p.m. and 10:44 p.m., respectively. Because they were sent after the close of business, these Requests, by law, are deemed to have been received on October 1, 2009.

The Charter School, by its Chief Executive Officer Levent Kaya, issued an interim response to Request # 1 on September 4, and a final response on September 30, 2009. A timely response was sent to Request #'s 2 and 3 on October 8, 2009. The Requester contends that the Charter School failed to timely respond in five business days in accordance with the RTKL, but failed to account for the fact that that her requests were received after business hours.

Request # 2 contains four sub-requests. Numbers 1 and 2 were denied and, with respect to #s 3 and 4, the Charter School invoked a 30-day extension of time pursuant to section 67.902. The Charter School stated that due to the limited size of its administrative staff (#3) and the need for legal review (#4) it would not be able to respond until November 7, 2009.

The OOR notes that a procedural error was made by the OOR when an appeal from the partial denial of Request # 2 was accepted and docketed. A right-to-know

request, regardless of how many sub-parts it has, is treated as one request and if an extension of time is invoked, it is applicable to the entire response. To do otherwise, would lead to absurd and unmanageable results. Economy of resources and clarity regarding applicable deadlines demands this result and furthers the purpose set forth in section 67.1102 of an expeditious resolution. Thus, the OOR should have dismissed the appeal from Request # 2 as premature because the 30-day extension invoked had not yet run. An interim response was sent on October 8, 2009 and the Charter School was required to issue a final response by November 7, 2009. The clock begins to run from the date of the denial or the calculation of deemed denial.

In this case, the appeal should have been filed no later than December 3, 2009. However, to dismiss the appeal now would deprive the Requester of a remedy, so in the interest of justice and fairness, (see section 67.1102), the OOR will consider the appeal as timely filed as it was due to its own error.

The Requester timely appealed the denials of access by the Charter School on October 8, 2009 (Request # 1) and October 20, 2009 (Request # 3). Initially the appeals were docketed as number AP 2009-0868, AP 2009-0900 and AP 2009-0901. The Charter School requested that the cases be consolidated and the appeals were thereafter collectively docketed as AP 2009-0901.

On October 30, 2009, the consolidation of these appeals was confirmed by the OOR as was the agreement of the Requester to extend the deadline for issuance of a Final Determination until December 18, 2009. The parties were advised that any submissions must be received by December 4, 2009 at which time the record would close.

## **Request # 1**

Request # 1 included 7 sub-requests. Three were granted and the information provided. The following are at issue in this appeal:

1. Resume and Employment Application for Al Oz
2. Resume and Employment Application for Levant Kaya
3. Resume and Employment Application for Zeynep Balik
4. Resume and Employment Application for Ammar Unal

The Charter School denied access to the above, stating that such documents are not public because they constitute personnel files under the Inspection of Employment Records Law, 43 P.S. §1322.

The Requester cites section 67.708(b)(7) of the RTKL, which prohibits disclosure of employment applications only of individuals not hired by the agency.

Joshua E. Pollack, Esquire entered his appearance on behalf of the Charter School and submitted a letter brief on December 4, 2009. The Charter School argues that:

Ms. Hocker misinterprets the employment application exception found in Section 708(b)(7)(iv) of the RTKL. In her conclusion that "the application of an individual who is hired is specifically included" as a public record, she fails to consider Section 3101.1 of the RTKL which states, "if the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply." With regard to the requested employment applications, such disclosure by the Charter School is prohibited by the Inspection of Employment Records Law ("IERL"). 43 P.S. § 1321 et seq.

The Charter School argues that the IERL authorizes access of employees to their personnel files and that applications for employment are one of the records specifically included in the definition of "personnel file." It further states that applications are maintained in the personnel files at the Charter School and are therefore exempt pursuant to the IERL, citing a Commonwealth Court decision which said "[t]he law is well-settled that any material designated as a "public record" under the Law shall be, at reasonable

times, open to any citizen of the Commonwealth for examination and inspection. Section 2 of the Law, 65 P.S. § 66.2. However, this Court has held that teachers' personnel files are not a "public record" under the Law. West Shore School District v. Michael Homick and West Shore Education Association, 23 Pa. Commw. 615, 353 A.2d 93 (Pa. Cmwlth. 1976).” *Bangor Area Educ. Ass'n v. Angle*, 720 A.2d 198, 202 (Pa. Commw.1998) (Aff’d, Pa. Supreme Court, 750 A.2d 282, 2000).

### **Request # 2**

Request # 2 includes 3 sub-requests at issue:

2. Any record containing the formal recommendations given by the Parent Advisory Council, the Student Council, and the Pupil Assistance Committee to the YSCP Board of Trustees (as described on p. 249 of the schools charter).
3. The Elementary and Secondary Professional Personnel (ESPP) report
4. Any records showing payments made to Wendy Whitesell, Bulent Tarman, Omer Gul, Ann Kusnadi, Riza Ulker and Abdullah Yavas between June 2008 and the present (October 2009), including any invoices or reimbursement requests submitted by Wendy Whitesell, Bulent Tarman, Omer Gul, Ann Kusnadi, Riza Ulker and Abdullah Yavas, and any payment receipts, check statements, logs or other records showing the purpose of or reason for all payments.

The Charter School timely responded, as set forth above, denying # 2 for lack of sufficient specificity pursuant to section 67.703 of the RTKL. With respect to sub-request #s 3 and 4, the Charter School invoked an extension of time due to staffing limitations (#3) and for legal review (#4). It stated that a response would be sent by November 7, 2009.

### **Sub-request # 2**

The Requester timely appealed the denial of access as set forth above and argues the following regarding sub-request # 2:

“...my request WAS sufficiently specific, as certainly the school IS, in fact, able to "ascertain which records are being requested," as the law requires. I have asked for records reflecting very specific information (the formal recommendations given by the Parent Advisor Council, the Student Council, and the Pupil Assistance Committee to the YSCP Board of Trustees) And I have included the page of the charter describing such recommendations to further clarify the records being requested.”

The Charter School argues as follows:

Ms. Hocker's request for" any record containing the formal recommendations given by the Parent Advisory Council, the Student Council, and the Pupil Assistance Committee to the YSCP Board of Trustees (as described on p. 249 of the school's charter)" lacks specificity as described in Section 703 of the RTKL. Unlike in Benevy, [referring to *Benevy v. Lansboro Borough*, OOR Dkt AP 2009-0365] her request lacks reference to a specific type of record. And unlike the facts of Santarelli, [referring to *Santarelli v. City of Philadelphia*, OOR Dkt. AP 2009-0093] her request is not sufficiently limited in time. By the "school's charter" it can reasonably be interpreted that she is referring to the Charter School's charter application and not the actual charter issued by the State College Area School District....It is acknowledged that the Board holds regular meetings at which times any member of the community, including administrators, teachers, parents, students or representatives thereof may speak to the Board in public comment. However," formal," unless specifically labeled as such, is a subjective term and therefore it would be impossible to ascertain with certainty whether a recommendation rises to that level. If Board meeting minutes from a specified period of time would satisfy Ms. Hocker regarding this particular request, the Charter School would happily oblige.

#### **Sub-request #'s 3 and 4**

Regarding sub-request # 3 and 4, for which the Charter School invoked an extension of time, the Requester argues as follows:

Because the request is for a very specific report, required by the Department of Education annually, it should not take a lengthy amount of time to find and copy this document....

Also, the legal review described by the agency can only find that the document is a record, as it is not included in the 30 categories of records that are exempt from disclosure under the RTK law.

The Charter School stated as follows with respect to sub-request # 3:

Section 902(a)(7) of the Act states that the open-records officer shall determine if "the extent or nature of the request precludes a response within the required time period." The school is currently reviewing your request. However, due to the limited size of our administrative staff and the time necessary to identify the document you reference, we are unable to provide a response within five business days. (emphasis added)

A 30-day extension was invoked to provide a final response until November 7, 2009.

### **Request # 3**

As set forth above, the Requester submitted a third Request seeking the following:

1. Any records in the school's possession that show the names of the teachers, the subjects they teach and the grade level at which they teach.
2. Any records in the school's possession which show the names of teachers employed and their postgraduate degrees and training or accreditations. (including resumes and employment applications that would contain this information).
3. Any records in the school's possession explaining or describing YSCP teacher qualifications under No Child Left Behind.

The Charter School timely responded, as set forth above, denying all 3 sub-requests for lack of sufficient specificity pursuant to section 67.703 of the RTKL.

The Requester timely appealed, citing the OOR's decision in *George v. Pennsylvania State Police*, OOR Dkt. AP 2009-0513 where the original request was as follows: Any and all records, files, or manuals[s], communication[s] of any kind, that explain, instruct, and/or require officers[s] and Trooper[s] to follow when stopping a Motor Vehicle, pertaining to subsequent search[es] of that Vehicle, and the seizure of any property, reason[s] therefore taking property." The OOR found the term "any and all records" to be insufficiently specific, but the Requester later limited the Request to manuals which, together with the above description, enabled the agency to discern what

records were sought and the appeal was granted. *George* is currently on appeal to the Commonwealth Court. The Requester further argues:

In **Benevy vs. Lansford Borough AP 2009-0365** the OOR found that the request is sufficiently specific if it pertains to a defined subject (in this case, teacher qualifications) and specific records (in this case, records explaining teacher qualifications, accreditations, training, degrees, and subjects and grade levels at which they teach).

In **Sanatarelli-City of Philadelphia AP 2009-0093** the OOR found that a request for voluminous records does not automatically mean the request is non-specific.

Clearly the OOR has granted a great deal of leeway on the issue of non-specific requests. As the requestor is in many cases unable to give the specific name of the document(s) requested, they must describe the information sought. In my request I have asked for records reflecting very specific information, including the very specific items of teacher resumes and employment applications.

The Charter School argues that the Requester:

...relies upon Benevy where, as explained above, the OOR found a request sufficiently specific under Section 703 only after noting the request contained both " a defined subject. .. and specific types of records." Ms. Hocker makes no attempt in these three requests, with the exception of a parenthetical reading "including resumes and employment applications that would contain this information," to identify a specific type of record and as such, the Charter School appropriately denied her request. As to the resumes and employment applications, the Charter School notes its argument above in regard to AP 2009-0868 justifying further denial.

Finally, it is important to consider OOR's ruling in Alexander v. Sexual Offender Assessment Board AP 2009-0591 as it appears highly applicable to the facts in this case. In Alexander, an inmate submitted a RTK to the Sexual Offender Assessment Board ("SOAB") for "copies of all your Commonwealth agency's records relating to me." Alexander at 1. In ruling that the inmate's request was not sufficiently specific to qualify as a proper request under Section 703 of the RTKL, OOR noted the [inmate]"was capable of narrowing his Request without needing additional clarification from the SOAB ..."

The Charter School further argues that *George* is stayed because it is currently on appeal.



## 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 Charter School 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: “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 (8<sup>th</sup> ed.). *See also* Commonwealth v. Williams, 615 A.2d 716 (PA. 1992).

## **Request # 1**

The OOR finds *Bangor*, supra. inapplicable here. Decided under the previous RTKL, where the definition of “public record” was vastly different and substantially limited, following its guidance would defeat the legislative purpose of the amended Law, to expand the rights of citizens to the records of government. *Bangor* concerned the propriety of one Board member accessing an employee’s entire personnel file, specifically “evaluation reports, observation reports, criminal clearance certificates, teacher contracts, college credit and reimbursement information as well as letters of commendation and complaint”, none of which are at issue here. The IERL guarantees access for employees to review their personnel files, but does not contain any restrictive or confidentiality provisions nor does it specifically state that employment records shall not be subject to the RTKL, as other laws do, e.g. 34 Pennsylvania Code Section 403.65; 37 Pa. Code §61.2; 72 P.S. §S511.4c(C)). The RTKL restricts access to employment records, including the application of an individual not hired by the agency, implicitly suggesting that, for those who are hired, the agency must disclose the information (see section 67.708(b)(7)).

The OOR considered employment applications and resumes in *Schillinger v. Single Tax Office*, OOR Dkt. AP 2009-0315:

The OOR agrees with the Citizen that the RTKL contemplated that employment applications of hired agency employees would be accessible to the public. In this way, the public can assess an agency’s criteria for hiring and fitness to perform agency functions. Section 708(b)(7), which protects records relating to an agency employee, provides that only certain records generally submitted with an employment application are specifically protected, *i.e.*, letters of reference, recommendations, academic transcripts and certain test results. Although the Agency does not assert Section 708(b)(7), the OOR wishes to clarify the type of records that must be disclosed upon request. Employment applications and resumes of hired employees, with the exception of any “letter of reference or recommendation

pertaining to the character or qualifications of an identifiable individual” (protected by subsection(7)(i)), or any result of a civil service test or similar test administered by the Agency, if restricted by collective bargaining agreement, (protected by subsection (7)(iii)), or academic transcript, (protected by subsection (7)(ix)), must be disclosed, with only the defined personally identifiable information redacted.

Accordingly, the appeal from the Charter School’s denial of access to Request # 1 is **granted**

**Request # 2**

**Sub-request # 2**

Section 67.703 requires that a “written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” The Requester seeks “formal recommendations” provided by named councils and committees within the Charter School’s organization. The Charter School argues that the term “formal” is subjective and the word “recommendation” fails to identify the type of record sought. In *Associated Builders v. Pa. Dept. of General Services*, 747 A.2d 962, the Commonwealth Court said:

Preliminarily, however, a person requesting inspection of a public record bears the burden of proof and must identify the type of information being sought with some specificity. *Nanayakkara v. Casella*, 681 A.2d 857, 859-60 (Pa. Cmwlth. 1996). Where the request is not sufficiently specific, the agency has no obligation to comply with the request because the lack of specificity prevents the agency from determining whether to grant or deny the request. *Id.* at 860. Further, a lack of specificity in the request makes it difficult, if not impossible, for this court to conduct meaningful review of the agency's decision. *Id.* *Accord Arduino v. Borough of Dunmore*, 720 A.2d 827 (Pa. Cmwlth. 1998); [\*7] *Hunt v. Department of Corrections*, 698 A.2d 147 (Pa. Cmwlth. 1997). With this background in mind, we turn to the particular requests at issue here.

First, while ABC contends that all requested documents are public records within the meaning of the Act, several of the individual requests are insufficient to allow this court to conduct meaningful review of this issue. Specifically, requests Nos. 7, 8, and 12 employ phraseology akin to

document requests under the civil discovery rules, i.e., "any and all documents relating to [subject matter.]" Such requests fail to provide sufficient facts to determine what type of record is being requested and whether, on review, any part of the request constitutes a public record requiring disclosure...

While decided under the previous RTKL, the issue is the word "specificity" requiring a reasonable interpretation as to whether an agency has sufficient information to fulfill the Request. Here, the Requester has met the burden to "identify the type of information being sought with some specificity" (see *Associated Builders*). She stated the type of record sought (formal recommendations) the authors of the records (naming the council or committee) and identified a page of the Charter in support of the Request. The OOR analyzes right-to-know requests to determine whether or not, in view of the totality of information provided, an agency can "identify the type of information being sought," *Associated Builders*. The decisions have considered factors such as time frame, type of record sought and subject matter. If the request contains sufficient descriptive information in any or all of those categories to enable an agency to discern what information is sought and locate responsive records, it will be ordered to produce them. See *Hoffman v. L & L Fire Co.*, OOR Dkt. 2009-0229; *George v. Pennsylvania State Police*, OOR Dkt. AP 2009-0513 (currently on appeal before the Commonwealth Court); *Skrocki v. Pennsylvania State Police*, OOR Dkt. AP 2009-0800 *Santarelli v. City of Philadelphia*, OOR Dkt. AP 2009-0093 and *Anderson v. City of Philadelphia*, OOR Dkt. AP 2009-0618. These holdings are consistent with *Associated Builders v. Pa. Dept. of General Services*, 747 A.2d 962.

The request for "formal recommendations" coupled with the names of the councils and committees making them and reference to the Charter is sufficient for the

Charter School to discern what is sought. The OOR notes that the Charter School argues that the word “formal” is subjective and, at the same time, argues that the Requester met “formally” with the Chief Executive Officer and attempts to place a burden of narrowing the scope of records on the Requester. We find there was sufficient information for the Charter School to identify the information sought. The appeal related to sub-request # 2 is **granted**.

### **Sub-request # 3**

Section 67.902 of the RTKL provides for extensions of time for certain, specified reasons and then requires agencies to send written notice within 5 business days as follows:

(2) The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice.

Sub-request # 3 seeks “The Elementary and Secondary Professional Personnel (ESPP) report.” The Requester argues that this report is required by the Pennsylvania Department of Education annually and should not take a lengthy amount of time to locate and copy. The Charter School initially invoked a 30-day extension citing “the limited size of our administrative staff and the time necessary to identify the document. The OOR was not provided with any information to demonstrate the necessity of an extension to locate a record already identified by the Requester. It now argues on appeal that it will provide a denial stating that a responsive document does not exist.

The Charter School has not provided any factual basis for the extension (i.e. “bona fide and specified staffing limitations”) or its subsequent position that the record does not exist. For these reasons, the appeal related to sub-request # 3 is **granted** and the Charter School is directed to provide either an affidavit to the Requester that the record does not exist or provide the report sought within thirty days.

#### **Sub-request # 4**

Regarding the extension of time related to legal review, the OOR does not presume to dictate to any agency regarding the propriety of seeking advice of counsel. The Requester’s only argument appears to be that there was no need for legal review. The deadline for submitting additional information in this appeal was December 4, 2009. Given that the Charter School promised a response by November 7, 2009, the Requester could have advised the OOR that no response was received at any time after that and prior to December 4. The appeal from sub-request #4 is therefore **denied**.

#### **Request # 3**

Prior decisions of the OOR regarding specificity are set forth above. We note that the definition of “record” is “information, regardless of physical form or characteristics...” and find this request more akin to *Benevy* than *Alexander* as the universe of responsive records is more definable and limited. In *Alexander*, a request for records related to an inmate could encompass numerous categories of records, including medical and psychiatric, correspondence, assessments, court documents, etc. Here, the Request and sub-requests clearly seek records related to teacher qualifications, similar to the request in *George*. Although *George* is under review by the Commonwealth Court, the law provides the OOR no mechanism to stay a Final Determination while a similar

issue is examined by the Court. Therefore, *George* remains a final order until further guidance from the Commonwealth Court. RTKL § 1101(b)(3) (“The determination by the appeals officer shall be a final order.”).

As we said in *Hoffman v. L & L Fire Co.*, OOR Dkt. 2009-0229, “a requester will not necessarily know the agency nomenclature for the various records it keeps” and, in such circumstances, it is not necessary to name specific records if the request, read as a whole, is clear regarding the information sought. We find it unlikely that the Charter School cannot discern the records sought regarding basic information related to teachers, subjects taught, grade levels and qualifications and locate same. For these reasons, the appeal related to Request # 3 and its sub-requests is **granted**

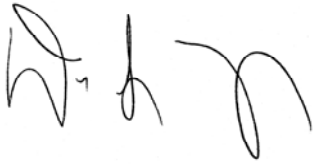
## CONCLUSION

For the foregoing reasons, this appeal is **granted in part and denied in part**. The Charter School shall provide responsive records to Request # 1, Request # 2 (sub-parts 2 and 3) and Request # 3 (and all sub-parts) within thirty (30) days. The Charter School is not required to take further action regarding Request # 2, sub-part 4.

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 Centre 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 AND MAILED ON: December 17, 2009**

A handwritten signature in black ink, appearing to read 'Dena Lefkowitz', written in a cursive style.

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APPEALS OFFICER  
DENA LEFKOWITZ, Esq.

Sent to: Ms. Ruth Hocker; Joshua E. Pollack, Esq.