



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**LESLIE BOOKER AND LESLIE’S
PERSONAL CARE SERVICES, LLC,
Requester**

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Docket No: AP 2021-0436

v.

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**PENNSYLVANIA DEPARTMENT OF
LABOR AND INDUSTRY,
Respondent**

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INTRODUCTION

Leslie Booker and Leslie’s Personal Care Services, LLC (collectively the “Requester”) submitted a request (“Request”) to the Pennsylvania Department of Labor and Industry (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking unemployment records for Ms. Booker. The Department denied the Request, arguing the records are confidential pursuant to the Unemployment Compensation Law and its regulations. 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 Department is not required to take any further action.

FACTUAL BACKGROUND

On February 24, 2021, the Request was filed, stating “[p]lease send copy of payment records as restricted by Unemployment Compensation for Federal Pandemic Unemployment Assistance as my access to my disbursement has been blocked by Unemployment Compensation

PA and US [R]elia[C]ard for an unapparent reason and would no longer or did I ever trust US Bank as my cardholder service and would like a paper check sent to mailing address as all verification systems and information is valued and approved.” On March 3, 2021, following a phone call with the Requester, the Department sent a letter notifying the Requester that it considered the Request withdrawn and provided appeal information should she interpret it as a denial.

On March 5, 2021, the Requester appealed to the OOR, stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 26, 2021, the Department submitted a position statement arguing the records are confidential under the Unemployment Compensation Law (“UCL”) and its regulations, 43 P.S. § 766(b), 34 Pa. Code § 61.25, along with 65 P.S. § 67.708(b)(28). In support of its position, the Department submitted the affidavit of David Furman, the Disclosure Officer for the Unemployment Compensation Resource Center of the Department.

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 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.* Here, the parties did not request a hearing.

The Department is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the 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. 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 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)(1). 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 Department denied access to the records based upon 43 P.S. § 766(b) and Department regulations. Section 766 of the UCL states that “[i]nformation . . . shall not be made public or be open to public inspection, other than to the members of the board, the officers and employees of the department and other public employees in the performance of their public duties....” 43 P.S. § 766(b). Furthermore, the Department’s regulation regarding the confidentiality and disclosure of unemployment compensation records provides that “[u]nemployment compensation information is confidential and may be disclosed only as permitted in this subsection.” 34 Pa. Code § 61.25; *see also Moncada v. Pa. Dep’t of Labor & Indus.*, OOR Dkt. AP 2016-0739, 2016 PA O.O.R.D. LEXIS 892. Section 61.25(5)(ii) permits disclosure to a claimant under paragraph (3)(ii), specifically, that information may be disclosed “to the extent necessary for the proper determination of the claimant’s application for benefits and claims for compensation.” 34 Pa. Code § 61.25(3)(ii).

Although the Requester is the claimant, unemployment compensation records are confidential under 43 P.S. § 766(b) and its implementing regulations, and, therefore, not subject to *public* disclosure under the RTKL. *See, e.g., Graham v. Dep’t of Labor & Indus.*, OOR Dkt. AP 2012-1187, 2012 PA O.O.R.D. LEXIS 1110; *Soper v. Dep’t of Labor & Indus.*, AP 2012-0237, 2012 PA O.O.R.D. LEXIS 204; *Stern v. Dep’t of Labor & Indus.*, OOR Dkt. AP 2010-1109, 2010 PA O.O.R.D. LEXIS 1008. Based upon these decisions, the Department has demonstrated that the responsive records are protected from disclosure by 43 P.S. § 766(b) and Department regulations. 65 P.S. § 67.305 (“Nothing in [the RTKL] shall supersede or modify the public or

nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree”).¹

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Department 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 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 as per Section 1303 of the RTKL. 65 P.S. § 67.1303. 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 at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 7, 2021

/s/ Erin Burlew

ERIN BURLEW, ESQ.
APPEALS OFFICER

Sent to: Leslie Booker (via email only);
Katherine Jones, Esq. (via email only)

¹ Because the Department has demonstrated that the requested records are confidential under the UCL and its regulations, the OOR need not reach the Department’s alternative grounds for denying access. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).