IN THE MATTER OF: 

WILLIAM LONSINGER, JR. AND 
NATALIE STOLTZFUS, 
Requesters 

v. 

LAMPETER-STRASBURG SCHOOL 
DISTRICT, 
Respondent 

Docket No.: AP 2016-1917 

INTRODUCTION 

William Lonsinger, Jr. and Natalie Stoltzfus ("Requesters") submitted a request ("Request") to the Lampeter-Strasburg School District ("District") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 et seq., seeking all communications from July 1, 2016 until September 29, 2016 containing seven identified names. The District denied the Request, asserting that the requested communications are not records as defined by the RTKL. The Requesters 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, and the District is required to take further action as directed.

FACTUAL BACKGROUND 

On September 29, 2016, the Request was filed, stating: “[w]e would like all communication (email, phone, text) that contains any of the following names. We would like to
have communication dating from 7/1/2016 until the time of retrieval of information.” The Request then provided the names of seven individuals, including the Requesters and their daughter, as well as “Branden Lippy, Julie Hoin, Megan McNaul and JoAnn Cohen.” On October 6, 2016, the District invoked a thirty day extension of time to respond to the Request. See 65 P.S. § 67.902. On November 4, 2016, the District denied the Request, stating that the requested records are not records under the RTKL. See 65 P.S. § 67.102 (defining “record”).

On November 16, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. See 65 P.S. § 67.1101(c).

On November 28, 2016 and December 1, 2016, the District submitted position statements, reiterating its reason for denial, along with the sworn affidavit of Dr. Kevin Peart, Superintendent and Open Records Officer for the District. On November 19, 2016 and November 30, 2016, the Requesters submitted position statements, arguing that responsive communications exist and are subject to disclosure. The Requesters also submitted copies of emails and text messages between themselves and District employees regarding the District’s girls’ volleyball team.

On December 15, 2016, following the Requester’s agreement to an extension of time to issue the Final Determination in this matter, see 65 P.S. § 67.1101(b)(1), the OOR directed the District to submit all withheld records for in camera review. On January 5, 2017, the District submitted the records, along with an exemption log, and the OOR performed an in camera review of the 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 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 necessary 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 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)).

1. The District has demonstrated that Records 1, 3, and 5-7 are not records of the District under the RTKL

The District asserts that it has identified “a number of email communications occurring during the relevant time period and that contained the identified key terms.” However, the District argues that these emails do not document a transaction or activity of the District and were not created, received or retained in connection with a transaction, business or activity of the District. See 65 P.S. § 67.102. The RTKL defines a “record” 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. To determine if certain material is a record, the RTKL imposes a two-part inquiry: (1) does the material document a “transaction or activity of the agency”; and (2) if so, was the material “created, received or retained … in connection with a transaction, business or activity of [an] agency.” See 65 P.S. § 67.102; Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc., 13 A.3d 1025, 1034-35 (Pa. Commw. Ct. 2011). Because the RTKL is remedial legislation, the definition of a record must be liberally construed.

In support of its argument that the e-mails located during its search are not records under the RTKL, the District submitted the sworn affidavit of Dr. Kevin Peart, Superintendent and Open Records Officer, who attests to the following:

6. Following receipt of the Request, I engaged in a good-faith search of the School District’s records to identify any records responsive to the Request.

7. This search revealed a number of email communications occurring during the relevant time period and that contained the identified key terms.

8. However, none of the items identified during my search documented, proved, supported or otherwise evidenced a transaction, activity or the business of the School District.

9. The search did not reveal anything that was created, received, or retained by the School District in connection with any transaction, activity or business of the School District.

10. Consistent with the search results, I concluded that no records as defined by the Right-to-Know Law and which would be responsive to the Request existed within the School District’s possession.

The OOR conducted an in camera review of seven withheld records that the District claims are not records under the RTKL. While all of the records implicate the District’s girls’ volleyball team, which is an activity of the District, the subject matter of certain records do not relate to the
operation of the team or otherwise document an activity of the District. See Pa. Office of Attorney General v. Bumsted, 134 A.3d 1204 (Pa. Commw. Ct. 2016) (finding that the subject matter of e-mails exchanged by agency employees did not relate to the operation of the agency). Here, Records 1, 3, and 5-7 are not records of the District, as they are comprised of criticisms of parents regarding the team’s coaching staff, as well as the coaching staff’s responses to the criticism. These communications, from individuals who have no authority over the function of the volleyball team, and which do not directly relate to the operation of the team, are not records of the District. Based upon the evidence provided by the District, as well as the OOR’s in camera review, the District has demonstrated that Records 1, 3, and 5-7 do not document a transaction or activity of the District, and are not subject to access under the RTKL.

2. Records 2 and 4 are records of the District

Records 2 and 4 are records of the District under the RTKL. Record 2 is an email between the District’s volleyball coach and the District Athletic Director reporting the results of team matches. Record 4 is an email from a District employee to the volleyball coach, with a redacted attachment regarding the eligibility of a student for after-school activities. These types of records clearly document a transaction or activity of the District as they are communications between District employees that were created, received, or retained in connection with their roles as a coach and athletic director. As Records 2 and 4 are records of the District, and the District has not raised any other exemptions under the RTKL, these records are subject to disclosure. See 65 P.S. § 67.305.

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1 The District redacted the names of students from the records who are unrelated to this matter and are, therefore, not responsive to the Request.
CONCLUSION

For the foregoing reasons, the Requester's appeal is granted in part and denied in part, and the District is required to provide copies of Records 2 and 4 to the Requesters within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Lancaster 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 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. This Final Determination shall be placed on the website at: http://www.openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: April 5, 2017

/s/ Kathleen A. Higgins

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APPEALS OFFICER
KATHLEEN A. HIGGINS, ESQ.

Sent to: William Lonsinger (via e-mail only);
Natalie Stoltzfus (via e-mail only);
Dr. Kevin Peart (via e-mail only);
Robert Frankhouser, Jr., Esq. (via e-mail only)

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