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OFFICE OF OPEN RECORDS

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CALIFORNIA UNIVERSITY OF PENNSYLVANIA,	:	
Petitioner	:	Appeal from the Final
	:	Determination of the
	:	Pennsylvania Office of
	:	Open Records
	:	(Docket No. AP 2018-1657)
	:	
v.	:	
	:	
	:	
GIDEON BRADSHAW,	:	___ CD 2018
Respondent	:	

PETITION FOR REVIEW

Pursuant to Rule 1512(a)(1) of the Pennsylvania Rules of Appellate Procedure and 65 P.S. § 67.1301 of Pennsylvania’s Right-to-Know Law (“RTKL”), California University of Pennsylvania (“University” or “Petitioner”), by its University Legal Counsel, Michael S. Ferguson, files this Petition for Review and, in support of such Petition, avers as follows:

Parties

1. The University is a constituent member institution of the Pennsylvania State System of Higher Education, which was created by an act of the Legislature, 24 P.S. § 20-2001-A *et seq.*, as a body corporate and politic constituting a public corporation and government instrumentality. As such, it is both an independent agency and state-affiliated entity as referenced by 65 P.S. § 67.102 and § 67.1301.

2. Gideon Bradshaw (“Bradshaw”) is a reporter with the *Washington Observer-Reporter*, who made a request for records to the University for donation records of the Foundation for California University of Pennsylvania by Manheim Corporation under the Right-to-Know Law (“RTKL”), 65 P.S. § 67.101 *et seq.*

Jurisdiction and Order to Be Reviewed

3. The government unit whose determination is at issue is the OOR. Specifically, this Petition for Review seeks reversal of a Final Determination, Docket No. AP-2018-1657, issued by the OOR on October 15, 2018. (A true and correct copy of the Final Determination of the Office of Open Records is appended hereto as *Appendix A* and incorporated herein by reference).

4. Jurisdiction is proper in this Court pursuant to the Pennsylvania Rules of Appellate Procedure 1501 *et seq.*, 42 Pa.C.S.A. § 763(a)(2), and 65 P.S. § 67.1301.

5. On August 22, 2018, Bradshaw submitted a request to the University pursuant to the Pennsylvania Right-to-Know Law (“RTKL”), requesting.

All records related to donations from Manheim Corp. to the Foundation for the University of California [sic] between Jan. 1, 2008, and December 31, 2013, and all records identifying the uses of those funds.

6. On August 27, 2018 the University denied the request stating,

Your request is denied because the University does not possess donation records of the independent IRS 501c3 organization, the Foundation for California University of Pennsylvania. *Foletti v. Edinboro University Foundation*,

Pa OOR Dkt. #AP 2010[sic]. Additionally, if your request was properly directed toward donation records of the University, the request would be denied pursuant to 65 P.S. §67.708(b)(13).

7. On September 13, 2018, Bradshaw filed an appeal of the University's denial pursuant to 65 P.S. §1101(a)(1).

8. All parties were given until September 26, 2018 in which to file their position statements and legal arguments with the OOR.

9. The University submitted its position statement on September 26, 2018.

10. The OOR issued its Final Determination on October 15, 2018 and granted Bradshaw's appeal. Specifically, the OOR determined that the University was required to provide records of the Foundation for California University of Pennsylvania ("Foundation") related to any specific donations made to it by Manheim Corp. The OOR determined that Manheim does not qualify as an "individual" under section 708(b)(13) of the RTKL.

11. Because of the numerous factual errors contained in the Final Determination that it believes led to an erroneous its legal conclusion, the University filed a Petition for Reconsideration with the OOR on October 30, 2018. *See Appendix B.* As of the date of the filing of this Petition, the OOR has neither acknowledged, nor taken any action on that Petition.

Grounds for Appeal

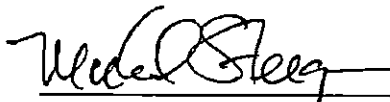
12. The OOR erred in its determination that the University was required to provide donation records of an independent third party Foundation not subject to the RTKL.

13. The OOR erred in its determination, assuming that if there were records of donations made by Manheim Corp. to the Foundation that the University controlled or possessed, that the records of an individual donor would not be exempt under 708(b)(13) of the RTKL.

14. The OOR further erred in concluding that donation records of a Corporation are somehow not subject to the provisions of 708(b)(13) because a corporation does not qualify as an "individual" pursuant to the RTKL.

WHEREFORE, Petitioner, California University of Pennsylvania, respectfully requests that this Court reverse the October 15, 2018 Final Determination of the OOR and enter an appropriate order.

Respectfully submitted,



Michael S. Ferguson
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Attorney for California University of Pa.

Date: November 13, 2018

APPENDIX A



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OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**GIDEON BRADSHAW,
Requester**

v.

**CALIFORNIA UNIVERSITY OF
PENNSYLVANIA,
Respondent**

Docket No.: AP 2018-1657

INTRODUCTION

Gideon Bradshaw (“Requester”) submitted a request (“Request”) to the California University of Pennsylvania (“University”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records of donations to the University. The University denied the Request, arguing that disclosure of the records would identify donors to the University. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the University is required to take further action as directed.

FACTUAL BACKGROUND

On August 22, 2018, the Request was filed, seeking “all records related to donations from Manheim Corp. to the Foundation for University of California between Jan. 1, 2008, and Dec. 31, 2013, and all records identifying the uses of those funds.” On August 27, 2018, the University

denied the Request, arguing that the “University does not possess donation records of the independent 501c3 organization.” The University further asserted that the release of the requested records would disclose the identity of an individual or individuals who made donations to the University, 65 P.S. § 67.708(b)(13).

On September 13, 2018, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited the parties to supplement the record and directed the University to notify third parties of their ability to participate in the appeal. 65 P.S. § 67.1101(c).

On September 17, 2018, the Requester submitted the Memorandum of Understanding between the University and The Foundation for California University of Pennsylvania. On September 26, 2018, the University submitted a position statement, reiterating its argument that the requested records are exempt from disclosure because they would identify individual donors, 65 P.S. § 67.708(b)(13).¹

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 On appeal, the University no longer argues that it does not possess the requested records, stating that “it does not matter whether the Foundation possesses the records or the University, access to donor records is protected from disclosure under 708(b)(13).” The Commonwealth Court has recognized that “[f]oundations at the various institutions of the [State System of Higher Education] in large part are alter egos of the member universities to carry out activities that those universities want to undertake; otherwise they would not exist.” *W. Chester Univ. v. Schackner*, 124 A.3d 382, 395 (Pa. Commw. Ct. 2015). Further, the Commonwealth Court has found that certain records in possession of a university foundation are subject to access under the RTKL pursuant to Section 506(d). *Id.* at 395-96; *E. Stroudsburg Univ. Found. v. Office of Open Records*, 995 A.2d 496 (Pa. Commw. Ct. 2010).

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; however, 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 of the parties requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate this matter.

The University 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 to be 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 to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *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) provides: “(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 University denied access to the requested records pursuant to Section 708(b)(13) of the RTKL, which exempts from disclosure:

[r]ecords that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to provide remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

65 P.S. § 67.708(b)(13).

The University asserts that the Manheim Corporation is an “independent IRS 501c3 corporation.” The University further asserts that while the term “individual” is not defined by the RTKL, “the General Assembly repeated[ly] defined the term ‘individual’ to include a corporation.” In support of its argument, the University cites to the Business Corporation Law, which states that business corporations “shall have the legal capacity of natural persons to act,” 15 Pa.C.S. § 1501, and the Domestic Non-Profit Corporation Law, which states that non-profit corporations “shall have the legal capacity of natural persons to act,” 15 Pa.C.S. § 5501. The University also cites to the Fiscal Code, which defines an individual to include a “natural person and shall include the members of a partnership or association and the shareholders of a Pennsylvania S corporation.” 72 P.S. § 7301(I). The University contends that “[t]he Pennsylvania Associations Code² and Fiscal Code recognize a corporation as an individual. Thus, any donation by a corporation is subject to the same recognition under the RTKL.”

²The University explains that the Business Corporation Law is known as the Association Code, 51 Pa.C.S. § 101(a).

As noted by the University, the RTKL does not define the term “individual” for purposes of applying Section 708(b)(13). The OOR addressed this issue in *Roxbury News v. City of Harrisburg*, stating:

The Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1501 *et seq.*, defines a “person” as “a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S. § 1991. Conversely, the Statutory Construction Act of 1972 defines an “individual” only as a “natural person.” *Id.* Thus, “individuals” are natural persons, while “persons” are natural persons as well as other legal entities. Had the General Assembly intended for Section 708(b)(13) of the RTKL to exempt the identity of corporate or other legal entities from disclosure, the General Assembly could easily have used the word “person” instead of “individual.” By using the word “individual” instead of “person,” it can only be concluded that the General Assembly intended to limit[] the protections of Section 708(b)(13) to natural persons and not other legal entities. *See* 1 Pa.C.S. § 1921(a) (statutes are to be interpreted to effectuate the intent of the General Assembly). Therefore, only the identities of natural persons are exempt from disclosure under Section 708(b)(13) of the RTKL.

OOR Dkt. AP 2012-1748, 2012 PA O.O.R.D. LEXIS 1457; *see also* *Butler Area Sch. Dist. v. Pennsylvanians for Union Reform*, 172 A.3d 1173 (Pa. Commw. Ct. 2017) (“The constitutional right to informational privacy only inures to individuals. Stated differently, individuals, as distinct from ‘persons’ (which may include corporations), may assert a privacy interest under Article I, Section 1”).

In light of the above, Section 708(b)(13) of the RTKL does not apply to corporations, including 501(c)(3) corporations. As such, the University has failed to meet its burden of proving that the responsive records are exempt from public access. *See* 65 P.S. § 67.708(a)(1); *see also* *Pa. Sch. Bds. Ass’n v. Tacony Acad. Charter Sch.*, OOR Dkt. AP 2015-1225, 2015 PA O.O.R.D. LEXIS 1348 (stating that Section 708(b)(13) of the RTKL “has only ever been applied to ‘natural persons’ as defined by 1 Pa.C.S. § 1991, and not corporations, partnerships, associations and other entities”).

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the University is required to provide the Requester with all responsive records 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 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 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.³ This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 15, 2018

/s/ Magdalene C. Zeppos

MAGDALENE C. ZEPPOS
APPEALS OFFICER

Sent to: Gideon Bradshaw (via email only);
Robert Thorn, AORO (via email only); and
Michael Ferguson, Esq. (via email only)

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

APPENDIX B

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

IN THE MATTER OF

**GIDEON BRADSHAW,
Requester**

v.

**CALIFORNIA UNIVERSITY OF
PENNSYLVANIA,
Respondent**

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Docket No.: AP 2018-1657

**CALIFORNIA UNIVERSITY OF PENNSYLVANIA'S PETITION FOR
RECONSIDERATION OF FINAL DETERMINATION OF THE
OFFICE OF OPEN RECORDS DATED OCTOBER 15, 2018**

Pursuant to Section 35.241 of the General Rules of Administrative Practice and Procedure, 1 Pa.Code § 35.241, the California University of Pennsylvania ("University") petitions the Pennsylvania Office of Open Records ("OOR") for reconsideration of its final determination concluding that donations made by a private corporation, Manheim, to a private Foundation, the Foundation for California University of Pennsylvania ("Foundation"), which is affiliated with the University are subject to disclosure. This determination makes faulty findings of fact and relies on these faulty facts to support its erroneous determination for the following reasons:

1. On October 15, 2018, the OOR rendered a final determination in this Requester's appeal from the University's denial of an August 22, 2018 request directed to the University that stated:

"I'm requesting all records related to donations from Manheim Corp. to the Foundation for University of California¹ between Jan. 1, 2008, and Dec. 31, 2013, and all records identifying the uses of those funds."

(Emphasis supplied).

2. The final determination, attached as Exhibit A, and incorporated fully by reference, notes that the request was made to the University "seeking records of donations to the University." OOR Final Determination, p.1. (Emphasis added).

3. This statement is factually incorrect. The request was made of the University seeking records of donations from Manheim to the Foundation for California University of Pennsylvania.

4. In response to this request, the University denied the request and stated:

Your request is denied because the University does not possess donation records of the independent IRS 501c3 organization, the Foundation for California University of Pennsylvania. *Foletti v. Edinboro University Foundation*, Pa OOR Dkt. #AP 2010. Additionally, if your request was properly directed toward donation records maintained by the University, the request would be denied pursuant to 65 P.S. §67.708(b)(13).

5. The final determination states, "The University denied the Request, arguing that the disclosure of the records would identify donors to the University." OOR Final Determination, p.1. The statement is inaccurate.

6. The University's response denied the request because it does not possess donation records of the Foundation.

7. However, to be clear to the requester, the University noted that had the request been directed toward the University, any specific donor records would be exempt under 708(b)(13) of the RTKL.

¹ It is the Foundation for California University of Pennsylvania.

8. The final determination inexplicably jumps to the conclusion that the University abandoned its argument that it did not possess the records. OOR Final Determination, p.2, fn.1. The University was asked by the OOR to supplement its response not restate the response. OOR Final Determination, p.2.

9. Next, the OOR refers to unsupported dicta in footnote 1 that states “The Commonwealth Court has recognized that ‘[f]oundations at the various institutions of the [State System of Higher Education] in large part are alter egos of the member universities to carry out activities that those universities want to undertake; otherwise they would not exist.’[sic]”

10. This citation to *W. Chester Univ. v. Schackner*, 124 A.3d 382, 395 (Pa. Commw. Ct. 2015) is misplaced and without any legal support. The Commonwealth Court has never engaged in any analysis regarding whether the Foundation for California University, or Foundation at any other State System University, is an alter ego of the University proper.

11. The OOR’s loose use of the unsupported dicta further damages the reliability of its conclusion.

12. Next, the OOR claims that the University asserted that “the Manheim Corporation is an ‘independent IRS 501c3 corporation.’”

13. The University never made that assertion or claim.

14. On page 2 of the University's September 26, 2018 response (attached as Exhibit B), the University notes that the Requester claims that the “University is obligated to provide donation records of a private, independent IRS 501c3 entity because the Foundation has a MOU with the University.”

15. It is puzzling how the OOR misconstrues the reference to the Foundation for California University to conclude the University is claiming that Manheim is that "independent IRS 501c3 entity."

16. The University made no reference whatsoever in paragraph 1 on page 2 of its response to Manheim, and the University never claimed that Manheim Corporation was an IRS 501c3 non-profit corporation.

17. Later in the University's response, it simply argues the Associations Code, which applies to business corporations, defines business corporation as natural persons and that natural persons are "individuals," and "individual" donor information is exempted from disclosure under the RTKL. (Exhibit B, p. 3).

18. The Final Determination cites a passage from another OOR final determination in *Roxbury News v. City of Harrisburg*, OOR Dkt. 2012-1748 which includes reference to the Statutory Construction Act of 1972 which states that an "individual" is defined as a "natural person." OOR Final Determination at p. 5.

19. The Associations Code states that a business corporation "shall have the same legal capacity of natural persons to act." 15 Pa.C.S.A. §1501.

20. The OOR then determines that a Manheim Corporation is not an "individual" because the corporation is not a "person." There is no requirement under the RTKL that an "individual" is a "person." The RTKL simply states that "records that would disclose the identity of an individual who lawfully makes a donation...." 65 P.S. §67.708(b)(13).

21. The conclusion that a corporation is not an 'individual' covered by the RTKL is a legal determination supported only by the decisions of the OOR without reference to the Associations Code which defines business corporations.

22. When the Associations Code is read together with the RTKL and the Statutory Construction Act, it is clear that a corporation is an individual under PA law.

23. The Commonwealth Court case cited by the OOR is not instructive or dispositive of this matter.

24. In *Butler Area Sch. Dist. v. Pennsylvanians for Union Reform*, 172 A.3d 1173, the issue was not the definition of an individual for donation purposes, but whether physical addresses contained in property tax records are public or whether they are protected by the Pennsylvania Constitution. 172 A.3d 1176-77. This case dealt with a constitutional right to privacy, not whether a corporation constitutes an individual under the RTKL.

25. Similarly, the OOR's decision in *Tacony* is simply based upon its decision in *Roxbury*, and neither decision is supported by law. The OOR simply interprets the RTKL in disregard of the definitions in the Associations Code.²

26. Upon review of the OOR's final determination, the OOR has misstated facts and made factual conclusions that are erroneous. Further the OOR failed to properly interpret statutes when it determined that an "individual" under the RTKL must be a living, breathing person, rather than a natural person as defined by the Associations Code.

27. The University requests that the OOR reconsider its factual conclusions and legal determination in light of the foregoing.

² The OOR could have created regulations that possibly clear up any ambiguities in the RTKL, but to date, the OOR has failed to do so. See *Com., Office of Governor v. Donahue*, 626 Pa. 437, 467, 98 A.3d 1223, 1240 (2014) (admonishing the OOR "that to the extent the RTKL is unclear and in need of interpretation, the legislature delegated to OOR authority to promulgate regulations and issue advisory opinions, consistent with the act. See 65 P.S. § 67.504(a); 65 P.S. § 67.1310(a). OOR seems, however, to desire to employ these functions as well as its adjudicatory role to alter its legislative underpinning, when it dislikes it. This it cannot do. If OOR disagrees with the legislature's intentions as set forth in the RTKL, its only remedy is to seek an amendment to that act.")

WHEREFORE, the University respectfully requests the OOR reconsider its final determination in this matter, reissue a final determination correctly reflecting the facts in this matter, and properly apply and give effect to the relevant statutes involved in this matter (the RTKL, the Associations Code, and the Statutory Construction Act).

Respectfully submitted,

Date: October 30 2018

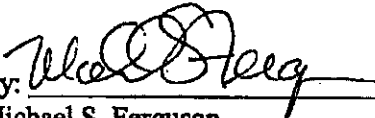
By: 
Michael S. Ferguson
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EXHIBIT A



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**GIDEON BRADSHAW,
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v.

**CALIFORNIA UNIVERSITY OF
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Docket No.: AP 2018-1657

INTRODUCTION

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LEGAL ANALYSIS

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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) provides: “(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 University denied access to the requested records pursuant to Section 708(b)(13) of the RTKL, which exempts from disclosure:

[r]ecords that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to provide remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

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The University asserts that the Manheim Corporation is an “independent IRS 501c3 corporation.” The University further asserts that while the term “individual” is not defined by the RTKL, “the General Assembly repeated[ly] defined the term ‘individual’ to include a corporation.” In support of its argument, the University cites to the Business Corporation Law, which states that business corporations “shall have the legal capacity of natural persons to act,” 15 Pa.C.S. § 1501, and the Domestic Non-Profit Corporation Law, which states that non-profit corporations “shall have the legal capacity of natural persons to act,” 15 Pa.C.S. § 5501. The University also cites to the Fiscal Code, which defines an individual to include a “natural person and shall include the members of a partnership or association and the shareholders of a Pennsylvania S corporation.” 72 P.S. § 7301(I). The University contends that “[t]he Pennsylvania Associations Code² and Fiscal Code recognize a corporation as an individual. Thus, any donation by a corporation is subject to the same recognition under the RTKL.”

² The University explains that the Business Corporation Law is known as the Association Code, 51 Pa.C.S. § 101(a).

As noted by the University, the RTKL does not define the term “individual” for purposes of applying Section 708(b)(13). The OOR addressed this issue in *Roxbury News v. City of Harrisburg*, stating:

The Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1501 *et seq.*, defines a “person” as “a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S. § 1991. Conversely, the Statutory Construction Act of 1972 defines an “individual” only as a “natural person.” *Id.* Thus, “individuals” are natural persons, while “persons” are natural persons as well as other legal entities. Had the General Assembly intended for Section 708(b)(13) of the RTKL to exempt the identity of corporate or other legal entities from disclosure, the General Assembly could easily have used the word “person” instead of “individual.” By using the word “individual” instead of “person,” it can only be concluded that the General Assembly intended to limit[] the protections of Section 708(b)(13) to natural persons and not other legal entities. *See* 1 Pa.C.S. § 1921(a) (statutes are to be interpreted to effectuate the intent of the General Assembly). Therefore, only the identities of natural persons are exempt from disclosure under Section 708(b)(13) of the RTKL.

OOR Dkt. AP 2012-1748, 2012 PA O.O.R.D. LEXIS 1457; *see also* *Butler Area Sch. Dist. v. Pennsylvanians for Union Reform*, 172 A.3d 1173 (Pa. Commw. Ct. 2017) (“The constitutional right to informational privacy only inures to individuals. Stated differently, individuals, as distinct from ‘persons’ (which may include corporations), may assert a privacy interest under Article I, Section 1”).

In light of the above, Section 708(b)(13) of the RTKL does not apply to corporations, including 501(c)(3) corporations. As such, the University has failed to meet its burden of proving that the responsive records are exempt from public access. *See* 65 P.S. § 67.708(a)(1); *see also* *Pa. Sch. Bds. Ass’n v. Tacony Acad. Charter Sch.*, OOR Dkt. AP 2015-1225, 2015 PA O.O.R.D. LEXIS 1348 (stating that Section 708(b)(13) of the RTKL “has only ever been applied to ‘natural persons’ as defined by 1 Pa.C.S. § 1991, and not corporations, partnerships, associations and other entities”).

CONCLUSION

For the foregoing reasons, the Requester's appeal is granted, and the University is required to provide the Requester with all responsive records 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 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 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.³ This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 15, 2018

/s/ Magdalene C. Zeppos

MAGDALENE C. ZEPPOS
APPEALS OFFICER

Sent to: Gideon Bradshaw (via email only);
Robert Thorn, AORO (via email only); and
Michael Ferguson, Esq. (via email only)

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

EXHIBIT B



GOVERNOR'S OFFICE OF GENERAL COUNSEL
University Legal Counsel

September 26, 2018

VIA E-MAIL (mzeppos@pa.gov)

Magdalene Zeppos, Esquire
Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
333 Market St. 16th Floor
Harrisburg, PA 17101-2234

Re: OOR DOCKET #AP 2018-1657

Dear Appeals Officer Zeppos:

Pursuant to the Official Notice of Appeal dated September 14, 2018, please accept this submission on behalf of California University of Pennsylvania and the State System of Higher Education, Office of the Chancellor.

On August 22, 2018, Gideon Bradshaw ("Requester") submitted a request ("Request") to California University of Pennsylvania ("University") pursuant to the Right-to-Know Law ("RTKL") 65 P.S. §§ 67.101 et seq. requesting records as follows:

"I'm requesting all records related to donations from Manheim Corp. to the Foundation for University of California between Jan. 1, 2008, and Dec. 31, 2013, and all records identifying the uses of those funds."

In accordance with the statutory framework of the RTKL, on August 27, 2018, the University denied the Requester's request for the aforementioned information. The University's denial was based upon Requester's request for donation records of an independent IRS 501c3 corporation, the Foundation for California University of Pennsylvania ("Foundation"). Additionally, the University noted that, if the request had been made of the University and it had records relating to a donation, the records would be exempt from disclosure under 65 P.S. §67.708(b)(13).



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In his appeal, Mr. Bradshaw contends that the University is obligated to provide donation records of a private, independent IRS 501c3 entity because the Foundation has a Memorandum of Understanding ("MOU") with the University. The issue before the hearing office is not whether the Foundation performs functions under the MOU for the University - the Foundation clearly performs some functions for the University. Rather the issue is whether donation records, if they exist, are exempt from access under the RTKL.

In *East Stroudsburg University Foundation v. Office of Open Records*, 995 A.2d 496 (Pa.Cmwith. 2010), the Commonwealth Court reviewed a case that involved a request for a list of donors to the ESU Foundation and specific gifts made by specific individuals. *Id.* at 499. The Court held that the records were related to the government function of the University and required the University to allow the Requestor access to information regarding the amount of donations generally, but held under 708(b)(13), that the identity of the donors was exempt from disclosure under 708(b)(13). *Id.* at 505. *Accord City of Harrisburg v. Prince*, 186 A.3d 544, 561 (Pa.Cmwith. 2018)(holding that donor records are exempt).

In *Municipality of Mt. Lebanon v. Gillen*, 151 A.3d 722 (Pa.Cmwith. 2016), *app. den.*, 169 A.3d 539 (Pa. 2017), the Commonwealth Court discussed what constituted a "donation" under the RTKL and stated in relevant part:

That is a question of first impression. The RTKL does not define the term "donation." Because it is not defined, the Court must look to the common usage and meaning of the word "donation" in construing Section 708(b)(13). Section 1903(a) of the Statutory Construction Act, 1 Pa. C.S. § 1903(a) (undefined, nontechnical "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage"); *Allegheny County Department of Administrative Services v. A Second Chance, Inc.*, 13 A.3d 1025, 1034 (Pa. Cmwith. 2011); *St. Ignatius Nursing Home v. Department of Public Welfare*, 918 A.2d 838, 845 (Pa. Cmwith. 2007). "Where a word is not expressly defined in the RTKL, we will construe the word according to its common and approved usage." *A Second Chance, Inc.*, 13 A.3d at 1034. To ascertain the common usage and meaning of a word, the Court may properly consider the dictionary definitions of the word. *A Second Chance, Inc.*, 13 A.3d at 1034; *St. Ignatius Nursing Home*, 918 A.2d at 845.

The dictionary definition of "donation" includes "the action of making a gratuitous gift or free contribution esp. to a charity, humanitarian cause, or public institution or utility" and "a free contribution: GIFT."

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Webster's Third New International Dictionary of the English Language—Unabridged 672 (2002). "Donate" is defined as "to make a free gift or grant of: contribute esp. to a charitable cause or toward a public-service institution" and "SUPPLY, LOAN." *Id.* "Gift" is defined, in turn, as "something that is voluntarily transferred by one person to another without compensation" and "a voluntary transfer of real or personal property without any consideration or without a valuable consideration." *Id.* 956. "Contribution" is defined as "something that is contributed: a sum or thing voluntarily contributed," and the definition of "contribute" includes "give money (or other aid) for a specified object." *Id.* 496.

Id. 151 A.3d 722, 728–29. (Emphasis added). Thus, the term "donation" is to be construed pursuant to its common meaning.

Similar to "donation," the term "individual" is not defined by the RTKL. However, the General Assembly has repeatedly defined the term "individual" to include a corporation.

Under Pennsylvania's Business Corporation Law¹, a business corporation shall "have the same legal capacity of natural persons to act." 15 Pa.C.S.A. §1501. Additionally a business corporation has the power "to make contributions and donations." 15 Pa.C.S.A. §1502. Similarly, under the Domestic Non-Profit Corporation Law, non-profit corporations "have the same legal capacity of natural persons to act." 15 Pa.C.S.A. §5501. Furthermore, a non-profit corporation has the power "to make contributions and donations." 15 Pa.C.S.A. §5502(a)(9).

Further, the Fiscal Code defines an individual as follows: "**Individual**" means a natural person and shall include the members of a partnership or association and the shareholders of a Pennsylvania S corporation." 72 P.S. §7301(l). Thus, contrary to Requester's claim that a corporation is not an individual, Pennsylvania law expressly defines a corporation as an individual and gives corporations the power to act as a "natural person" which includes the ability to make donations. The Pennsylvania Associations Code and Fiscal Code recognize a corporation as an individual. Thus, any donation by a corporation is subject to the same recognition under the RTKL.

Thus, if a donation was made by Manheim Corporation to the Foundation, "records that would disclose the identity of an individual" would be exempt from disclosure under section 708(b)(13) of the RTKL no matter who possesses the records.²

¹ Known as the "Association Code." 15 Pa.C.S.A. §101(a).

² The Requester has seemingly sought to claim that section 508(d)(1) has import to his appeal. The University argues that it does not matter whether the Foundation possesses the records or the University,

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As such, the University respectfully requests that the appeal be denied.

Respectfully submitted,



Michael S. Ferguson
University Legal Counsel

Enclosure

Distribution via e-mail only:

Gideon Bradshaw, bradshawgideon@gmail.com

Andrew C. Lehman, Chief Counsel

Robert Thorn, Agency Open Records Officer, California University of Pennsylvania

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access to donor records is protected from disclosure under 708(b)(13). Thus, his appeal must fail. Furthermore, contrary to his claims that this appeal deals with a financial record, the Commonwealth Court in *City of Harrisburg*, held a donor record is not a "financial record" for purposes of section 708(c) and section 708(b)(13) is applicable. *Id.* 186 A.3d at 556.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Petition for Review via U.S. Postal Service First-Class mail and, if applicable, via PACFile upon the following persons, which service satisfies the requirements of Pa.R.A.P. 121:

Gideon Bradshaw
122 S. Main St.
Washington, PA 15301
bradshawgideon@gmail.com

Magdalene C. Zeppos, Hearing Officer
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101

Office of Attorney General
Strawberry Square
Harrisburg, PA 17120

Dated: November 13, 2018



Michael S. Ferguson, Esquire
State System of Higher Education
2986 N. 2nd Street
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