



October 3, 2019

Via email only

Garen Fedeles, Esq.
Santicola, Steele, & Fedeles P.C.
722 Turnpike St.
Beaver, Pa 15009

RE: Request for Advisory Opinion

Dear Attorney Fedeles:

The Office of Open Records ("OOR") is in receipt of your request for an Advisory Opinion related to a request submitted to the Municipal Authority of the Borough of Midland. Specifically, you sought the OOR's opinion as to whether the request can be considered "overly burdensome" given the volume of the requested records and the Authority's staffing constraints.

The OOR is an independent quasi-judicial agency that hears appeals from local and Commonwealth agencies. While the OOR answers general questions related to the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.* ("RTKL"), the OOR is precluded from offering legal advice about specific questions that may come before the OOR, such as your specific question.

The OOR will not issue an advisory opinion or offer legal advice related to how to respond to this particular request, as the OOR is charged with evaluating an agency's response during the appeals process. Notwithstanding the foregoing, you may wish to review the attached unpublished opinion of the Commonwealth Court where the Court appears to evaluate whether a request is "overly burdensome" on a case-by-case basis.

Respectfully,

/s/ Charles Rees Brown
Charles Rees Brown
Chief Counsel

c.c. Erik Arneson, Executive Director
Nathanael Byerly, Deputy Director

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Fort Cherry School District,	:	
Appellant	:	
	:	
v.	:	No. 842 C.D. 2011
	:	Argued: November 14, 2011
Robin Acton and/or Trib Total	:	
Media and Pennsylvania Office of	:	
Open Records	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER¹

FILED: February 8, 2012

Fort Cherry School District (School District) appeals from the order of the Court of Common Pleas of Washington County (trial court) affirming the final determination of the Office of Open Records (OOR), which directed the School District to produce certain requested records in an electronic format. We affirm.

Robin Acton of Trib Total Media, Inc. (Requester) filed a request with the School District pursuant to the Right to Know Law (RTKL),² seeking

¹ This case was assigned to the opinion writer on or before January 6, 2012, when President Judge Leadbetter completed her term as President Judge.

² Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101 - 67.3104.

payroll/salary information and line item budgets for the 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2009-2010 school years in an electronic format.

Paul R. Sroka, who serves as the School District's open records officer, granted the request but determined that the documents had to be printed on approximately 20,000 sheets of paper in order to redact protected information,³ and, therefore, the School District would require an advance fee of \$5,000. Requester appealed, challenging the fee and the assertion that the documents could not be provided in electronic form.

Although not required to do so, the School District permitted W. Scott Ardisson, an electronic discovery specialist hired by Requester, to examine the School District's computer systems to determine whether there was a way to redact the information within the database systems so that the information could be provided to Requester electronically. Ardisson opined that both MUNIS and Pentamation data⁴ could be converted to "delimited text files," then imported into Excel, a program in which the redactions could be made by removing information in any data fields containing privileged information. After completing the redactions in Excel, the information could be converted to .pdf format and provided to Requester.

³ The information that must be redacted is extensive, including information protected by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, the Health Insurance Portability and Accountability Act (HIPPA), 42 USCS §§ 300gg *et seq.*, as well as employees' Social Security numbers, home addresses, bank account and bank routing numbers, and home address/date of birth information of minors. Requester does not challenge the need for redacting such information.

⁴ Data for the 2005-2006 school year can no longer be manipulated electronically. Data for the 2006-2007 and 2007-2008 school years are maintained under the MUNIS/UNIX software system. Data for the 2008-2009 and 2009-2010 school years are maintained under the Pentamation software system.

The OOR appeals officer determined that the 2005-2006 school year records could not be provided electronically, but that records from the four remaining school years must be provided in the manner as described by Ardisson. After conducting an independent review, the trial court affirmed, finding that the School District could easily retrieve and export the necessary information to Excel, and that the process of exporting information to Excel was not “reformatting” within the meaning of the RTKL. The trial court held that

[T]he School District would only need to query the database and retrieve the electronic information that was requested and provide it in an electronic form. This can be accomplished in both the Pentamotion and MUNIS systems. According to the uncontroverted report of Requester’s expert Mr. Ardisson, “it is a simple matter to run a query for the relevant information, and the results are available ‘instantaneously.’” This is the electronic equivalent of opening a file cabinet and retrieving specific folders. A query of the District’s electronic database and the subsequent redaction does not require a reformatting, conversion, or creation of any new data.... Nor does this Court find that providing the information electronically constitutes a “reformatting” or a “conversion.”

Trial Court Opinion at 11 - 12; Reproduced Record (R.R.) at 17a – 18a. This appeal followed.

This case illustrates the tension between § 705 of the RTKL, 65 P.S. § 67.705, which provides that an agency shall not be required to “compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record,” and § 706, 65 P.S. § 67.706, which mandates that if, “information which is not subject to access is an integral

part of [a public record] ... and cannot be separated, the agency shall redact from the record the information which is not subject to access,” but grant access to the remainder. Our court has not had occasion to attempt to define the parameters of the terms “compile, format, maintain or organize,” but if they are read in their broadest senses, § 705 would conflict with § 706, as redaction necessarily implicates a change in the records. Therefore, it would appear that reconciling the need to redact electronically stored information with the proviso that it need not be “recompiled, reformatted or reorganized” requires a highly fact-sensitive balancing in each case.

Here, such an analysis was undertaken by the Honorable John E. DiSalle of the Court of Common Pleas of Washington County, filed July 26, 2011, in *Fort Cherry School District v. Acton*, No. 2010-719, and we find no basis to overturn his decision.⁵

⁵ The School District argues that the trial court’s decision violates various provisions of the RTKL because it requires the School District to “reverse engineer” its electronic data and convert it into several formats which the School District does not otherwise maintain. According to the School District, providing the information electronically is not required by the RTKL, would be unduly burdensome, and does not ensure that all protected information would be properly redacted. The School District maintains that, instead of searching for fields in Excel that contain protected information, each record must be viewed as a whole to ensure that all protected information is properly removed. The Pennsylvania School Boards Association has also submitted an amicus brief, stressing the importance of keeping protected information from being revealed and arguing that an agency should not be required to make its redactions electronically, but rather should be able to “exercise its discretion to redact the records so as to satisfy itself that protected material has been completely removed.” Pennsylvania School Boards Association’s brief at 3. Unfortunately, these arguments must fail in light of Judge DiSalle’s factual findings, which accepted the contrary opinions of Requester’s expert. In addition, the Department of General Services and the Office of General Counsel submitted an amicus brief arguing that “allowing the requester to dictate the manner in which redactions will be performed or requiring agencies to perform redactions electronically would result in significant cost and hardship to responding agencies.” Office of General Counsel’s brief at 1. This may well be true, but the RTKL makes no provision to compensate agencies for the labor involved in redaction. (Footnote continued on next page...)

Accordingly, we affirm the trial court's order on the basis of that opinion.

BONNIE BRIGANCE LEADBETTER,
President Judge

(continued...)

Indeed, it became clear during oral argument that a significant element underlying the present dispute was that the School District could charge for producing paper copies, thereby mitigating its redaction costs, while it could charge nothing for the electronic redaction. This would appear to be a flaw in the RTKL, but one which must be remedied by the General Assembly, not this Court.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Fort Cherry School District,	:	
Appellant	:	
	:	
v.	:	No. 842 C.D. 2011
	:	
Robin Acton and/or Trib Total	:	
Media and Pennsylvania Office of	:	
Open Records	:	

ORDER

AND NOW, this 8th day of February, 2012, the order of the Court of Common Pleas of Washington County is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge

#6 Nov

Falco Muscante, Esq.
Attorney for Petitioner

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORT CHERRY SCHOOL DISTRICT,

Petitioner,

vs.

ROBIN ACTON and/or TRIB TOTAL
MEDIA,

and

PENNSYLVANIA OFFICE OF OPEN
RECORDS,

Respondents.

ENTRY OF OPINION, ORDER, DECREE,
ADJUDICATION OR JUDGMENT FILED 7-26-11

MAILED 7-27-11

TO Muscante

No. 2010-719

Opinion of Court

This is an appeal from the Trial Court's Order dated April 8, 2011, denying Fort Cherry School District's Petition for Review under the Pennsylvania Right-to-Know-Law ("RTKL") and upholding the final determination of the Pennsylvania Office of Open Records ("OOR").

Introduction

On September 8, 2009, Robin Acton, a reporter for Trib Total Media ("Requester") submitted a RTKL request for records to the Fort Cherry School District ("School District"), seeking payroll and salary information for employees, as well as line item budgets showing actual revenues and all expenditures, including checks written, for five (5) school years from 2005-2006 through 2009-2010. Requester requested that the documents be provided electronically. The School District maintained that the documents cannot be provided electronically as their current format only permits an on screen view or "printed to paper" or hardcopy option. The School District has also maintained that many of the documents require

redaction of non-public information which can only be accomplished by reformatting the data from its current electronic format, through multiple conversions and several databases, citing statutory exemptions and exceptions to the process under the RTKL. Upon the School District's refusal to provide the documents electronically, the Requester appealed to the OOR, challenging the infeasibility of providing the records electronically and the estimated fee. The OOR issues a Final Determination in favor of the Requester and the School District appealed to the Court of Common Pleas pursuant to 65 P.S. § 67.1302(a).

Factual Background

The September 8, 2009 right-to-know request filed by Ms. Acton on behalf of Trib Total

Media sought:

1. The payroll/salary information for the 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 school years that would include the names and positions of all district employees, teachers, and administrators, their base salaries and their actual salaries, including overtime payments, bonuses and payments for additional duties, coaching or sponsoring teams, clubs or other activities.
2. The names of district employees or board members permitted to sign checks.
3. The names of district employees or board members who are bonded, those bond amounts and the annual costs of those bonds to the district.
4. The line item budgets showing actual revenues and all expenditures, including all checks written for the 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 school years.

After invoking the thirty-day extension,¹ on October 13, 2009, Paul Sroka, the Open Records Officer for the School District advised that existing responsive records would require prepayment of \$5,000 due to the required redactions, and that the records could not be provided in electronic format, providing further explanation in a letter of counsel also dated October 13th, 2009. The School District denied the records sought in parts two (2) and three (3) above as non-existent, advised that part one (1) required redaction under Section 708(b)(6) of the RTKL for personal identification numbers, and that the budget items in four (4) also required redaction of personal identifiers under (b)(6) and (b)(30) of the RTKL, under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and HIPAA (Health Insurance Portability and Accountability Act), and protection for school employee home addresses in accordance with the injunction issued in *PSEA, et al v. OOR, et al*, No. 396 MD 2009 (the "Denial"). The School District advised that upon prepayment of the \$5,000.00 estimated fee, the redacted records on printed paper would be provided.

The Requester timely appealed the Denial, challenging the estimated fee and the infeasibility of providing the requested records electronically ("Appeal"). The Requester argues that the information requested may be provided with redactions in accordance with Section 706 of the RTKL, to the extent any information is protected. The Requester contends that the information can be saved into an Excel file, but asserts that saving or converting the information in that format is not required. In support, the Requester submitted an affidavit of W. Scott Ardisson ("Ardisson Affidavit I"), a certified computer examiner (CCE) who performs computer

¹ The Requester had filed an earlier appeal, OOR Dkt. AP 2009-0828, related to the same Request before the thirty-day extension elapsed. That appeal was dismissed as premature because the School District contended it would be providing a substantive denial, including reasons for redaction, within thirty days. As the OOR determined in *Renshaw v. City of Allentown*, OOR Dkt. AP 2009-1013, an agency cannot refuse to provide grounds for its allegedly required redactions within its denial, and require payment before supplying its reasons for requiring redaction.

forensic investigations and electronic discovery Mr. Ardisson attests in the affidavit that the requested records are able to be exported and provided by electronic means via Compact Disc.² He asserts that the information is stored in the MUNIS and Petamation systems, which are electronic database accounting management systems that enable information to be retrieved and exported.³

Mr. Ardisson contends that providing the data in electronic form does not jeopardize the integrity of the information, and that the integrity of the information could be validated through the use of a digital signature.⁴ He contends that the School District could use a digital signature or "hash value" as is done in electronic discovery processes to address any concerns with alteration.⁵

The Solicitor for the School District requested an extension of time in order to obtain an opinion from a computer expert to counter the Ardisson Affidavit. As a result, an extension for a Final Determination was granted. Upon agreement of the parties to permit time to reach an amicable resolution, the Final Determination date was extended to December 31, 2009.

Prior to the record closing, Trib Total Media supplemented the Ardisson Affidavit with a second affidavit from Mr. Ardisson ("Ardisson Affidavit II"), based on his visit to the School District to review the School District's MUNIS and Pentamation accounting systems on November 30th. He attested that he was able to show the School District that their systems' have the capability for retrieval and export of the information in electronic reports and delimited text files, which are standard formats for retrieving data.⁶ He further explains that the report of all checks written or received over a specific timeframe was able to be redacted in Excel by

² First Affidavit of Scott W. Ardisson, ("hereinafter Ardisson I"), page 2.

³ Ardisson I, p. 2.

⁴ Ardisson I, p. 5.

⁵ Ardisson I, p. 5.

⁶ Second Affidavit of Scott W. Ardisson, ("hereinafter Ardisson II"), page 2.

replacing the sensitive information with "XXX" or the word "redacted."⁷ The payroll/salary reports are available on the MUNIS system.⁸ The Pentamation system also permitted exporting in a delimited text format, and permitted redaction by deleting the data column that contained Social Security numbers.⁹ He attests that Pentamation has the capability of generating reports in ".rpt files" which are "plain text files that are easily exportable and may be redacted by searching for and replacing sensitive information."¹⁰

The School District Solicitor supplemented the record addressing the existence of the records in the medium requested, being an "electronic" medium. The Solicitor argued that data for the 2005-06 school year is not available in electronic medium because it has been achieved off-site.¹¹ The Solicitor further argued that the data no longer exists in any manner which can be accessed by the School District without entering a new contract with the software vendor, such that the 2005-06 data is only available in printed form.¹² With regard to records for 2006-07 and 2007-08 school years, the Solicitor maintains the records cannot be provided in an electronic medium which permits redaction of nonpublic information.¹³ He contends that the MUNIS records cannot be properly redacted through a search and retrieval as Mr. Ardisson suggests because that presumes knowledge of each type of nonpublic information that the electronic record contains without viewing the record as a whole.¹⁴ With regard to Pentamation records, corresponding to the 2008-09 and 2009-10 school years, the School District argued that the RTKL does not require it to download the data into Excel and redact it electronically.¹⁵

⁷ Ardisson II, p. 2.

⁸ Ardisson II, p. 2.

⁹ Ardisson II, p. 2.

¹⁰ Ardisson II, p. 2.

¹¹ Pennsylvania Office of Open Records Opinion ("OOR Opinion"), page 4.

¹² OOR Opinion, p. 4.

¹³ OOR Opinion, p. 4.

¹⁴ OOR Opinion, p. 4.

¹⁵ Id.

The School District supplied verification from its Information Technology Coordinator that the statements within the Solicitor's letter are true and correct to the best of his knowledge.¹⁶ The School District submitted a letter from Cypher & Cypher, Certified Public Accountants, regarding the necessity for redaction from the financial records of any sensitive information.¹⁷ The School District also supplied a sworn notarized statement of its ORO that the facts within the Solicitor's letter are true and correct to the best of his knowledge.¹⁸

The Requester challenged the School District's Denial as to Parts 1 and 4 of its Request. The parties have not disputed the type of redactions at issue, (*i.e.*, personal identifiers listed in Section 708(b)(6), or (b)(30), or of account numbers, or home addresses of school employees, or student names), thus the propriety of these claimed redactions has not been challenged.¹⁹ The Appeal is limited to whether the School District may defend its Denial as to Parts 1 and 4 based upon Section 705, due to its alleged inability to copy the electronic records into an electronic medium given the need for redaction.²⁰

This Court upheld the OOR's determination as follows:

1. The 2005-2006 school year records cannot be provided electronically. The School District no longer maintains the information electronically in a manner in which it can be queried. The District may satisfy the request for 2005-06 school year data by providing it in hard copy after redaction of the nonpublic information, as outlined in the District's Denial. All costs of the copies, including the manual redactions, shall be paid by the Requester, Robin Acton for Trib Total Media.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*, p. 5.

²⁰ OOR Opinion, p. 5.

2. The 2006-07 and 2007-08 records must be made available electronically, after redaction of the non-public information. Electronic Redaction shall be required pursuant to the Right to Know Law ("RTKL") since it was demonstrated by the Requesters expert that the records exist and are available in an electronic medium. While the School District had no obligation to permit an on-site inspection by the Requester's expert, his inspection report did show that it is possible to make the records available, without undue reformatting or conversion.
3. The 2008-09 and 2009-10 School Year Records Exist Electronically. The School District maintains the records electronically and thus may either export the records to a printer to be manually redacted, or export the records to Excel to be electronically redacted.
4. As the OOR stated in its report, this Final Determination is highly fact specific and does not set forth a general rule for agencies. Agencies are not required to permit the type of on-site inspection the School District permitted. However, in this instance an on-site inspection was permitted and the inspection showed that it was possible to obtain the information electronically as requested.

The School District, (hereinafter also referred to as the "Appellant,") filed the instant appeal on May 9, 2011 and the Concise Statement of Matters Complained of on Appeal May 26, 2011. In the Appellant's Concise Statement, it raises ten issues, alleging the Court erred for the following reasons:

1. "The Court erred and abused its discretion by requiring the School District to go beyond the requirements of the RTKL to reverse engineer and reformat its

electronic data in order to accommodate a Requester's preference for a particular medium."

2. "The Lower Court erred and abused its discretion by requiring the School District to perform multi-step conversions of its own data into several formats in which the data was not maintained in order for requested records to be electronically redacted and provided electronically rather than provided by paper."
3. "The Court erred and abused its discretion in requiring the School District to provide documents electronically and to redact the documents electronically based upon what was possible with some creative computer engineering rather than what was required under the RTKL."
4. "The Court erred and abused its discretion in requiring electronic production of documents for the 2006-2007 and 2007-2008 records based upon an improper standard adopted by the Court that the records existed, were available in an electronic medium, could be electronically redacted, and it was possible to make the records available electronically without undue reformatting or conversion."
5. "The Court erred and abused its discretion with regard to the requested 2008-2009 and 2009-2010 records by adopting an improper standard that the records existed electronically and could be electronically redacted by 'exporting' the records to an Excel format."
6. "The Court erred and abused its discretion by requiring the School District, contrary to the RTKL, to reformat its electronic data in order to provide documents in an electronic medium to a Requester."

7. "The Court erred and abused its discretion by requiring the School District, contrary to the RTKL, to provide documents electronically when the electronically stored documents are maintained in a format that cannot be provided in an electronic medium which permits the redaction of confidential, privileged, and/or non-public information."
8. "The Court erred and abused its discretion by requiring the School District, contrary to the RTKL, to reformat its electronically stored documents to a format not currently utilized by the School District in order to provide the documents electronically and to provide electronically redacted versions of the documents."
9. "OOR's Final Determination, as "upheld in total" by the Court, contains numerous erroneous findings and errors of law and constitutes an abuse of discretion by OOR and by the Court, including (1) erroneous characterization of the issues on appeal and/or inappropriate characterization of the School District's position; (2) inappropriate attempts to improperly interchange distinct and different terminology in an attempt to circumvent the provisions of the RTKL; (3) improper and incorrect interpretation of the issues regarding required redaction to protect non-public information containing private and confidential information; and (4) lack of internal consistency in OOR's Final Determinations."
10. By upholding OOR's Final Determination 'in total,' the Court erred and abused its discretion by requiring the School District to electronically retrieve, electronically redact and provide the electronically redacted records in an electronic medium to the Requester, because by doing so, the Court imposed requirements upon the School District to "reverse engineer" its electronic data,

format its electronic data in a format in which it was not maintained, perform electronic redaction and then transmit the electronically redacted records in another format in which the records were not maintained by the School District, all in direct contravention and violation of the provisions of the RTKL, specifically Section 705 and 706 (67 P.S. § 67.705 and 67.706).

The Court of Common Pleas in this case has appellate jurisdiction in this case, as the OOR's final determination relates to a decision of a local agency.²¹ In such cases, this Court functions as a trial court and may independently review the OOR's Order and may substitute its own findings of fact for that of the agency. *Bowling v. Office of Open Records*, 990 A.2d 813, 818 (Pa. Cmwlth. 2010). While this independent review is not a de novo review, this Court "is entitled to the broadest scope of review." *State Employees' Retirement System v. Office of Open Records*, (citing *Bowling*, 990 A.2d 813, (Pa. Cmwlth. 2010)). This Court did independently review the OOR order, but relied on the record established by the parties' and the OOR for its findings of fact. Though not limited to the rationale offered in the OOR's written decision, *Bowling*, 990 A.2d at 820, this Court affirmed the OOR's final determination based on the same reasoning. *Stein v. Plymouth Township*, 994 A.2d 1179, 1181 (Pa. Cmwlth. 2010).

This Court did not err or abuse its discretion in the first issue the Appellant raises on appeal as the Appellant was not forced to "reverse engineer and reformat its electronic data."²² The Requester's expert, Mr. Scott Ardisson, determined that the information stored and maintained by the School District in the "MUNIS" and "Pentamation" systems may be electronically exported and copied to electronic media for review.²³ During a site visit to the School District, Mr. Ardisson was able to show that the School District's system is capable of

²¹ Right to Know Law, 67 P.S. § 67.1302(a).

²² Defendant-Appellant's Concise Statement of Matters Complained of on Appeal, Paragraph 1.

²³ First Affidavit of Scott W. Ardisson, ("hereinafter Ardisson 1, pages 2-6").

retrieving and exporting the information in electronic reports and delimited text files.²⁴ These are standard formats for retrieving data.²⁵ Both the MUNIS and Pentamation systems are electronic database accounting management systems which allow the District to retrieve and export electronic information contained within the databases.²⁶ Moreover, no "compiling" or "reformatting" of information is necessary in order to respond to the request.²⁷ The expert demonstrated that it is possible to "query" the MUNIS database and set forth the information requested after the query is complete.²⁸ After the information is retrieved, it can then be exported to a printer, downloaded to Excel for review in electronic form and then copied to electronic media, or exported to a portable document file (.pdf) for review.²⁹ It is clear to this Court as it was to the OOR, that no "reverse engineering" or "reformatting"³⁰ is required to produce and redact the records electronically.

This Court did not err in regards to the second issue the Defendant raises on appeal. There were no "multi-step conversions...into several different formats in which the data was not maintained."³¹ Again, the School District would only need to query the database and retrieve the electronic information that was requested and provide it in an electronic form.³² This can be accomplished in both the Pentamation and MUNIS systems.³³ According to the uncontroverted report of Requester's expert Mr. Ardisson, "it is a simple matter to run a query for the relevant information, and the results are available 'instantaneously.'"³⁴ This is the electronic equivalent

²⁴ Ardisson I, p. 2.

²⁵ Ardisson I, p. 2.

²⁶ Ardisson I, p. 2.

²⁷ Ardisson I, p. 2.

²⁸ Ardisson I, p. 2-3.

²⁹ Ardisson I, p. 3.

³⁰ Defendant-Appellant's Concise Statement, Paragraph 1.

³¹ Appellant's Concise Statement, Paragraph 2.

³² Ardisson I, p. 3.

³³ Ardisson I, p. 4.

³⁴ Ardisson I, p. 4-5.

of opening a file cabinet and retrieving specific folders.³⁵ A query of the District's electronic database and the subsequent redaction does not require a reformatting, conversion, or creation of any new data.³⁶ Therefore, this Court did not err or abuse its discretion. Neither this Court nor the OOR found that the District is being forced to complete any overly burdensome multi-step conversions. Nor does this Court find that providing the information electronically constitutes a "reformatting" or a "conversion."

This Court did not err regarding the third, fourth, fifth, and sixth issue the Appellant raises on appeal. These issues can all be discussed simultaneously. All the issues in paragraphs 3-6 of the Appellant's concise statement concern whether it was proper to require the School District to redact and provide the requested documents electronically.³⁷ The Appellants primary complaints, espoused in paragraphs 3, 4, and 6 specifically, are that to require the information to be produced and redacted electronically would require a "reformatting,"³⁸ a "conversion"³⁹ and/or "creative computer engineering."⁴⁰ Based on the information Mr. Ardisson provided, this Court did not find that "creative computer engineering"⁴¹ was required to provide and redact the information electronically.⁴² Moreover, this Court did not find that the procedure identified by Mr. Ardisson constituted a "reformatting"⁴³ or a "conversion."⁴⁴ Mr. Ardisson added that both the MUNIS and Pentamation systems "by their very nature enable the user...to 'retrieve' and 'export' electronic information contained within the databases."⁴⁵ As we noted previously, the

³⁵ Ardisson I, p. 5.

³⁶ Ardisson I, p. 5.

³⁷ Appellant's Concise Statement, Paragraphs 3, 4, 5, and 6

³⁸ Appellant's Concise Statement, Paragraphs 4 and 6.

³⁹ Appellant's Concise Statement, Paragraph 4.

⁴⁰ Appellant's Concise Statement, Paragraph 3.

⁴¹ Id.

⁴² Ardisson I, p. 2-5.

⁴³ Appellant's Concise Statement, Paragraphs 4 and 6

⁴⁴ Appellant's Concise Statement, Paragraph 4.

⁴⁵ Ardisson I, p. 2.

systems can retrieve and export electronic information using electronic reports, which are standard formats for retrieving data.⁴⁶ This would make it possible for the School District to provide the information electronically without undue reformatting or conversion.⁴⁷ Mr. Ardisson stated that this is a key selling point of MUNIS to potential users.⁴⁸ The School District need only query the database and retrieve the requested information and then provide it to the requester. It is clear to this Court, and was at the time of upholding the OOR's decision, that no undue "reformatting,"⁴⁹ "conversion,"⁵⁰ or "creative computer engineering"⁵¹ was required. The Court further held that it was not overly burdensome on the School District to provide the information electronically.

In the seventh issue, the Appellant states that the Court erred because the documents are "maintained in a format that cannot be provided in an electronic medium which permits the redaction of confidential, privileged, and/or non-public information."⁵² Mr. Ardisson was able to show the School District the systems' capability for retrieval and export of the information in electronic reports and delimited text files, which are standard formats for retrieving data.⁵³ In both the Pentamation and MUNIS systems, confidential information can be easily eliminated from the requested information by omitting data fields that contain FERPA and HIPPA information, employee identification numbers, social security numbers, or other confidential information from the query.⁵⁴ Mr. Ardisson was also able to redact the report of all checks written or received over a specific timeframe in Excel by replacing the sensitive information with

⁴⁶ Ardisson II, p. 5.

⁴⁷ Ardisson I, p. 2.

⁴⁸ Ardisson I, p. 3.

⁴⁹ Appellant's Concise Statement, Paragraphs 4 and 6.

⁵⁰ Appellant's Concise Statement, Paragraphs 4 and 6.

⁵¹ Appellant's Concise Statement, Paragraph 4.

⁵² Appellant's Concise Statement, Paragraph 7.

⁵³ Ardisson II, p. 2.

⁵⁴ Ardisson I, p. 5.

"XXX" or the word "redacted."⁵⁵ Other financial documents, such as the payroll/salary reports are available on the MUNIS system and are able to be redacted.⁵⁶ The Pentamation system also permitted exporting in a delimited text format, and permitted redaction by deleting the data column that contained Social Security numbers.⁵⁷ Pentamation has the capability of generating reports in .rpt files which are "plain text files that are easily exportable and may be redacted by searching for and replacing sensitive information."⁵⁸ Mr. Ardisson further stated that he was surprised that the School District would prefer manual redaction as opposed to the automated features available in the database system, as electronic redaction would be much easier.⁵⁹ Upon review of this information, it is clear that this Court did not err as the information in the School District's systems are maintained in a format that can be provided in an electronic medium that easily allows for redaction of certain sensitive information.

This Court did not err regarding the eighth issue complained of on appeal. The Court held that the determination of the OOR does not require the School District to "reformat" its electronically stored documents.⁶⁰ This is merely a reiteration of the issues previously presented and discussed at length in this opinion. During a visit to the School District, Mr. Ardisson showed that both the MUNIS and Pentamation systems had the capability for retrieval and export of the information in electronic reports which are standard formats for retrieving data.⁶¹ It is very easy to retrieve electronic information from the MUNIS system and then export it for review.⁶² Again, providing the information electronically does not require a "reformatting" in

⁵⁵ Ardisson II, p. 2.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Ardisson I, p. 5.

⁵⁹ Ardisson I, p. 5.

⁶⁰ Appellant's Concise Statement, Paragraphs 4 and 6.

⁶¹ Ardisson I, p. 2-5.

⁶² Ardisson I, p. 5.

either system.⁶³ The same can be done in the Pentamation database system.⁶⁴ This Court did not err, as it has ardently stated numerous times in this appeal that no "reformatting" is required of the School District.

This Court did not err regarding the ninth issue complained of on appeal. The Court did not err because it did not: (1) erroneously characterize the issues on appeal or the School District's position; (2) make inappropriate attempts to interchange distinct and different terminology in attempt to circumvent the RTKL; (3) improperly and incorrectly interpret the issues regarding redaction; (4) nor was there a lack of internal consistency in OOR's Final Determinations.⁶⁵ Without more specificity, it is impossible for this Court to respond in any further detail. The complaints set forth in paragraph nine of the School District's Concise Statement are characterized very broadly, leaving this Court with no recourse but to issue an overly broad response. Therefore, this Court broadly responds by way of dismissing the four complaints contained therein and stating that this Court did not err in its Order upholding the OOR's decision in total.

In paragraph ten of the Defendant's concise statement; it appears the Defendant is essentially restating issues complained of in Paragraphs 1-8. However, the Defendant also stated that this Court's determination was in direct contravention of the RTKL, 67 P.S. § 67.705 and 67.706.

Section 705 of the RTKL states that,

"When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record."⁶⁶

⁶³ Ardisson I, p. 3, 5.

⁶⁴ Ardisson I, p. 4.

⁶⁵ Appellant's Concise Statement, Paragraph 9.

⁶⁶ Right to Know Law, 67 P.S. § 67.705.

Regarding this section, the Court did not err as it is apparent from Mr. Ardisson's testimony that the record does exist, and it would not be overly difficult for the school district to provide the redacted records electronically.⁶⁷ The School District already stores the records electronically.⁶⁸ Providing a hard disk copy to the Requester would not require any kind of reformat by the School District.⁶⁹ Despite the risk of sounding redundant, this Court has concluded that the School District's system has the capability for retrieval and export of the information and can use standard formats for doing so.⁷⁰

Section 706 of the RTKL states that,

"If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. *The agency may not deny access to the record if the information which is not subject to access is able to be redacted.* . Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9."⁷¹

Again, Mr. Ardisson stated that automated features are available to electronically eliminate the retrieval of certain information such as: social security numbers, bank account numbers and HIPPA related information.⁷² Moreover, he stated that in both the Pentamation and MUNIS systems, any such confidential information can be easily eliminated from the requested information by omitting the data fields that contain such

⁶⁷ Ardisson I, p. 1-5.

⁶⁸ Ardisson I, p. 1-5.

⁶⁹ Ardisson I, p. 3, 5.

⁷⁰ Ardisson I, p. 4-5.

⁷¹ Right to Know Law, 67 P.S. § 67.706 (emphasis added).

⁷² Ardisson I, p. 5.

confidential information.⁷³ The confidential information contained in both the Pentamotion and MUNIS systems is able to be electronically redacted and provided to the requester. Ordering the School District to do so is not in direct contravention of the RTKL, but rather, comports with the clear mandate and intention of the Act.

It is apparent to the Court that the School District is resisting all efforts to enter the age of technology by refusing to accept the demonstration of the expert, Mr. Ardisson, who showed how simply the request could be accomplished electronically. Moreover, Mr. Ardisson's services in this regard were provided by the Requester at no cost to the School District. As aptly summarized by counsel for Requester, the "conversion" was simply a matter of two "clicks" to retrieve the data in the requisite format. The School District's characterization of the process as a "conversion," "reformatting," or "creative computer engineering" is disingenuous. The use of the Excel program did not reorganize, modify, or change the data. By the School District's logic, the process of redaction alone could be argued as a "conversion" or a "reformatting" of data, as could using a copy machine to make paper copies, copying the data to a compact disc or other electronic media, or sending the data via email. It was not the intention of the RTKL that its limitations be used to avoid technology and cling to traditional methods of retrieving information.

The uncontroverted evidence in the record, particularly the report of Mr. Ardisson, clearly reveals that the systems used by the School District are designed to retrieve data in the manner requested by the Requester. That the retrieval requires the employment of a certain process does not constitute a "conversion" or a "reformatting,"

⁷³ Ardisson I, p. 5.

and is not overly burdensome. In fact, it is undoubtedly easier and less time consuming than copying, cutting, and pasting the data in question.

Based on the foregoing, the Lower Court respectfully submits that the Order of Court dated April 8, 2011 should be affirmed.

BY THE COURT:

Date

7/26/11

John E. DiSalle

J.

Falco Muscante Esq.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA
CIVIL DIVISION

FORT CHERRY SCHOOL DISTRICT,

Petitioner,

vs.

ROBIN ACTON and/or TRIB TOTAL
MEDIA,

and

PENNSYLVANIA OFFICE OF OPEN
RECORDS,

Respondents.

ENTRY OF OPINION, ORDER, DECREE,
ADJUDICATION OR JUDGMENT FILED 4-12-11

MAILED 4-12-11

TO F. Muscante

No. 2010-719

ORDER

AND NOW, this 11th day April, 2011, following argument on
December 29, 2010, at which counsel for Petitioner, Fort Cherry School District, and
counsel for Respondent, Robin Acton and/or Trib Total Media, were present, it is hereby
ORDERED and Decreed that the Petition for Review is DENIED and the Office of Open
Records ("OOR") Final Determination is upheld in total, as follows:

1. The 2005-2006 school year records cannot be provided electronically.
The School District no longer maintains the information electronically in a
manner in which it can be queried. The District may satisfy the request
for 2005-06 school year data by providing it in hard copy after redaction
of the nonpublic information, as outlined in the Districts Denial. All costs

of the copies, including the manual redactions, shall be paid by the Requester, Robin Acton for Trib Total Media.

2. The 2006-07 and 2007-08 records must be made available electronically, after redaction of the non-public information. Electronic Redaction shall be required pursuant to the Right to Know Law ("RTKL") since it was demonstrated by the Requesters expert that the records exist and are available in an electronic medium. While the School District had no obligation to permit an on-site inspection by the Requester's expert, his inspection report did show that it is possible to make the records available, without undue reformatting or conversion.
3. The 2008-09 and 2009-10 School Year Records Exist Electronically. The School District maintains the records electronically and thus may either export the records to a printer to be manually redacted, or export the records to Excel to be electronically redacted.
4. As the OOR stated in its report, this Final Determination is highly fact specific and does not set forth a general rule for agencies. Agencies are not required to permit the type of on-site inspection the School District permitted. However, in this instance an on-site inspection was permitted and the inspection showed that it was possible to obtain the information electronically as requested.

BY THE COURT:



John F. DiSalle

J.

From: Garen Fedeles
To: [DC, OpenRecords](#)
Cc: [midland water authority borough of midland](#)
Subject: [External] Advisory Opinion
Date: Monday, September 30, 2019 2:41:54 PM
Attachments: [SKM_C224e19092715090.pdf](#)

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.*

The Municipal Authority for the Borough of Midland seeks an advisory opinion on the attached Right to Know Request. I serve as solicitor for the Authority and can be the contact moving forward. There is no pending appeal or litigation of this request.

Our specific question is whether this request falls under an “overly burdensome” request that can be denied. The Authority is staffed with 2 office personnel and obtaining copies for this particular request would cripple the day to day functioning of the Authority as both employees would have to dedicate a large amount of time responding to this request.

If you have any further questions, please do not hesitate to contact me.

Garen

Garen Fedeles, Esq.
Santicola, Steele, & Fedeles P.C.
722 Turnpike St.
Beaver, Pa 15009
724-775-3392
724-775-3425 (fax)



pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Municipal Authority of the Borough of Midland (Attn: AORO)

Date of Request: September 26, 2019 Submitted via: ☐ Email ☐ U.S. Mail ☐ Fax ☒ In Person

PERSON MAKING REQUEST:

Name: Nicholas D. Rivelle Company (if applicable): MA of Midland Director

Mailing Address: 1129 Beaver Ave

City: Midland State: PA Zip: 15059 Email: nickrivelle@icloud.com

Telephone: 724 | 272.5942 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

PLEASE SEE ATTACHMENTS.

DO YOU WANT COPIES? ☒ Yes, electronic copies preferred if available
☐ Yes, printed copies preferred
☒ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☐ No

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than ☒ **\$100 (or)** ☐ \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$_____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: *In most cases, a completed RTKL request form is a public record.*
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Nov. 27, 2018

Municipal Authority of the Borough of Midland

946 Railroad Avenue
Midland, PA 15059

September 26, 2019

Brigid Darbut
Right-to-Know Officer
Municipal Authority of the Borough of Midland
946 Railroad Ave
Midland, PA 15059

Dear Brigid:

Under the Pennsylvania Right to Know Law, 65 §66.1 et seq., I am requesting an opportunity to inspect public records and obtain copies that I need to perform my duties as member of the Governing Body of the Municipal Authority of the Borough of Midland (MA). I am requesting the following:

- 1) Copy of all resolutions issued by the MA, starting with resolution no. 4. I acknowledge receipt of resolutions 1, 2 and 3. They pertain to the organization of said Authority on March 8, 1949.
- 2) Copy of MA's meeting minutes for the past 10 years, including all additional handouts/reports.
- 3) Electronic copy of the actual 2019 operating budget, which includes revenue and expenses, as approved by MA in 2018. See ASU Agreement for Management Services Agreement, section 9, subsection I. See attached document format for the minimum expected categories.
- 4) Electronic copy of the latest 2019 working budget, including revenue and expenses, in Microsoft Excel.
 - a) Electronic copy of 2013-2018's working budgets, including revenue and expenses, in Microsoft Excel.
- 5) Copy of the 2018 financial report issued to the Department of Community and Economic Development (DCED). As per Pennsylvania Consolidated Statutes Title 53 Municipalities Generally, Chapter 56 Municipal Authorities, § 5612 Money of authority, b report, 1. If not submitted, please provide a copy of the extension(s) from the DCED and the Borough of Midland.
 - a) Copy of financial reports issued to the DCED for fiscal years 2012 through 2017.
- 6) Copy of 2018 audit report issued to DCED. As per Pennsylvania Consolidated Statutes Title 53 Municipalities Generally, Chapter 56 Municipal Authorities, § 5612 Money of authority, b report, 2. If not submitted, please provide a copy of the extension from the DCED for said report.
- 7) Copy of all current executed contracts with applicable attachments. Including, but not limited to outside services, contractors, subcontractors, legal consultants, other boroughs/townships, etc....
 - a) Copy of the un-executed sewage contract between Industry Borough and MA.
 - b) Copy of the unrenewed contract between ATI and MA.
 - c) Copy of all declining block rate contracts.

- 8) Copy of employee rules and regulations. Including, but not limited to drug testing policy, safety and maintenance, etc....
- 9) Copy of all insurance policies. Including, but not limited to General Liability, Directors and Officer and Healthcare, etc....
- 10) Copy of all financial institution records for the water fund, sewer fund, debt service fund, capital improvement fund and pension funds from January 2014 to the latest available statement. Including, but not limited to savings, checking, certificate of deposits, money market, petty cash, etc.... Also include copies of all cancelled checks, if they are not included on the monthly statements.
- 11) Electronic copy, in Microsoft Excel, of all current paying end users. List to include address/parcel number, latest consumption (cubic ft. usage) and gross water and sewer amounts.
- 12) Copy of all end user charging rates. Including but not limited to residential, commercial, industrial and non-profits.
- 13) Copy of all deduct water meters issued/installed by MA.
- 14) Copy of the fine/penalty schedule (examples: broken seal on valve, tampering with a meter/water line, etc...)

If there are any fees for searching or copying these records, please inform me of the cost. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of Municipal Authority of the Borough of Midland. Please note, this information is not being sought for commercial purposes.

The Pennsylvania Right to Know Law requires a response time within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

MUNICIPAL AUTHORITY OF THE BOROUGH OF MIDLAND



Nicholas D. Rivelle
Member of Governing Body

cc: Theresa Lona, Chairperson, Municipal Authority of the Borough of Midland
Martin Schulte, Vice Chairperson, Municipal Authority of the Borough of Midland
Randy Adams, Municipal Authority of the Borough of Midland
Angelo Ranelli, Municipal Authority of the Borough of Midland
Garen Fedeles, Esq., Solicitor, Municipal Authority of the Borough of Midland

Municipal Authority of the Borough of Midland - 2019 Budget			
Operating Income			
WATER	Budget	SEWER	Budget
Residential Customers (1,000 customers)		Residential Customers	
Commerical Customers (24 customers)		Commerical Customers	
Industrial Customers		Industrial Customers	
School District Customers		School District Customers	
Other Municipalities		Other Municipalities	
Tap Fees		Tap Fees	
Lien Fee		Lien Fee	
Pension - State Aid		Pension - State Aid	
Other Revenue		Other Revenue	
Total Water Income	-	Total Sewer Income	-
Operating Expenses			
WATER	Budget	SEWER	Budget
Insurance		Insurance	
Wages - Administrative			
Disability Insurance - Admin			
Payroll Taxes - Administrative			
Wages - Plant		Wages - Sewer	
Disability Insurance - Plant		Disability Insurance - Sewer	
Payroll Taxes - Plant		Payroll Taxes - Sewer	
Wages - Distribution			
Disability Insurance - Distribution			
Payroll Taxes - Distribution			
		Sludge Removal	
Bond Issue		Bond Issue	
PENNVEST			
Purchases - Major Equip		Purchases - Major Equip	
Maintenance		Maintenance	
Pensions		Pensions	
Raw Water Purchase			
Petty Cash			
Utilities		Utilities	
Contracted Services - Admin			
Contracted Services - Plant		Contracted Services - Sewer	
Contracted Services - Distribution			
Chemicals		Chemicals	
Laboratory		Laboratory	
Misc Supplies - Admin		Misc Supplies - Office	
Misc Supplies - Plant		Misc Supplies - Sewer	
Misc Supplies - Distribution			
Advertising/Printing		Advertising/Printing	
Authority Board Expenses		Authority Board Expenses	
Certificates+ Misc Plant Expenses		Certificates+ Misc Plant Expenses	
Professional Services		Professional Services	
Healthcare - Admin			
Healthcare - Plant		Healthcare - Sewer	
Healthcare - Distribution			
Life Insurance - Admin		Life Insurance - Sewer	
State Workmen's Insurance - Admin		State Workmen's Insurance - Sewer	
Life Insurance - Plant + Distribution			
457K Employer Portion		457K Employer Portion	
Misc Charges		Misc Charges	
Unmapped Accounts		Unmapped Accounts	
Total Expenses Water	-	Total Expenses Sewer	-
Added Value Water	-	Added Value Sewer	-
Estimated Profit/Loss	-		