



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
HALLE STOCKTON AND THE <i>PUBLIC</i>	:	
<i>SOURCE,</i>	:	
Complainant	:	Docket No: AP 2013-0747
	:	
v.	:	
	:	
PENNSYLVANIA DEPARTMENT OF	:	
LABOR AND INDUSTRY,	:	
Respondent	:	

INTRODUCTION

Halle Stockton and the *Public Source* (collectively, the “Requester”), submitted a request (“Request”) to Pennsylvania Department of Labor and Industry (“Department”) pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”) seeking records related to a Department program for workers with disabilities. The Department denied the Request claiming that it sought exempt medical record information, personal identification information, and information related to recipients of social services. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied** and the Department is not required to take any further action.

FACTUAL BACKGROUND

On March 15, 2013, the Request was filed seeking: “records related to licenses authorizing special minimum wages for works with disabilities, also known as ‘LLC 18,’ for the state of Pennsylvania, specifically:

- the full applications submitted for the licenses[.]
- the individual average hourly rate for all employees, submitted by the employer in the license application.
- the certificates or licenses given to the employers who were approved.
- any record related to the denial of such applications.
- any record related to disciplinary actions associated with the license.
- annual rosters of the employers who held these licenses for the past 10 years.”

On April 22, 2013, after extending the response period in accordance with 65 P.S. § 67.902, the Department denied access to requested records claiming that they were exempt from public access pursuant to the medical records exemption, 65 P.S. § 67.708(b)(5), the personal identification information exemption, 65 P.S. § 67.708(b)(6); and the social services exemption, 65 P.S. § 67.708(b)(28). On April 29, 2013, the Requester appealed to the OOR stating grounds for disclosure and claiming that the Department is required to redact any exempt information pursuant to 65 P.S. § 67.706. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal pursuant to 65 P.S. § 67.1101(c).

On May 8, 2013, the Department submitted a position statement reiterating its grounds for denial. On June 10, 2013, in response to an OOR request for clarification, the Department submitted the affidavit of Peter Von Getzie, the Acting Director of the Department’s Bureau of Labor Law Compliance explaining the approval process for licenses authorizing special minimum wages for workers with disabilities authorized by Section 4(d) of the Minimum Wage Act, 43 P.S. § 333.104(d).

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is

“designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *appeal granted* 15 A.3d 427 (Pa. 2011).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Department is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of

the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Requester challenges the Department’s withholding of certain records relating to the Department’s authorization for employers to special minimum wages for workers with disabilities. Through the affidavit of Mr. Von Getzie, the Department has provided descriptions of the program authorizing special minimum wages for works with disabilities pursuant to the Minimum Wage Act. Further, Mr. Von Getzie attests that records responsive to the Request “contain the identities of individuals who participate in the exemptions ..., which is only applicable to an designed to benefit individuals with disabilities;” “contains information relating to the status and degree of disability suffered by each applicant/worker;” and “[e]ach of the records sought by [the Requester] ... contains information relating to the particular circumstances of the disabilities suffered by each applicant/worker.” Section 708(b)(28) of the RTKL exempts from disclosure records identifying “an individual who applies for or receives social services.” 65 P.S. § 67.708(b)(28). The RTKL defines “social services” as:

Cash assistance and other welfare benefits, medical, mental and other health care services, drug and alcohol treatment, adoption services, vocational services and training, occupational training, education services, counseling services, workers’ compensation services and unemployment compensation services, foster care services, services for the elderly, services for individuals with disabilities and services for victims of crimes and domestic violence.

65 P.S. § 67.102 (emphasis added). Based on the evidence provided by the Department, the OOR finds that the requested records identify individuals who applied for or received social services and are therefore exempt from disclosure pursuant to Section 708(b)(28). *See Corbin v.*

Pennsylvania Department of Labor & Industry, OOR Dkt. AP 2011-1568, 2011 PA O.O.R.D. LEXIS 1260.

The Requester argues that the Department should release redacted versions of the requested records. However, records containing information exempt from disclosure pursuant to Section 708(b)(28) “are entirely exempt from disclosure, and redaction is not required.” *Propublica, Inc. v. Pennsylvania Department of Public Welfare*, OOR Dkt. AP 2011-0905PFR, 2011 PA O.O.R.D. LEXIS 1206. Accordingly, the requested records are exempt from disclosure in their entirety.

CONCLUSION

For the foregoing reasons, Requester’s appeal is **denied** and the Department is not required to take any further action. This Final Determination is binding on all parties. Within thirty (30) 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. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: [Click here to enter a date.](#)



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