



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
SUSAN SPICKA AND EDUCATION	:
VOTERS OF PA,	:
Requester	:
	:
v.	: Docket No: AP 2022-1704
	:
COMMONWEALTH CHARTER	:
ACADEMY CHARTER SCHOOL,¹	:
Respondent	:

On May 23, 2022, Susan Spicka and Education Voters of PA (collectively “Requester”) submitted a request (“Request”) to Commonwealth Charter Academy Charter School (“Charter School”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

- Copies of ALL “Community Class Registration Forms” for the 2019-2020 and 2020-2021 school year that were submitted to CCA with the following UNREDACTED information:
- Course title:
- Number of time the class meets:
- Start date:
- Cost of the class:
- Amount requesting for the reimbursement:

¹ The Request was directed to Commonwealth Charter Academy Cyber Charter School; however, it refers to itself as Commonwealth Charter Academy Charter School in its submissions and therefore the caption is amended to reflect that name.

On June 30, 2022, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Charter School partially denied the Request, arguing, among other things, that the records are protected by FERPA and the constitutional right to privacy. The Charter School provided the aggregate cost of the classes for each school year.

On July 21, 2022, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.² The OOR invited both parties to supplement the record and directed the Charter School to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On July 28, 2022, the OOR granted the Charter School’s request to keep the record open until August 8, 2022. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

On August 8, 2022, the Charter School submitted a position statement reiterating its grounds for denial and asserting that the Requester failed to state the particular defects of the denial in her appeal. In support of its position, the Charter School submitted the attestations made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, of Natasha Shane, Vice President of Family Services, and Timothy Eller, Senior Vice President of Outreach and Government Relations.

1. The appeal is sufficient under Section 1101 of the RTKL

The Charter School asserts that the appeal is deficient because the Requester failed to identify the particular defect in the state reasons for denial. *Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429 (Pa. Commw. 2011). However, the Requester utilized the OOR’s standard

² The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

appeal form which provides that by submitting the form, the Requester is asserting that the “records do not qualify for any exemption under § 708 of the RTKL....” *See Barnett v. Pa. Dep’t of Public Welf.*, 71 A.3d 399, 406 (Pa. Commw. Ct. 2013). Generally, the OOR has found that this statement is sufficient to satisfy a requester’s burden under Section 1101(a). *See, e.g., Phillips and WHYY v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2016- 1782, 2017 PA O.O.R.D. LEXIS 222; *Tomassi v. Municipality of Mt. Lebanon*, OOR Dkt. AP 2017-0644, 2017 PA O.O.R.D. LEXIS 896. Therefore, the appeal is sufficient under the RTKL.

2. The Charter School must provide redacted records

The Charter School asserts that the records are educational records protected by FERPA. FERPA protects “personally identifiable information” contained in “education records” from disclosure, and financially penalizes school districts that have “a policy or practice of permitting the release of education records ... of students without the written consent of their parents.” 20 U.S.C. § 1232g(b)(1). Regulations implementing FERPA define “education records” as those records that are “[d]irectly related to a student” and are “[m]aintained by an educational agency or institution or by a party acting for the agency or institution.” 34 C.F.R. 99.3. While the express language of FERPA’s implementing regulation would appear to encompass all records held by an educational institution pertaining to a student, a review of case law interpreting FERPA reveals that not all of these records constitute “education records” as defined by FERPA. Just because a record involves a student does not automatically implicate the confidentiality provisions of FERPA. *See Bockis v. Agora Cyber Charter Sch.*, OOR Dkt. AP 2016-0845, 2016 PA O.O.R.D. LEXIS 848; *Newhouse v. Manheim Twp. Sch. Dist.*, OOR Dkt. AP 2016-0541, 2016 PA O.O.R.D. LEXIS 759.

Regulations implementing FERPA define “personally identifiable information” as:

- a) The student's name;
- b) The name of the student's parent or other family members;
- c) The address of the student or student's family;
- d) A personal identifier, such as the student's social security number, student number, or biometric record;
- e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

34 C.F.R. § 99.3. While the RTKL does not require an evaluation of the circumstances surrounding the request for records, FERPA does. *See* 34 C.F.R. § 99.3(g).

Ms. Shane affirms that in order to obtain a Community Class Reimbursement ("CCR"), a parent/guardian is required to submit a Community Class Registration Form, Community Class Attendance Form, and proof of payment. Shane Attestation ¶ 9. These forms include various fields including the student's name, student identification number, the caretaker's name, a parent/guardian signature, and proof of payment, which includes personal financial information i.e. payment details, including card type, card number, and billing address. Shane Attestation ¶¶ 9(a)-(b), 14. She also affirms that the Charter School does not disclose this information without prior written consent from the appropriate party and that it does not have that consent in this matter. Shane Attestation ¶¶ 15-16. Ms. Shane affirms that even if the personal information is redacted, the remainder of the information on these forms can be linked to a specific student. Shane Attestation ¶ 17. Finally, she explains that the forms and proof of payment are submitted in a variety of ways but often as a single file (i.e. a scanned PDF or a single jpeg). Shane Attestation ¶¶ 11, 13. The Charter School maintains these forms and proof of payment in its electronic filing system in the folder specifically designated for each individual student. Shane Attestation ¶ 12.

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Charter School has acted in bad faith, “the averments in [the attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

The Charter School has demonstrated that these are education records that contain personally identifiable information. They contain a variety of identifiers, including name and address. The forms directly relate to the student because they identify courses taken by a student and they are maintained by the Charter School in each student’s individual file. Thus, these records are protected by FERPA.

However, FERPA regulations permit schools to release education records without consent when the records have been “de-identified,” that is, when all personally identifiable information has been removed. 34 C.F.R. § 99.31(b)(1) (“An educational agency . . . may release the records or information without the consent required by §99.30...after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable...”); *see also Easton Area Sch. Dist. v. Miller*, 232 A.3d 716, 729-30 (Pa. 2020).

The Charter School argues that even if student names, ID numbers, parent/caretaker/guardian names and signatures, and the name of the business or organization and its entity number or Tax ID number are redacted from the Registration form, the student can still be identified because the Requester “has infiltrated the [Charter School] community via Facebook

communities intended for parents, guardians, students, and caretakers” and the registration forms, with the attached attendance forms and proof of payment contain information that is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. However, the Request is for the registration forms only, not the attendance or payment forms. Thus, even if those are part of the same file, they may be redacted as they were not requested. Further redacting the registration forms of any information not sought sufficiently de-identifies the forms such that they may be released under FERPA. Additionally, with the redaction of personal identification information, there are no constitutional right to privacy concerns for the OOR to address.

For the foregoing reasons, the appeal is **granted**, and the Charter School is required to provide the registration forms only, redacted of any identifying information, 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 Dauphin County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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

FINAL DETERMINATION ISSUED AND MAILED: September 16, 2022

/s/ Erin Burlew

APPEALS OFFICER
ERIN BURLEW, ESQ.

Sent via email to: Susan Spicka; Katherine Fitz-Patrick, Esq., Philip Murren, Esq.; Evelyn De Jesus