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OFFICE OF OPEN RECORDS

**Executive Director  
Office of Open Records  
333 Market Street, 16th Floor  
Harrisburg, PA 17101-2234**

August 19, 2019

**Right to Know Law Appeal - Denial or Partial Denial by Agency:**

This appeal is filed under the Pennsylvania Right to Know Law, 65 P.S. §67.101, *et seq.* I requested documents from the Central Dauphin School District. The Agency denied or partially denied my request for information. I am appealing the denial of my request, under section 1101 of the Right-to-Know Law and provide the following information in accordance with the Law:

**Requester's name:**

Eric Epstein.

**Address/City/State/Zip:**

4100 Hillsdale Road  
Harrisburg, PA 17112  
Telephone number: 717-635-8615  
Fax number: 717-541-5487  
Email: lechambon@comcast.net

**Date of Right to Know request:**

July 1, 2019.

**Date of Agency Response:**

August 7, 2019.

**Concise statement of facts:**

Please refer to enclosed Brief.

**Brief**  
**Right-To-Know Law: Office**  
**of Open Records Appeal of Eric Epstein**

By letter dated August 7, 2019, the Central Dauphin School District ("CDS") answered 18 RTKL requests made by Eric Epstein on July 1, 2019. (CDS August 7, 2019 response is attached as Exhibit 1) In its response, CDS granted some requests and denied others. Eric Epstein hereby appeals two (2) of the RTKL determinations by Central Dauphin School District by letter dated August 7, 2019:

(1) RTKL #13 – Gonzalez Contract

In this request, Mr. Epstein requested that CDS "provide a copy of the enrollment study prepared by Dr. Luis Gonzalez during the last year of his contract." In response, CDS denied the request and stated that "the requested record no longer exists in accordance with the district's retention policy. Therefore, no such record exists." This response is surprising because in an OOR decision dated August 26, 2013, (Docket No. AP 2013-1251, attached as Exhibit 2) OOR determined that CDS properly denied the same request by Mr. Epstein on the ground that the Gonzalez study was exempted as a pre-decisional matter under 65 P.S. §67.708(b)(10) (OOR Order at p. 8). However, CDS now claims that the record "no longer exists.)

Mr. Epstein appeals the denial of the Gonzalez study for three reasons.

First, the Pennsylvania Commonwealth Court has found that under most circumstances, an agency cannot raise additional reasons for denial of requested documents beyond those included in the initial response. *See, Housing Authority of the City of Pittsburgh v. Van Osdol and WTAE-TV*, 40 A. 3d 209 (Pa. Cmwlth. 2012).

Second, the claim that the record was destroyed consistent with CDS's record retention policy appears inappropriate since it appears that the Gonzalez enrollment study should have been kept at least six (6) years or until August 26, 2019, since the OOR decision was dated August 26, 2013 (CDS Policy Manual, p.5) (CDS's Policy Manual is attached at Exhibit 3).

Third, CDSD should not be allowed under the RTKL to use a RTKL exemption to evade disclosure by relying upon an exemption until it could exercise the agency's record retention policy, which is what appears to be occurring in this instance. Mr. Epstein appeals the denial of #13.

(2) RTKL #15-Honeywell Contract

In this request, Mr. Epstein requested "15(a) Please provide the final and signed contract and associated MOUs between the District and Honeywell. 15(b) Please provide data and documentation confirming that CDSD saved \$885,269 in guaranteed annual savings from 2009 to 2019. 15(c) Please provide data and documentation confirming that the \$8,515,000 expenditure by the District was "budget neutral."

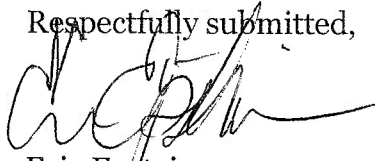
In response, CDSD stated "15(a), 15(b), 15(c), 16) have been combined. Granted in part and denied in part. By way of a response, we are researching emails previously sent to you that included all we could locate in response to these requests...." The CDSD response goes on to discuss the fact that email addresses may be confidential under the RTKL.

However, as indicated, the requests did not request personal email addresses. In point of fact, if CDSD was sincerely concerned about the disclosure of email addresses, the email addresses could have been redacted. Instead, Mr. Epstein requested specific financial information designed to confirm that certain amounts were either expended or saved by CDSD.

In short, Mr. Epstein's requests are clear, specific and targeted. CDSD's response to #15 violates Pennsylvania's RTKL. In this regard, the law requires that if an agency decides to deny an RTK request, in its response, it must: (1) provide a description of the record(s) requested (65 P.S. §67.903(1); and, *the specific reason for denying access to records with a corresponding citation to legal authority* (65 P.S. §67.903(2)).

Instead, CDSD has provided a vague response that does not comply with the RTKL. Consequently, Mr. Epstein appeals the denial portion of the response to #15.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric Epstein', written over the typed name and address.

Eric Epstein,  
4100 Hillsdale Road  
Harrisburg, PA 17112  
lechambon@comcast.net

cc:

Jeffrey Engle, Esquire, Solicitor  
Karen L. McConnell, Open Records Officer

Dated: August 19, 2019

Exhibit, #1

**CENTRAL DAUPHIN SCHOOL DISTRICT**

District Administration Office  
600 Rutherford Road  
Harrisburg, PA 17109  
Telephone: (717) 545-4703  
Fax: (717) 657-4999  
openrecordsofficer@cdschools.org



Karen L. McConnell, MBA, CPA  
Open Records Officer

**Right-To-Know Response Form**

August 7, 2019

VIA EMAIL: [lechambon@comcast.net](mailto:lechambon@comcast.net)

Eric Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Dear Mr. Epstein:

The undersigned is the Open Records Officer for Central Dauphin School District. On July 1, 2019, the Open Records Office received your request for records pursuant to the Pennsylvania Right-To-Know Law:

See attached.

We responded within the required five (5) business days advising that the District needed additional time and was invoking its right to a 30-day extension.

We have numbered our responses with the numbered items on your request.

- 1a) Granted. The documents were provided to you in response to your February 2013 request for the same records and we are again providing copies. These are all of the documents we could locate in our possession, custody or control with regard to this request.
- 1b) Denied. The document, which was provided to you in February 2013, no longer exists due to the district's retention policy. Therefore, no such record exists.
- 1c) Granted in part and denied in part. Portions of the invoices contain information protected by attorney/client privilege and those portions are exempt from release. The invoices have been redacted in accordance with Section 706 and a denial is issued for the redacted portions. The request for the remainder of the invoices is granted. These are all of the documents we could locate in our possession, custody or control with regard to this request.
- 2a) Granted. These are all of the documents we could locate in our possession, custody or control with regard to this request.
- 2b) Granted in part and denied in part. These are all of the documents we could locate in our possession, custody or control with regard to this request. The accounting RFP now longer exists due to the district's retention policy. That part of the request is denied as no such record exists.
- 2c) Granted. These are all of the documents we could locate in our possession, custody or control with regard to this request.
- 3a) Granted. These are all of the documents we could locate in our possession, custody or control with regard to this request.
- 3b) Denied. No RFP was issued; therefore, no such record exists.
- 3c) Granted. Your request asks for legal invoices but they were already requested in 1c so we are assuming this is a typo and you want Susquehanna Group Advisor invoices. These are all of the documents we could locate in our possession, custody or control with regard to this request.
- 4a), 4b), 4c) have been combined as they are duplicates of requests we received from you dated February 2013. There has been no change to our response. Denied, no such records exist.
- 4d) Granted. The contract was provided to you in response to 1a; see above. These are all of the documents we could locate in our possession, custody or control with regard to this request.
- 4e) Granted in part and denied in part. Legal invoices were provided to you in response to 1c. See above. These are all of the documents we could locate in our possession, custody or control with regard to this request.

5) Denied; no such record exists. No attorney reviewed this request on our behalf. However, you emailed the request to the school district solicitor (Jeff Engle).

6a), 6b), 6c) have been combined as they are duplicates of requests we received from you in June 2013. There has been no change to our response. Granted in part and denied in part.

7) Denied. This is a duplicate of a request we received from you in June 2013. There has been no change in our response. No such record exists.

8a) Granted. By way of a response, we are resending an email that was previously sent to you that included the most recent response to this request. The report for last school year has not yet been completed. Personal email addresses are considered person/confidential information and are exempt in accordance with **65 P.S. §67.708(b)(6)(i)(A)** – A record containing...home, cellular or personal telephone numbers; **personal email addresses**; employee number or other confidential personal identification number. (See Davis v. PA DEP Docket AP 2014-1171). Because the email contained email addresses other than yours, they have been redacted in accordance with Section 706 and a denial is issued for the redacted portions. These are all of the documents we could locate in our possession, custody or control with regard to this request.

8b) Granted. These are all of the documents we could locate in our possession, custody or control with regard to this request.

9a) Granted in part and denied in part. As reported to you in June 2013, Dr. Johnson did not have a district-provided cell phone. Therefore, no such records exist and that portion of your request is denied. Your request for professional development, continuing education expenses, and mileage reimbursements is granted. Your request does not indicate a search time frame so we are assuming you want 2016, 2017, 2018 & 2019. These are all of the documents we could locate in our possession, custody or control with regard to this request.

9b) Denied. As reported to you in June 2013, Dr. Johnson is covered under group insurance plans. Dr. Johnson does not have her own providers and the district does not make individual payments for her. Therefore, no such records exist. Your request for copies of receipts for "other benefits" is denied. Your request does not specify to which "other benefits" you are referring. However, after a good-faith search, we were unable to locate any record of "other benefits".

9b) sic (should be 9c) Granted. These are all of the documents we could locate in our possession, custody or control with regard to this request. We do not have a document that indicates the daily rate for vacation reimbursement. However, by way of further response and without waiving any objection, the daily rate at the time of retirement was \$782.80.

10a) Granted in part and denied in part. We have no employee named Dr. Norman Johnson. We are assuming this is a typo and you mean Dr. Norman Miller. Dr. Miller does not have a district-provided cell phone. Therefore, no such records exist and that portion of your request is denied. Your request for professional development, continuing education expenses, and mileage reimbursements is granted. Your request does not indicate a search time frame so we are assuming you want 2016, 2017, 2018 & 2019. These are all of the documents we could locate in our possession, custody or control with regard to this request.

10b) Denied. Your request indicates Dr. Johnson but we assume this is a typo and you mean Dr. Miller. Dr. Miller does not have his own providers and the district does not make individual payments for him. Therefore, no such records exist. Your request for copies of receipts for "other benefits" is denied. Your request does not specify to which "other benefits" you are referring. However, after a good-faith search, we were unable to locate any record of "other benefits".

11a) Granted in part and denied in part. As reported to you in June 2013, Karen McConnell does not have a district-provided cell phone. Therefore, no such records exist and that portion of your request is denied. Your request for professional development, continuing education expenses, and mileage reimbursements is granted. Your request does not indicate a search time frame so we are assuming you want 2016, 2017, 2018 & 2019. These are all of the documents we could locate in our possession, custody or control with regard to this request.

11b) Denied. We have no employee named Karen McConnell Johnson. We are assuming this is a typo and you mean Karen McConnell. As reported to you in June 2013, Karen McConnell is covered under group insurance plans and does not have individual providers. The district does not make individual payments on Karen's behalf. Therefore, no such records exist. Your request for copies of receipts for "other benefits" is denied. Your request does not specify to which "other benefits" you are referring. However, after a good-faith search, we were unable to locate any record of "other benefits".

12a) Granted in part and denied in part. Your request does not indicate a search time frame so we are assuming you want 2016, 2017, 2018 & 2019. Your request for professional development, continuing education expenses, and mileage reimbursements is granted. Your request for the cell phone bills is granted in part and denied in part. We only began receiving detailed invoices as of April 30, 2019. We contacted the vendor and were advised they only maintain 18 months in their system. We are providing to you what was provided to us. They are having technical issues and have been unable to retrieve several of the invoices. They are working to see if the technical issues can be corrected or if the information can be obtained another way. We will continue to follow up with the vendor and will advise.

Phone numbers are considered personal/confidential information and are exempt in accordance with **65 P.S. §67.708(b)(6)(i)(A)** – A record containing...**home, cellular or personal telephone numbers**; personal email addresses; employee number or other confidential personal identification number. (See Davis v. PA DEP Docket AP 2014-1171). The invoices have been redacted in accordance with Section 706 and a denial is issued for the redacted portions. These are all of the documents we could locate in our possession, custody or control with regard to this request.

12b) Denied. Carrie Deichman is covered under group insurance plans and does not have individual providers. The district does not make individual payments on Carrie's behalf. Therefore, no such records exist. Your request for copies of receipts for "other benefits" is denied. Your request does not specify to which "other benefits" you are referring. However, after a good-faith search, we were unable to locate any record of "other benefits".

13) Denied. The requested record no longer exists in accordance with the district's retention policy. Therefore, no such record exists.

14a) Granted in part and denied in part. The minutes for May 23<sup>rd</sup> and June 20<sup>th</sup> were provided to you on July 24<sup>th</sup>; they are also being provided with this response. These are all of the documents we could locate in our possession, custody or control with regard to this request. Your request for the minutes of the June 18<sup>th</sup> meeting is denied. This was not a public meeting and there are no minutes. Therefore, no such record exists.

14b) Granted in part and denied in part. The request for the public advertising for the June 20<sup>th</sup> meeting is granted. These are all of the documents we could locate in our possession, custody or control with regard to this request. Your request for the advertising for the June 18<sup>th</sup> meeting is denied. The meeting was not a public meeting so no advertising was required. Therefore, no such record exists.

15a), 15b), 15c), 16) have been combined. Granted in part and denied in part. By way of a response, we are resending emails previously sent to you that included all we could locate in response to these requests. Personal email addresses are considered person/confidential information and are exempt in accordance with **65 P.S. §67.708(b)(6)(i)(A)** – A record containing...**home, cellular or personal telephone numbers**; **personal email addresses**; employee number or other confidential personal identification number. (See Davis v. PA DEP Docket AP 2014-1171). The email addresses have been redacted in accordance with Section 706 and a denial is issued for the redacted portions. These are all of the documents we could locate in our possession, custody or control with regard to this request.

17) Granted. These are all of the documents we could locate in our possession, custody or control with regard to this request.

18) Granted. These are all of the documents we could locate in our possession, custody or control with regard to this request

Invoices are not maintained electronically. Of the invoices provided, 367 pages required redaction. Under the Right-To-Know Law, an agency is permitted to charge a copying fee for any page that requires copying for redacting purposes. (See Mollick v. Township of Worcester, Docket AP 2015 PA O.O.R.D. LEXIS 797). The fee for this request is **\$96.75** (367 pages x \$.25 per page) plus \$5.00 certification fee (per your request for certification). Please remit **\$96.75**, check or money order only made payable to Central Dauphin School District, upon receipt of this letter. Please include a copy of this letter with your remittance.

You have the right to appeal the denial of access to records in writing to Erik Arneson, Executive Director, PA Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4<sup>th</sup> Floor, Harrisburg, PA 17120-0225. If you choose to file an appeal, the appeal must be filed within 15 business days of the mailing date of this response. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,



Open Records  
Officer

Karen L. McConnell, MBA, CPA  
Open Records Officer

KLM:law

cc: Central Dauphin School District Board of Directors



# Central Dauphin School District Right to Know Requests

**Dated and submitted on July 1, 2019**

**Submitted by Eric J. Epstein**

## **Right to Know Request, #1.**

1a) Please provide copies of legal contracts the Central Dauphin School District ("CDSD" or "District") has with individual attorneys and law firms for fiscal years 2016, 2017, 2018, and 2019.

1b) Please provide copies of the RFPs for the above identified contracts.

1c) Please provide copies of invoices submitted to the CDSD, and paid by the District for fiscal years 2016, 2017, 2018, and 2019.

## **Right to Know Request, #2.**

2a) Please provide copies of accounting, architectural and engineering contracts the Central Dauphin School District ("CDSD" or "District") has with these entities for fiscal years 2016, 2017, 2018, and 2019.

2b) Please provide copies of the RFPs for the above identified contracts.

2c) Please provide copies of invoices submitted by these entities to the CDSD, and paid by the District for fiscal years 2016, 2017, 2018, and 2019.

## **Right to Know Request, #3.**

3a) Please provide copies of contracts the Central Dauphin School District ("CDSD" or "District") has with Jay Wenger and Susquehanna Group Advisors for fiscal years 2016, 2017, 2018, and 2019.

3b) Please provide copies of the RFPs for the above identified contracts.

3c) Please provide copies of legal invoices submitted to the CDSD, and paid by the District for fiscal years 2016, 2017, 2018, and 2019.

#### **Right to Know Request, #4.**

Mr. Jeffrey B. Engle simultaneously serves as Solicitor to the Central Dauphin School District and is a Member of the Dauphin County Tax Assessment Appeals Board. He was appointed to the Tax Board prior to being hired by the District.

4a) Please provide the documents that indicate who is contractually authorized to advocate and represent the District's interests when Mr. Engle makes a recommendation relating to property tax assessments for the Dauphin County Tax Assessment Appeals Board involving properties in the Central Dauphin School District.

4b) Please provide documents that identify and record when Mr. Engle has recused himself as solicitor from providing advice on tax appeal settlements that require a Central Dauphin School Board public vote after a Dauphin County Tax Assessment Appeals Board recommendation or ruling.

4c) Please provide documents that identify and record when Mr. Engle has acknowledged, announced or disclosed a Conflict of Interest to the Administration or Board - as solicitor for the Central Dauphin School District - when the Dauphin County Tax Assessment Board has ruled on property tax assessment appeals in the Central Dauphin School District.

4d ) Please provide the contract and terms of services for Jeff Engle for 2016, 2017, 2018, and 2019.

4e) Please provide copies of Mr. Engle's invoices submitted to the Board and paid by the District for fiscal years 2016, 2017, 2018, and 2019.

#### **Right to Know Request, #5.**

Please provide the name(s) of the attorney - and law firm of the attorney(s) - reviewing this Right to Know Request.

**Right to Know Request, #6.**

6a) Please provide copies of all contracts and MOUs relating to agreements with Scholastic Achievement Partners and the International Center for Leadership in Education to provide professional development, needs assessment, and strategic planning for the College and Career Readiness Initiative.

6b) Please provide copies of all funding sources and the amounts Central Dauphin School District will use to pay Scholastic Achievement Partners and the International Center for Leadership in Education to provide professional development, needs assessment, and strategic planning for the College and Career Readiness Initiative.

6c) Please provide the baseline and the evaluation metrics used to evaluate the success of the Scholastic Achievement Partners and the International Center for Leadership in Education to provide professional development, needs assessment, and strategic planning for the College and Career Readiness Initiative.

**Right to Know Request, #7.**

Please provide copies of all documents allowing school board candidates and members to use CDSD property for campaign or political purposes.

**Right to Know Request, #8.**

8a) Please provide copies of the inventory of school buses delivered by Durham School Services to the Central Dauphin School District Transportation Center.

8b) Please provide copies of all penalties and fines assessed against Durham School Services by the Central Dauphin School District since 2010.

**Right to Know Request, #9.**

9a) Please provide receipts and copies of Dr. Carol Johnson's cell phone bills, professional development and continuing education expenses, and mileage reimbursements.

9b) Please provide copies of the District's payments to the providers of Dr. Johnson's life insurance, medical insurance disability, income protection insurance, and copies of receipts for "other benefits" for years 2016, 2017, 2018, and 2019.

9b) Please provide the number of sick days and vacation days the CDSD agreed to reimburse Dr. Johnson upon her retirement, at what daily rates, and the terms for reimbursement.

**Right to Know Request, #10.**

10a) Please provide receipts and copies of Dr. Norman Johnson's cell phone bills, professional development and continuing education expenses, and mileage reimbursements.

10b) Please provide copies of the District's payments to the providers of Dr. Johnson's life insurance, medical insurance disability, income protection insurance, and copies of receipts for "other benefits" for years 2016, 2017, 2018, and 2019.

**Right to Know Request, #11.**

11a) Please provide receipts and copies of Karen McConnell's cell phone bills, professional development and continuing education expenses, and mileage reimbursements.

11b) Please provide copies of the District's payments to the providers of Karen McConnell's Johnson's life insurance, medical insurance disability, income protection insurance, and copies of receipts for "other benefits" for years 2016, 2017, 2018, and 2019.

**Right to Know Request, #12.**

12a) Please provide receipts and copies of Carrie Deichman's cell phone bills, professional development and continuing education expenses, and mileage reimbursements.

12b) Please provide copies of the District's payments to the providers of Carrie Deichman's life insurance, medical insurance disability, income protection insurance, and copies of receipts for "other benefits" for years 2016, 2017, 2018, and 2019.

**Right to Know Request, #13.**

13) Please provide a copy of the enrollment study prepared by Dr. Luis Gonzalez during the last year of his contract.

**Right to Know Request, #14.**

14a) Please provide the minutes from the Building and Grounds Committee meetings convened on May 23, 2019 and June 20, 2019, and the Superintendent Search Committee convened on June 18, 2019.

14b) Please provide copies of public advertising and notices for the meetings convened on June 18, 2019 and June 20, 2019.

**Right to Know Request, #15.**

The contract between Central Dauphin School District and Honeywell Building Solutions ("Honeywell") over the course of fifteen years - 2009 to 2024 - guaranteed that the \$8,515,00 project would save \$885,269 annually, be "budget neutral", and guarantee savings. (March 9, 2009, 6. 03 ESCO Presentation, Honeywell, p. 8.)

The same evening PFM gave a report under 8.02 ESCO Financing. PFM stated on p. 2 that , "Energy Savings is anticipated to offset the related debt service payments."

15a) Please provide the final and signed contract and associated MOUs between the District and Honeywell.

15b) Please provide data and documentation confirming that CDSD saved \$885,269 in guaranteed annual savings from 2009 to 2019.

15c) Please provide data and documentation confirming that the \$8,515,000 expenditure by the District was "budget neutral."

**Right to Know Request, #16.**

The CDSD and Honeywell contract was discussed at Board meetings convened on March 9, 2009 and March 23, 2009. On March 23, 2009, Karen McConnell stated:

"The Administration is recommending the approval of Honeywell Buildings Solutions as the District's performance contractor for the elementary school guaranteed energy savings project with a total cost and savings of \$8,279,250."

Please provide copies of the contract and documents that were used to support the motion relating to Honeywell Building Solutions, and approved on March 23, 2019.

**Right to Know Request, #17.**

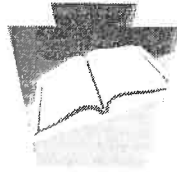
The Financial Report for April, 2019, Item 7., listed a withdrawal to "cover overdrawn accounts " by the Assistant Superintendent of Finance and Operations.

Please provide the amount of the transfer, the amount of the overdraw, and identify the accounts that experienced an overdraw.

**Right to Know Request, #18.**

Please provide copies of the contract and MOUs between the District and Krise Transportation for the 2019 - 2020 school year.

Exhibit, #2



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

ERIC EPSTEIN,  
Complainant

v.

CENTRAL DAUPHIN SCHOOL  
DISTRICT,  
Respondent

Docket No. AP 2013-1251

### INTRODUCTION

Eric Epstein ("Requester") submitted seven (7) requests ("Requests") to the Central Dauphin School District ("District") pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, ("RTKL"), seeking various records from the District. The District denied the Requests, stating that certain records do not exist or are exempt. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is granted in part and denied in part and the District is required to take further action as directed.

### FACTUAL BACKGROUND

On June 18, 2013, the Requester filed the Requests with the District seeking the following items:

- [1] the contract and terms of services for Jeff Engle, Esquire from 2012-2013, 2013-2014 and most recent available contract.
- [2] a copy of Mr. Engle['s] most recent performance evaluation by the [District].
- [3] copies of all documents allowing school board members to use [District] property for political purposes.
- [4] copies of all penalties and fines assessed against Durham School Services by the [District] since 2010.



[5] copies of the inventory of school busses delivered by Durham School Services to the [District] Transportation Center.

[6] copies of all documents approving dress code changes per the April 29, 2013 memo.

[7] a copy of the enrollment study produced by Dr. Luis Gonzalez ("Study").

On June 26, 2013,<sup>1</sup> the District denied Items 2 through 6, asserting that the records requested do not exist within the District's possession. Along with its response to the Requester, the District provided an "Attestation of Nonexistence of Record" from its Open Records Officer ("ORO") for each of those Items. The District denied Item 1 on the basis that it was a duplicate request, and that the requested record was previously provided to the Requester. The District also denied Item 7, pointing out that the Study was requested three times before, and remained exempt from disclosure under Section 708(b)(10) of the RTKL as a record reflecting the internal, pre-decisional deliberations of the District.

On July 17, 2013, the Requester filed an appeal with the OOR, stating grounds for disclosure and challenging the District's denial of Items 1 through 6. In this appeal, docketed to AP 2013-1240, the Requester provided a detailed position statement with numerous attachments, including a contract between the District and Durham School Services, L.P., a transportation service provider. The Requester maintains that records responsive to his Requests exist and, in support of his arguments, cites to various attachments included in his appeal.

On July 18, 2013, the Requester filed an appeal concerning the District's denial of Item 7. In this appeal, which the OOR docketed as OOR Dkt. AP 2013-1251, the Requester contests the District's position that the Study is protected by the internal, pre-decisional deliberation exemption. Instead, the Requester asserts that the Study was discussed at public meetings, and is, therefore, subject to disclosure. He maintains that use of the Study by the District has moved

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<sup>1</sup> The District provided evidence that its offices are closed on Fridays from June 14, 2013 through August 9, 2013. Because Friday, June 21, 2013 was not a business day for the District, the District's response was timely. See 65 P.S. § 67.901.

from “pre-decisional to decisional.” The District, the Requester asserts, cannot hide behind the pre-decisional deliberation exemption to prevent disclosure of a report that was paid for by taxpayers over two years ago.

In each appeal, the OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal pursuant to 65 P.S. § 67.1101(c). The OOR hereby consolidates OOR Dkt. AP 2013-1240 and OOR Dkt. AP 2013-1251 into the above-referenced docket.

On July 29, 2013, the District filed responses to each of Requester’s appeals. With respect to Items 2-6, the District submitted correspondence and an affidavit from its ORO who affirmed that no responsive records exist. The District also cites to Section 506(a)(1) of the RTKL in support of its denial of Item 1, arguing that it was not obligated to respond to a repeated request. With respect to Item 7, the District submitted an affidavit and correspondence of its ORO, who maintains that the Study has never been publicly presented and is a working paper that was completed to assist the school board with internal deliberations and possible policy changes. Additionally, the ORO affirms that no final decision or public action has been taken concerning the Study.

### 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), *aff’d* No. 20 MAP 2011, 2013 Pa.

LEXIS 1800 (Pa. Aug. 20, 2013). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing 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 District is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL 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 burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pennsylvania Department of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The District has failed to demonstrate that Section 506(a)(1) prevents disclosure of records responsive to Item 1

On appeal, the Requester contends that the District did not provide him with the contract covering Mr. Engle’s legal services for 2013-2014. The District claims that Item 1 was properly denied because it is a duplicate request and the Requester was previously given copies of the contract on March 27, 2013 and May 10, 2013 in response to two prior requests for records. The District affirms that the contract previously provided to the Requester is the only contract responsive to the Request. The District further explains that there is no new contract to provide to the Requester because the contract previously provided contains an automatic renewal clause.

Section 506(a)(1) of the RTKL provides that “[a]n agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.” 65 P.S. § 67.506(a)(1). “Under this section ... an agency must demonstrate that (1) ‘the requester has made repeated requests for th[e] same record[(s)]’ and (2) ‘the repeated requests have placed an unreasonable burden on the agency.’” *Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011); *see Slate v. Dep’t of Environ. Prot.*, OOR Dkt. AP 2009-1143, 2010 PA O.O.R.D. LEXIS 97 (“A repeated request alone is not enough to satisfy § 506(a)(1)”). The OOR has held that repeated requests for the same records, although phrased differently, may be denied as disruptive. *See Cohen v. Dept. of Labor & Industry*, OOR Dkt. AP 2009-0296, 2009 PA O.O.R.D. LEXIS 159; *Dougher v. Scranton Sch. Dist.*, OOR Dkt. AP 2009-0798, 2009 PA O.O.R.D. LEXIS 318 (“Slight differences in phraseology do not preclude application of [Section 506(a)]”).

Although the District has substantiated that it has previously provided the Requester with a copy of the contract in response to two prior requests, it did not provide evidence that the District was unreasonably burdened with having to respond to the Request. As a result, the District has not established that the Request was “disruptive” under 65 P.S. § 67.506(a)(1), and it is directed to provide records responsive to Item 1 of the Request.

2. The District has met its burden of proof that records responsive to Items 2, 3, 4, 5 and 6 do not exist

In response to the appeal as to Items 2, 3, 4, 5 and 6, the District provided attestations from its ORO that records responsive to these Items do not exist. Under the RTKL, an attestation under penalty of perjury or a sworn affidavit 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. OOR*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Although the Requester asserts that the records requested should exist and offers information in support of his contentions, he offers no evidence to conclusively refute the ORO’s attestations that records do not, in fact, exist.<sup>2</sup>

Additionally, during the course of the appeal, the OOR requested that the District address whether or not Section 506(d) of the RTKL, related to records in the possession of a third party contractor, applies to Items 4 and 5. Item 4 sought all penalties and fines assessed against Durham School Services by the District since 2010. The Requester argues that the contract between the District and Durham sets forth when such fines and penalties can be assessed and collected. However, a review of the contract submitted by the Requester only reveals when

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<sup>2</sup> To the extent that the Requester’s appeal seeks disclosure of information different from that which was originally requested, such is not permitted under the RTKL. It is well established that a Request cannot be modified on appeal. *See Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Staley v. Pittsburgh Water and Sewer Authority*, OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256 (“A requester may not modify the original request as the denial, if any, is premised upon the original request as written”). Therefore, the OOR’s review on appeal is confined to the Request as written, and any modifications of the Request on appeal are not considered. *See Brown v. Pennsylvania Turnpike Commission*, OOR Dkt. AP 2011-1287, 2011 PA O.O.R.D. LEXIS 998.

amounts can be assessed or deducted as liquidated damages, not when “fines and penalties” can be assessed. Similarly, concerning Item 5 of the Request, there are no terms in the contract between the District and Durham that expressly require Durham to deliver school buses to the District.

Based on the evidence submitted by the District, the OOR finds that it has sufficiently met its burden of proof that no records responsive to Item 2, 3, 4, 5 and 6 exist within its possession.

3. Item 7 of the Request is protected from disclosure under Section 708(b)(10) of the RTKL

In his appeal, the Requester contends that the Study, which was previously found by the OOR to be exempt under Section 708(b)(10), is no longer protected by the pre-decisional deliberation exemption. 65 P.S. § 67.708(b)(10); *see Epstein v. Central Dauphin Sch. Dist.*, OOR Dkt. No. AP 2012-1489, 2012 PA O.O.R.D. LEXIS 1231. The Requester argues that the Study has been advertised and publicized in the public domain for two years. In support of his contentions, the Requester cites to the District’s board meeting minutes from August 2012 and September 2012. He also cites to the Commonwealth Court decision in *Philadelphia Pub. Sch. Notebook v. School Dist. of Philadelphia*, 49 A.3d 445 (Pa. Commw. Ct. 2012), in support of his position.

Section 708(b)(10) of the RTKL exempts from public disclosure a record that reflects:

(A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, ...or course of action or any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 67.708(b)(10)(i)(A). The OOR has consistently held that to withhold a record under Section 708(b)(10)(i)(A), an agency must show: (1) the deliberations reflected are internal to the agency, including representatives, (2) the deliberations reflected are predecisional, i.e., before a decision on an action; and (3) the contents are deliberative in character, i.e., pertaining to a proposed action. *See Kaplin v. Lower Merion Twp.* 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011); *Martin v. Warren City Sch. Dist.*, OOR Dkt. AP 2010-0251, 2010PA O.O.R.D. LEXIS 285; *PHFA v. Sansoni*, OOR Dkt. AP 2010-0405, 2010 PA O.O.R.D. LEXIS 375; *Kyle v. DCED*, OOR Dkt. AP 2009-0801, 2009 PA O.O.R.D. LEXIS 310.

Here, the District ORO's affidavit affirms that the withheld Study remains internal to the District, was created to assist District board members with taking a course of action concerning strategy and policy changes, and that no final decision or public action has been taken concerning the Study. Although the board meeting minutes submitted by the Requester suggest that a public workshop was to be held to discuss the report, there is nothing to substantiate that such a workshop in fact took place. Rather, the Board meeting minutes from September 2012 show that "the plan to evaluate schools for potential closings" was put on hold due to increased enrollment. The minutes further reflect that the Board sought additional time to review the recommendations made in the Study. Moreover, it is noted that the facts of the *Notebook* case are distinguishable from the instant matter in that the records in *Notebook* involved proposed resolutions that were presented to board members for public consideration and comment. *Id.* at 453. Such facts are not present in the instant matter.

As such, the OOR finds that the District has met its burden of proving that the withheld record remains exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL.

## CONCLUSION

For the foregoing reasons, the Requester's appeal is granted in part and denied in part, and the District is required to provide all responsive records concerning Item 1 of the Request to the Requester within thirty (30) days. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal or petition for review 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 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: August 26, 2013



ANGELA EVELER, ESQ.  
APPEALS OFFICER

Sent to: Eric Epstein (via e-mail only);  
Karen L. McConnell (via e-mail only);  
Michael Auliffe Miller, Esq. (via e-mail only)



## Exhibit, #3

Book  
Policy Manual

Section  
800 Operations

Title  
Record Retention and Destruction

Code  
801.1

Status  
Active

Legal  
1. 24 P.S. 518  
24 P.S. 433  
65 P.S. 67.101 et seq  
20 U.S.C. 1232g  
Federal Rules of Civil Procedure  
Pol. 004  
Pol. 006  
Pol. 105.2  
Pol. 114  
Pol. 138  
Pol. 203  
Pol. 203.1  
Pol. 209  
Pol. 212  
Pol. 216  
Pol. 216.1  
Pol. 233  
Pol. 314  
Pol. 324  
Pol. 326  
Pol. 334  
Pol. 414  
Pol. 424  
Pol. 514

Pol. 524  
Pol. 601  
Pol. 609  
Pol. 610  
Pol. 618  
Pol. 619  
Pol. 702  
Pol. 706  
Pol. 716  
Pol. 801  
Pol. 810  
Pol. 810.1  
Pol. 912

Adopted  
February 23, 2004

Last Revised  
March 27, 2017

### **Purpose**

A number of statutory and regulatory guidelines require the district to retain its records for a prescribed period of time. The purpose of this policy is to outline various statutory and regulatory requirements for document retention and destruction.

### **Authority**

The Board of School Directors shall retain, as a permanent record of the district, the minute book, each annual auditor's report and each annual financial report.<sup>[1]</sup>

All other financial records of the district, including financial account books, orders, bills, contracts, invoices, receipts and purchase orders shall be retained by the district for a period of not less than six (6) years. Records may be retained as recorded or copied.

## Definitions

**Electronic Mail (Email) System** - a system that enables users (employees) to compose, transmit, receive and manage text and/or graphic electronic messages and images across local area networks and through gateways connecting other networks. This information consists primarily of messages, but may include attachments such as calendars, directories, distraction lists, word processing documents, spreadsheets, and other electronic documents.

**Legal Custodian** - the term refers to the originator of an email message or the creator of an electronic document, if that person is a district employee, Board member, contractor or agent; otherwise it is the district employee to whom the message is addressed or to whom the electronic document is sent. If the record is transferred, by agreement or policy, to another person for archival purposes, then that person becomes the legal custodian.

## General Requirements

Maintenance and disposal of electronic records, as determined by their content, is the responsibility of the legal custodian and must be in accordance with guidelines established by the Board and also in compliance with approved records retention and disposition schedules.

When an employee leaves the school district or is transferred to a different building, the principal or immediate supervisor is responsible for notifying the Technology staff of a new legal custodian and ensuring that any public records in the separating employee's possession are properly transferred to the new custodian or are properly archived in accordance with Board policy.

The Technology staff is responsible for the transfer of the electronic records to the new custodian before the accounts are scheduled to be deleted or archived.

Each employee is responsible for periodically reviewing any application files, documents, spreadsheets, databases or other electronic records to ensure the timely deletion of records that are no

longer needed to conduct school district business, which will allow adequate storage space on district servers.

### Electronic Mail

Each email user must take responsibility for retaining school district records as directed in official records retention and disposition schedules. email that does not meet the definition of a district record, e.g., personal email or junk email, should be deleted immediately from the system.

Central Dauphin School District email servers are NOT intended for long-term records retention. Email messages and any associated attachment(s) with retention periods greater than 2 years are to be printed and filed in similar fashion to paper records. Email will be archived from the current email server for 2 years and then will be purged from the system on a quarterly basis.

### Backup Files

Information Technology Services performs a backup on a regular schedule of the email and electronic files stored on central servers for disaster recovery. These backups are to be used for system restoration purposes only. The Technology Department is not the legal custodian of messages or records, which may be included in such backups.

### Litigation Hold

When the district has been given notice that a legal action is either pending or imminent or a government investigation will occur, destruction of records (documents) must be suspended immediately. Notice could occur before the filing of a complaint, and assumes that the district is previously aware of an incident or event that is subject to a suit.

The Superintendent must be made aware of events or incidents that are likely to lead to legal action. Counsel must be notified immediately. Counsel will be responsible for evaluating the defenses available to the district, identifying the records (documents) that may

be relevant to a legal action and responding to the suspension of the retention and destruction policies and schedule.

The district shall adopt the following records retention schedule:

DOCUMENT

RETENTION PERIOD

Accident Reports and Claims (settled)	6 years
Accounts Payable Ledgers	6 years
Accounts Receivable Ledgers	6 years
Annexation, Consolidation and Boundary Change Records	Permanent
Annual Financial Reports	Permanent
Audit Reports	Permanent
Bank Deposit Slips	6 years
Bank Reconciliation	6 years
Blank Contracts: Advertisements, Instructions to Bidders, Performance and Payment Bonds	If ACCEPTED: Retain 6 years after termination of general written contracts. Retain 12 years after termination of construction contracts.
Board Policies (Current)	If DECLINED: Retain 3 years after job completion
Board Policies (Old)	Permanent
Books and Notes	Permanent
Buildings, Land, Land Improvements, Deeds and Related Legal Correspondence	8 years after cancellation
Building Construction: Advertisements, Instruction for Bidders, Performance and Payment Bonds, Architect Fees and Invoices	Permanent
Bylaws, Regulations and Rules of Order	Permanent
Case Files	6 years after superseded/revoked
Certificates of Election	Retain closed cases as long as of administrative and legal value
Curriculum, Course Offerings and Textbooks	6 years
Contracts and Leases (expired)	Current adoption
Correspondence (general)	6 years after expiration
District Commissioned Plans/Studies: including L, Strategic Plan, Taskforce Findings, and Emergency Management Plans	1 year
Electronic Mail (email) System (employee)	3 years after final resolution
Employee Health Insurance Claim Files	6 years after settlement of claim

Employee Medical Records	Retain same length of time as Individual Employee Personnel Records. However, if employee has been exposed to toxic substances or harmful physical agents in the workplace, retain at least 30 years after termination of employment and comply with appropriate Occupational Safety and Health Standards issued by the U.S. Dept. of Labor (29 CFR Ch. XVII)
Employee Personnel Records (Including applications for Employment, Commendations, Correspondence, Health Insurance Membership Applications, Letters of Resignation, Life Insurance Applications, Performance Evaluations, Personnel Change Forms, Personnel Story Cards, Photo Identification Records, References, Resume, Retirement Membership Application, Salary Review Forms, Separation and Training Records, and Vacation/Sick Leave Reports.	6 years after termination of employment. (If applicable, comply with union rules relating to certain types of personnel records such as evaluations and reprimands.)
Employment Application	1 year
Securities Commission Statements of Financial Interest	6 years
Equal Employment Opportunity Records: Compliance Reports and Related Records	3 years
Official Discrimination Complaint Case Files	4 years after resolution of case
Grant Administration Records	Comply with retention requirement promulgated by the appropriate funding agency and for no less than current plus 3 years' prior
Hazardous Substance Survey Forms	30 years. If used as health and exposure record for employee involved in a specific incident, retain for 30 years after termination of employment.
Insurance Claims and Policies	6 years after final settlement
Inventories	6 years after expiration, provided all claims have been settled
Job Announcements	6 years
Job Descriptions	2 years after position is filled
Labor Negotiations Files	Current plus 1 prior revision
Material Safety Data Sheets	6 years after expiration of contract
	30 years. If used as health and exposure record for employee involved in a specific incident, retain 3

minute Books	years after termination.
Enrollment Records	Permanent
Property and Equipment/Fixed Assets	6 years
Inventories	6 years after superseded or obsolete
Public Hearing Proof of Publications	Retain fixed assets inventories permanently
Purchase Orders	10 years
Checks and Bond Certificates	6 years
Ident Records - Category A	6 years
Ident Records - Category B	Permanent
Ident Records - Category C	Periodic Review
(See category descriptions below)	Annual Review
Trademarks and Copyright Registrations	Permanent
Union Grievances	3 years after final resolution
Workers' Compensation Records	4 years after the signing of final settlement receipt or 4 years after the death of recipient

#### Student Record - Category Descriptions

##### Category A -

This data shall include official administrative records that constitute the minimum personal data necessary for operation of the educational system. This data shall include such information as identifying data (including names and addresses of parent or guardian), birth date, academic work completed, level of achievement (grades, standardized achievement test scores), attendance, data and entry and withdraw, student's participation in school activities, awards, and letters of commendation, authorization for release of information, report of pupil's absence, student's permanent record, pupil accident report and social security number.

These records shall be maintained for one hundred (100) years subject to the conditions of security.

Conditions of access will be subject to the provisions under Dissemination of Information regarding pupils.

##### Category B - (Cumulative Data)

- Items in Category B may be filed separately from Category A information and may include the following:



- Verified reports of serious and recurrent behavior problems.
- Anecdotal records containing systematically gathered reports from teachers, counselors, and others regarding the student.
- All student referral forms.
- Correspondence to parents, social agencies, or others that indicate a verified problem the student is having in school.
- School health record.
- School dental record.
- Exclusion from school notification and report of hearing to the Program Director.
- Intelligence tests, interest inventory results, aptitude results, family background.
- Legal documents, due process.
- Psychological tests results.
- Clinical reports such as psychologists' reports and reports from outside agencies concerning the students.
- Psychological evaluation follow-up report.

Information collected in Category B shall be reviewed periodically and all unnecessary data eliminated.

#### Category C -

This file contains information which has short-term value and may be unverified. Legal or clinical findings, personality test results, and unevaluated reports of teachers or counselors belong in this category.

#### Records Retention Due to Pending Litigation

The district records that need to be retained due to pending litigation or government investigations must be reviewed frequently. Contact must be made with the Superintendent to verify possession of the most current list of records that should be considered protected (i.e. not to be destroyed) due to pending litigation or in litigation or subject to government investigation. The district should be made aware that the court considers all recorded information as a record regardless of the medium of storage of the information. All records that relate to pending litigation or regulatory proceedings must be retained during the pending litigation and/or proceeding.

### Destruction

Proper disposal or destruction of paper and electronic records (Department of Defense method or its equivalent) is required. Records must be destroyed by shredding, erasing, or otherwise modifying the information of the record to make the record unreadable, undecipherable or non-reconstructable through generally available means.

### Consequences for Violations

Employees must be aware that violations of this policy may result in a variety of disciplinary actions including, but not limited to, warnings, loss of privileges, position reassignment, oral and written reprimands, suspensions (with or without pay), dismissals and/or legal proceedings.

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