

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Edward Benkoski :  
 :  
 v. : No. 1435 C.D. 2006  
 : Submitted: February 27, 2009  
 Township of Bear Creek and :  
 Bonnie Wasilewski, Chairperson, :  
 Bear Creek Township Board of :  
 Supervisors, :  
 Appellants :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
 HONORABLE MARY HANNAH LEAVITT, Judge  
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: April 30, 2009

The Township of Bear Creek and Bonnie Wasilewski, Chair of the Bear Creek Township Board of Supervisors (collectively, the Township), appeal an order of the Court of Common Pleas of Luzerne County granting a request by Edward Benkoski for information under the act commonly referred to as the Right-to-Know Law.<sup>1</sup> At issue in this appeal is whether time cards completed by

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<sup>1</sup> Act of June 21, 1957, P.L. 390, *as amended*, 65 P.S. §§ 66.1 - 66.9, repealed by Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101-67.3104, effective January 1, 2009. Because Benkoski initiated the underlying action in 2006, this case is governed by the former Right-to-Know Law.

Township employees are public records within the meaning of Section 1 of the Right-to-Know Law, 65 P.S. §66.1.<sup>2</sup> We affirm.

Benkoski is a resident of the Township and a former member of its Board of Supervisors. In May 2006, Benkoski petitioned for a rule to show cause why the Township should not grant him access under the Right-to-Know Law to, *inter alia*, time cards completed by certain Township employees for 2005 and 2006. The Township opposed the request, arguing that the time cards were either not public records under the Right-to-Know Law or exempt from disclosure because they contained personal information such as the employee's social security number.

The trial court conducted a hearing on June 19, 2006. Following the hearing, the trial court held that the time cards were public records that could be redacted to prevent disclosure of personal or confidential information. Accordingly, the trial court entered an order dated June 19, 2006, directing that Benkoski and his auditor be given access to the redacted time cards. The Township now petitions this Court for review.<sup>3</sup>

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<sup>2</sup> Section 1 of the Right-to-Know Law defines a "public record" as follows:

Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property ... Provided, That the term "public records" ... shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which ... would operate to the prejudice or impairment of a person's reputation or personal security ....

65 P.S. §66.1, repealed by Section 3102(2)(ii) of the Act of February 14, 2008, P.L. 6, effective January 1, 2009.

<sup>3</sup> The nearly three-year delay in this case is attributable to the parties. According to the trial court, the parties filed cross-motions for contempt following the court's ruling and, thereafter, **(Footnote continued on the next page . . . )**

On appeal,<sup>4</sup> the Township argues that the time cards are exempt from public disclosure by virtue of the so-called “personal security exception” to the Right-to-Know Law’s general rule of disclosure. Stated otherwise, a Township employee’s time card is not a “public record” within the meaning of Section 1 of the Right-to-Know Law because it contains the employee’s social security number and, potentially, other personal information such as child support, alimony or garnishment payments. The Township also contends that redacting the confidential information from the time cards will require it to create a new public record, in derogation of Section 2(e) of the Right-to-Know Law, 65 P.S. §66.2(e).<sup>5</sup>

The Township’s claim that the time cards were not public records under the Right-to-Know Law was thoroughly analyzed and ably disposed of in the Rule 1925(a) opinion authored by the Honorable Michael T. Toole. Accordingly, we affirm on the basis of his opinion in *Benkoski v. Township of Bear Creek and*

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**(continued . . . )**

requested that the court delay issuing its Rule 1925(a) opinion pending a possible settlement of their dispute. The trial court did not issue its opinion until October 24, 2008.

<sup>4</sup> This Court’s standard of review in a Right-to-Know Law case is whether an error of law was committed, whether constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. *Buehl v. Department of Corrections*, 955 A.2d 488, 490 n. 5 (Pa. Cmwlth. 2008). Our scope of review for a question of law is plenary. *Id.*

<sup>5</sup> Section 2(e) of the Right-to-Know Law states:

- (e) Creation of a public record. When responding to a request for access, an agency shall not be required to create a public record which does not currently exist or to compile, maintain, format or organize a public record in a manner in which the agency does not currently compile, maintain, format or organize the public record.

65 P.S. §66.2(e), repealed by Section 3102(2)(ii) of the Act of February 14, 2008, P.L. 6, effective January 1, 2009.

*Bonnie Wasilewski, Chairperson, Bear Creek Township Board of Supervisors (Civ. A. No. 5532 of 2006, filed October 24, 2008).*<sup>6</sup>

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MARY HANNAH LEAVITT, Judge

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<sup>6</sup> There is no merit to the Township’s argument that redacting the time cards will require it to create a new public record, which it is not required to do under Section 2(e) of the Right-to-Know Law, 65 P.S. §66.2(e). Redaction, by definition, does not involve the creation of a new document; it is “the careful editing of a document ... to remove confidential references.” BLACK’S LAW DICTIONARY 1303 (8th ed. 2004). Moreover, the Township’s position is absurd since no document could ever be redacted under the Right-to-Know Law without running afoul of Section 2(e). This would render as mere surplusage Section 3-2 of the Law, 65 P.S. §66.3-2, which was added in 2002 to expressly allow an agency to redact information not subject to public access from an otherwise public record.

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Bear Creek Township Board of	:	
Supervisors,	:	
Appellants	:	

**ORDER**

AND NOW, this 30<sup>th</sup> day of April, 2009 the order of the Court of Common Pleas of Luzerne County in the above-captioned matter, dated June 19, 2006, is AFFIRMED.

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MARY HANNAH LEAVITT, Judge