

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Department of Public Welfare,	:	
Petitioner	:	
	:	
v.	:	No. 706 C.D. 2013
	:	Submitted: November 27, 2013
Robert Clofine,	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: February 20, 2014

Petitioner Department of Public Welfare (DPW) petitions for review of a final determination of the Office of Open Records (OOR). OOR granted Robert Clofine's (Clofine) appeal from DPW's partial denial of his request for records under the Right-to-Know Law (RTKL).¹ For the reasons set forth below, we reverse.

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-.3104. As previously explained by this Court,

[t]he RTKL was 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. The current version of the RTKL, passed in 2008, changed the method of access to an individual's personal information and set forth new criteria to determine whether

(Footnote continued on next page...)

On January 23, 2013, DPW received a RTKL request from Clofine, seeking the direct phone number and e-mail address for Adams County Assistance Office income maintenance caseworker Vicki Miller, as well as the names and direct phone numbers of all Adams County Assistance Office income maintenance caseworkers. (Reproduced Record (R.R.) at 27a-28a.) DPW granted Clofine's request as to the names of all Adams County Assistance Office income maintenance caseworkers, but otherwise denied Clofine's request. (*Id.* at 28a.) DPW based its denial on its assertion that agency-issued telephone numbers and e-mail addresses are personal information protected from disclosure by Section 708(b)(6)(i)(A) of the RTKL.² (*Id.*)

(continued...)

information is protected from disclosure. Under the current RTKL, a record in the possession of a Commonwealth agency or local agency is presumed to be a public record unless (1) the record is exempt under Section 708; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. Section 708(a)(1) of the RTKL, 65 P.S. § 67.708(a)(1), entitled "Exceptions for public records," places the burden on the agency to prove by a preponderance of the evidence that a particular record is exempt from public access.

Office of the Lieutenant Governor v. Mohn, 67 A.3d 123, 126 n.1 (Pa. Cmwlth. 2013) (en banc) (citations omitted).

² 65 P.S. § 67.708(b)(6)(i)(A). Section 708(b)(6)(i)(A) of the RTKL exempts, in part, the following as "personal identification information": "[a] record containing all or part of a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number."

Clofine then appealed to OOR, challenging the partial denial. By final determination issued on March 27, 2013, OOR granted the appeal. Relying primarily on its own precedent, OOR concluded that agency-issued telephone numbers and e-mail addresses did not constitute personal identification information that is exempt from disclosure under Section 708(b)(6)(i)(A) of the RTKL. With regard to agency-issued telephone numbers, OOR reasoned that the term “personal telephone number” as used in Section 708(b)(6)(i)(A) could have many meanings and that OOR does not interpret a direct-dial agency-issued telephone number to be one of the types of telephone numbers that falls within the definition of “personal.” (*Id.* at 31a-32a.) OOR further reasoned that an agency-assigned and owned direct-dial telephone number, unlike an employee identification number, is not “an inexorably connected identifier to an agency employee in which the employee has a vested interest in its personal and confidential nature.” (*Id.* at 32a.) OOR further explained that it has repeatedly held that agency-issued e-mail addresses are not protected from disclosure under the RTKL. (*Id.*) OOR, therefore, required DPW to provide all responsive records to Clofine’s request. (*Id.* at 33a.) DPW then petitioned this Court for review.

On appeal,³ DPW argues that OOR erred in concluding that agency-issued direct-dial telephone numbers and e-mail addresses do not fall within the personal identification information exemption set forth in Section 708 of the RTKL. In short, DPW argues that the resolution of this matter is controlled by

³ Our standard of review of determinations made by appeals officers under the RTKL is *de novo*, and our scope of review is plenary. *Bowling v. Office of Open Records*, __ Pa. __, __, 75 A.3d 453, 477 (2013).

this Court's recent decisions in *Office of the Lieutenant Governor v. Mohn*, 67 A.3d 123 (Pa. Cmwlth. 2013) (en banc), and *Office of the Governor v. Raffle*, 65 A.3d 1105 (Pa. Cmwlth. 2013) (en banc).⁴ More specifically, DPW argues that the holdings of those cases clearly establish that the information sought by Clofine on appeal is protected from disclosure under the personal identification information exemption in Section 708(b)(6)(i)(A).

In *Mohn*, the requester submitted a RTKL request to the Office of the Lieutenant Governor (OLG), seeking, *inter alia*, all agency-issued e-mail addresses for the Lieutenant Governor and two Board of Pardons' employees. *Mohn*, 67 A.3d at 125. "The OLG provided the government-issued e-mail addresses . . . for the requested individuals that were held out to the public as e-mail addresses . . . at which the public officials could be contacted but, citing the personal identification information exception to the RTKL, denied the request to the extent it was seeking additional personal e-mail addresses for those individuals used to communicate with other agency officials."⁵ *Id.* at 126 (footnote omitted). The requester appealed to OOR, which granted access to all agency-issued e-mail addresses for the Lieutenant Governor. *Id.* The OLG appealed to this Court, arguing, in part, "that the Lieutenant Governor's secondary, government-issued e-mail addresses are exempt from disclosure under the personal identification information exception to the RTKL." *Id.* at 133.

⁴ Notably, both *Mohn* and *Raffle* were decided on April 24, 2013, nearly a month after OOR issued its final determination in this matter.

⁵ Despite this denial, the OLG provided the personal e-mail addresses of the two Board of Pardons' employees, noting that it was doing so "outside of the RTKL," by granting access to its responses to another individual's prior RTKL requests, as those responses already contained that requested information. *Mohn*, 67 A.3d at 126 & n.4.

This Court held in *Mohn* that the Lieutenant Governor’s secondary e-mail address fell within the exemption provided in Section 708(b)(6)(i)(A) of the RTKL. *Id.* In so doing, we noted that the RTKL does not define “personal identification information,” but that we have previously defined the term as follows:

[I]nformation that is unique to a particular individual or which may be used to identify or isolate an individual from the general population. It is information which is specific to the individual, not shared in common with others; that which makes the individual distinguishable from another.

Id. (alteration in original) (quoting *Delaware Cnty. v. Schaefer ex rel. Philadelphia Inquirer*, 45 A.3d 1149, 1153 (Pa. Cmwlth. 2012)). Relying upon *City of Philadelphia v. Philadelphia Inquirer*, 52 A.3d 456 (Pa. Cmwlth. 2012), wherein we explained that “[p]ersonal . . . does not mean that it has to involve a public official’s personal affairs but also covers those documents necessary for that official that are personal to that official in carrying out his public responsibilities,” this Court reasoned that while the secondary e-mail address in question was used to conduct agency business, it was still personal to the Lieutenant Governor. *Id.* (internal quotation marks omitted) (quoting *City of Phila.*, 52 A.2d at 461). Thus, we concluded that the e-mail address was exempt from disclosure.

In *Raffle*, a requester submitted a RTKL request to the Pennsylvania Office of the Governor (Governor’s Office), seeking the government-issued telephone numbers of 56 Governor’s Office employees, among other information. *Raffle*, 65 A.3d at 1107. The Governor’s Office provided the requester “with land-line telephone numbers for each of those employees, but denied the request to the extent that it sought additional cellular and/or personal telephone numbers.”

Id. at 1108. The requester appealed to OOR with regard to the information that was refused for 39 of the Governor’s Office employees. *Id.* Subsequently, OOR ordered the disclosure of the requested telephone numbers. *Id.* at 1108-09.

On appeal to this Court, we held that the Governor’s Office was not required to disclose the “agency-issued cellular or personal telephone numbers of [the] 39 . . . employees.” *Id.* at 1111. In so doing, we relied upon *Mohn* and noted that

the fact that government business may be discussed over an employee’s government-issued personal cellular telephone does not make that telephone any less ‘personal’ within the meaning of the RTKL. Based on that reasoning and the absence of any indication in the statute that the personal identification information exception does not apply to government-issued personal or cellular telephone numbers, those numbers are not subject to disclosure.

Id.

Here, we conclude that the information Clofine requests on appeal is protected from disclosure under Section 708(b)(6)(i)(A) of the RTKL. Although there are facts in this case that, to a degree, distinguish it from *Mohn* and *Raffle*, such distinctions do not warrant a different result given the binding precedent of those en banc decisions. Specifically, Ms. Miller’s agency-issued e-mail address and the requested agency-issued telephone numbers meet the definition of “personal identification information” as previously interpreted by this Court, in that they constitute “information that is unique to a particular individual,” “information which may be used to identify or isolate an individual from the general population,” or “information which is specific to the individual, not shared in common with others; that which makes the individual distinguishable from another.” Moreover, regardless of whether the agency-issued e-mail address or

phone numbers in question are used to conduct agency business, they are still personal to each Adams County Assistance Office income maintenance caseworker. OOR, therefore, erred in concluding that such information does not fall within the personal identification information exemption set forth in Section 708(b)(6)(i)(A) of the RTKL.⁶

Accordingly, we reverse the final determination of OOR.

P. KEVIN BROBSON, Judge

⁶ We decline the invitation of Clofine and OOR, which filed an amicus brief in this matter, to overturn or otherwise “refine” this Court’s en banc decisions in *Mohn* and *Raffle*.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Department of Public Welfare,	:	
Petitioner	:	
	:	
v.	:	No. 706 C.D. 2013
	:	
Robert Clofine,	:	
Respondent	:	

ORDER

AND NOW, this 20th day of February, 2014, the final determination of the Office of Open Records, issued March 27, 2013, is hereby REVERSED.

P. KEVIN BROBSON, Judge