

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Fort Cherry School District,	:	
Appellant	:	
	:	
v.	:	No. 842 C.D. 2011
	:	Argued: November 14, 2011
Robin Acton and/or Trib Total	:	
Media and Pennsylvania Office of	:	
Open Records	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER<sup>1</sup> FILED: February 8, 2012**

Fort Cherry School District (School District) appeals from the order of the Court of Common Pleas of Washington County (trial court) affirming the final determination of the Office of Open Records (OOR), which directed the School District to produce certain requested records in an electronic format. We affirm.

Robin Acton of Trib Total Media, Inc. (Requester) filed a request with the School District pursuant to the Right to Know Law (RTKL),<sup>2</sup> seeking

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<sup>1</sup> This case was assigned to the opinion writer on or before January 6, 2012, when President Judge Leadbetter completed her term as President Judge.

<sup>2</sup> Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101 - 67.3104.

payroll/salary information and line item budgets for the 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2009-2010 school years in an electronic format.

Paul R. Sroka, who serves as the School District's open records officer, granted the request but determined that the documents had to be printed on approximately 20,000 sheets of paper in order to redact protected information,<sup>3</sup> and, therefore, the School District would require an advance fee of \$5,000. Requester appealed, challenging the fee and the assertion that the documents could not be provided in electronic form.

Although not required to do so, the School District permitted W. Scott Ardisson, an electronic discovery specialist hired by Requester, to examine the School District's computer systems to determine whether there was a way to redact the information within the database systems so that the information could be provided to Requester electronically. Ardisson opined that both MUNIS and Pentamation data<sup>4</sup> could be converted to "delimited text files," then imported into Excel, a program in which the redactions could be made by removing information in any data fields containing privileged information. After completing the redactions in Excel, the information could be converted to .pdf format and provided to Requester.

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<sup>3</sup> The information that must be redacted is extensive, including information protected by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, the Health Insurance Portability and Accountability Act (HIPPA), 42 USCS §§ 300gg *et seq.*, as well as employees' Social Security numbers, home addresses, bank account and bank routing numbers, and home address/date of birth information of minors. Requester does not challenge the need for redacting such information.

<sup>4</sup> Data for the 2005-2006 school year can no longer be manipulated electronically. Data for the 2006-2007 and 2007-2008 school years are maintained under the MUNIS/UNIX software system. Data for the 2008-2009 and 2009-2010 school years are maintained under the Pentamation software system.

The OOR appeals officer determined that the 2005-2006 school year records could not be provided electronically, but that records from the four remaining school years must be provided in the manner as described by Ardisson. After conducting an independent review, the trial court affirmed, finding that the School District could easily retrieve and export the necessary information to Excel, and that the process of exporting information to Excel was not “reformatting” within the meaning of the RTKL. The trial court held that

[T]he School District would only need to query the database and retrieve the electronic information that was requested and provide it in an electronic form. This can be accomplished in both the Pentamation and MUNIS systems. According to the uncontroverted report of Requester’s expert Mr. Ardisson, “it is a simple matter to run a query for the relevant information, and the results are available ,instantaneously.” This is the electronic equivalent of opening a file cabinet and retrieving specific folders. A query of the District’s electronic database and the subsequent redaction does not require a reformatting, conversion, or creation of any new data.... Nor does this Court find that providing the information electronically constitutes a “reformatting” or a “conversion.”

Trial Court Opinion at 11 - 12; Reproduced Record (R.R.) at 17a – 18a. This appeal followed.

This case illustrates the tension between § 705 of the RTKL, 65 P.S. § 67.705, which provides that an agency shall not be required to “compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record,” and § 706, 65 P.S. § 67.706, which mandates that if, “information which is not subject to access is an integral

part of [a public record] ... and cannot be separated, the agency shall redact from the record the information which is not subject to access,” but grant access to the remainder. Our court has not had occasion to attempt to define the parameters of the terms “compile, format, maintain or organize,” but if they are read in their broadest senses, § 705 would conflict with § 706, as redaction necessarily implicates a change in the records. Therefore, it would appear that reconciling the need to redact electronically stored information with the proviso that it need not be “recompiled, reformatted or reorganized” requires a highly fact-sensitive balancing in each case.

Here, such an analysis was undertaken by the Honorable John E. DiSalle of the Court of Common Pleas of Washington County, filed July 26, 2011, in *Fort Cherry School District v. Acton*, No. 2010-719, and we find no basis to overturn his decision.<sup>5</sup>

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<sup>5</sup> The School District argues that the trial court’s decision violates various provisions of the RTKL because it requires the School District to “reverse engineer” its electronic data and convert it into several formats which the School District does not otherwise maintain. According to the School District, providing the information electronically is not required by the RTKL, would be unduly burdensome, and does not ensure that all protected information would be properly redacted. The School District maintains that, instead of searching for fields in Excel that contain protected information, each record must be viewed as a whole to ensure that all protected information is properly removed. The Pennsylvania School Boards Association has also submitted an amicus brief, stressing the importance of keeping protected information from being revealed and arguing that an agency should not be required to make its redactions electronically, but rather should be able to “exercise its discretion to redact the records so as to satisfy itself that protected material has been completely removed.” Pennsylvania School Boards Association’s brief at 3. Unfortunately, these arguments must fail in light of Judge DiSalle’s factual findings, which accepted the contrary opinions of Requester’s expert. In addition, the Department of General Services and the Office of General Counsel submitted an amicus brief arguing that “allowing the requester to dictate the manner in which redactions will be performed or requiring agencies to perform redactions electronically would result in significant cost and hardship to responding agencies.” Office of General Counsel’s brief at 1. This may well be true, but the RTKL makes no provision to compensate agencies for the labor involved in redaction. **(Footnote continued on next page...)**

Accordingly, we affirm the trial court's order on the basis of that opinion.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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**(continued...)**

Indeed, it became clear during oral argument that a significant element underlying the present dispute was that the School District could charge for producing paper copies, thereby mitigating its redaction costs, while it could charge nothing for the electronic redaction. This would appear to be a flaw in the RTKL, but one which must be remedied by the General Assembly, not this Court.

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**ORDER**

AND NOW, this 8th day of February, 2012, the order of the Court of Common Pleas of Washington County is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge