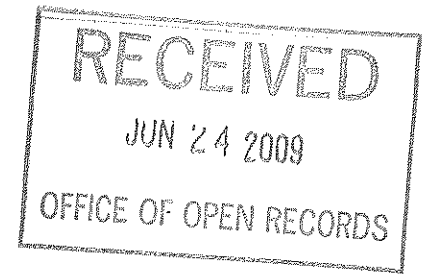


4762 Ridge Road
Westover, PA 16692
June 19, 2009



Terry Mutchler, Executive Director
Office of the Open Records
400 North Street
Harrisburg, PA 17120

RE: Advisory Opinion

Executive Director Mutchler,

Please provide an advisory opinion regarding records of disbursement of funds relating to a local school board. I am asking for this opinion to determine if access to information requested is within the scope of the law, and therefore required to be released to the public by the local board.

If a school board refuses to release information relevant to the financial details of a contract settlement for an employee facing disciplinary action, is this a violation? Specifically, the board met in closed session to determine its course of action and ultimately reached a financial settlement with the individual in exchange for a resignation. Requests for information regarding the settlement have been denied by the board as being "personnel-related", and therefore not subject, in their opinion, to review under the open records law.

I believe my question is relevant to open records provisions in that public money was used to pay the settlement and this amount should be, in my opinion, open for inspection and debate as to the fiduciary responsibilities of the board and school administration, and to help determine if they have performed, in this instance, in the best interest of the local taxpayers. As public entities, school boards should be fully accountable to its local taxpayers and the citizens of this State and Nation for that matter, in the prudent use of taxpayer dollars. Without this information being released, this board may feel emboldened in future actions that will result in further erosion of public confidence and the intent of the open records law. Because they have not been pressed on this issue, another potential settlement on a different and unrelated matter that could result in another settlement may be forthcoming.


While individual rights must be protected to prevent negligent inquires into private matters, public employees and local institutions must also serve the public interest. If a

public employee's salary and contract are subject to public review, why would this not be true for someone who was still a public employee prior to the settlement of the dispute? Again, the ability to spend public dollars without disclosing the amount or purpose as this board has done, removes full accountability from the table.

There is no pending litigation in this matter and there has been no other request, to the best of my knowledge, from any other local taxpayer or district constituent prior to the date of this letter.

Your assistance in providing a prompt opinion on this matter is appreciated. You can contact me at the address below. Thank you for your time and advisory.

Sincerely,

A handwritten signature in black ink that reads "Robert L. Dospoy". The signature is written in a cursive style with a large, stylized initial 'R'.

Robert L. Dospoy
4762 Ridge Road
Westover, PA 16692



November 2, 2009

Robert L. Dospoy
4762 Ridge Road
Westover, PA 16692

Re: Request for Advisory Opinion

Dear Mr. Dospoy:

Thank you for writing to the Office of Open Records ("OOR") with your request for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.* ("RTKL"). I have attached a copy of your letter for your convenience.

You asked whether a settlement contract with an employee facing disciplinary action is a public record. I have attached a copy of your letter for your convenience.

Please be advised that the OOR has decided not to grant this request for an Advisory Opinion, as the answer is clear under the RTKL. The exemption allowing an agency to withhold records relating to a noncriminal investigation expressly provides that executed settlement agreements are public records that cannot be withheld, unless a court determines that they are confidential. 65 P.S. §67.708(b)(17)(vi)(A). This office has affirmed this "exception to the exemption" in *Goodman v. Pennsylvania Securities Commission*, OOR Dkt. AP 2009-0487. You can find it on the OOR website at:

http://openrecords.state.pa.us/portal/server.pt/community/open_records/4434/final_determinations/481690.

Even if a settlement agreement somehow would be determined not to relate to a noncriminal investigation, it is otherwise a financial record, which is considered the most public of all records. The RTKL defines the term "record" as "Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of an agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document."

The term "financial record" is defined in the RTKL as: "Any of the following: (1) Any account, voucher or contract dealing with: (i) the receipt or disbursement of funds by an agency; or (ii) an agency's acquisition, use or

disposal of services, supplies, materials, equipment or property; (iii) the salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee; (iv) a financial audit report. The term does not include work papers underlying an audit.”

It is important to note that most of the statutory exceptions to the law expressly do not apply to financial records except in limited circumstances (personal security, homeland security, public safety, medical information, personal information, criminal investigation records and non-criminal investigation records.). 65 P.S. § 67.708(c). This means that if the records fit within the definition of financial records, they can only be withheld if one of the eight identified exemptions apply.

Thank you for your inquiry. We will reflect this response on the OOR website.

Respectfully,


Terry Mutchler
Executive Director