

FAX TRANSMITTAL SHEET

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Re:	WB Area School Dist - v. Kimberly Borland + City of WB
Date:	12-12-16
No. of Pages (Including this Page)	25

Name:	Fax Number:
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Kim Borland	822-9894

COMMENTS:

Original to Follow
Opinion + Order

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WILKES-BARRE AREA SCHOOL
DISTRICT,

Petitioner

v.

KIMBERLY D. BORLAND,

Respondent

In the Court of Common Pleas
of Luzerne County

CIVIL ACTION - LAW

No. 2016-7654

WILKES-BARRE AREA SCHOOL
DISTRICT,

Petitioner

v.

KIMBERLY D. BORLAND,

Respondent

In the Court of Common Pleas
of Luzerne County

CIVIL ACTION - LAW

No. 2016-8668

WILKES-BARRE AREA SCHOOL
DISTRICT,

Petitioner

v.

KIMBERLY D. BORLAND,
Respondent

And
CITY OF WILKES-BARRE,
Respondent

In the Court of Common Pleas
of Luzerne County

CIVIL ACTION - LAW

No. 2016-8669

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LUZERNE COUNTY

OPINION

Background

This matter involves the appeal of Petitioner, Wilkes-Barre Area School District, ("WBASD") to the Final Determinations of the Pennsylvania

Office of Open Records (the "OOR") requiring that it deliver responsive documents to Respondent, Kimberly D. Borland ("Borland").

WBASD Appeal No. 2016-7654 (OOR Docket AP-2016-0120)

On December 2, 2015, Borland submitted a request to WBASD, seeking, in pertinent part, the following:

1. The plans and specifications for the Mackin School project, currently being completed.
2. The progress plans and specifications for the construction of the proposed consolidated high school on North Washington Street between Union and Market Streets in Wilkes-Barre. (Reproduced Record, 1.)

On December 9, 2015, WBASD invoked its right to a thirty (30) day extension of time to respond to the request. See 65 P.S. § 67.902 (2009). By letter dated January 8, 2016, WBASD denied both requests because the plans and specifications sought are exempt from disclosure as records that would threaten the personal security of an individual, as well as the security of a building. (Reproduced Record, 1.); see § 67.708(b)(1)(ii) and (b)(3)(iii). Related to the request for progress plans and specifications for the construction of the new, consolidated high school, WBASD further denied the request because such records are pre-decisional deliberations and confidential proprietary information. (Id.); see § 67.708(b)(10)(i)(A) and (b)(11). WBASD provided either responsive documents or explanations for each of the other items included in the initial request. (Id.)

On January 29, 2016, Borland filed an appeal with the OOR, challenging the denial and stating grounds for disclosure. (Reproduced Record, 1.) The OOR issued an Official Notice of Appeal, inviting both parties to supplement the record and directing WBASD to notify any third parties of their ability to participate in the appeal. (Reproduced Record, 2.); see § 67.1101(c). On February 29, 2016, the WBASD submitted a position statement to the OOR, reiterating its reasons for the original denial. (Reproduced Record, 4.) The position statement included the sworn affidavits of Kyle Kinsman, architect for the design team, ("Kinsman") and Brian Lavan, Director of Police Operations and Security for WBASD, ("Lavan") who attested that the release of school building plans and specifications create a safety risk, including increased vulnerability to mass attack/destruction. (Id.) WBASD also submitted the affidavit of Patrick Endler, architect on the design/consulting team, ("Endler") who attested that the plans and specifications are proprietary. (Id.)

Also on February 29, 2016, Borland submitted a position statement arguing that the District did not meet its burden of establishing that the requested records are exempt from disclosure. (Reproduced Record, 5.) Further, Borland sought additional time to supplement his response and requested a hearing. (Id.) On April 28, 2016, the OOR re-opened the record, seeking additional evidence from WBASD regarding the specific

records contained in the plans and specifications. (Reproduced Record, 9.) On May 19, 2016, WBASD submitted the supplemental sworn affidavit of Kinsman, who attested to the number of drawings for the schools. (Reproduced Record, 10.) On June 21, 2016, the OOR issued its Final Determination, granting Borland's appeal and requiring that WBASD provide all responsive records within thirty (30) days. (Reproduced Record, 11.) WBASD filed its Notice of Appeal to this Court on July 21, 2016.

WBASD Appeal No. 2016-8669 (OOR Docket AP-2016-0516)

On January 12, 2016, Borland submitted a request to WBASD that was later amended on January 13, 2016, seeking, in relevant part, "the progress and/or floor plans for the construction of the proposed consolidated high school on North Washington Street between Union and Market Streets in Wilkes-Barre." (Reproduced Record, 1.) On January 21, 2016, WBASD invoked its right to a thirty (30) day extension of time to respond to the request. See § 67.902.

By letter dated February 19, 2016, WBASD denied both requests because the plans and specifications sought are exempt from disclosure as records that would threaten the personal security of an individual, as well as the security of a building. (Reproduced Record, 1.); see § 67.708(b)(1)(ii) and (3)(iii). WBASD further denied the request because such records are pre-decisional deliberations and confidential proprietary information. (Id.); see § 67.708(b)(10)(i)(A) and (b)(11). WBASD provided

either responsive documents or explanations for each of the other items included in the initial request. (Id.)

On March 11, 2016, Borland filed an appeal with the OOR, challenging the denial and stating grounds for disclosure. (Reproduced Record, 1.) The OOR issued an Official Notice of Appeal, inviting both parties to supplement the record and directing WBASD to notify any third parties of their ability to participate in the appeal. (Reproduced Record, 2.); see § 67.1101(c). Due to a similar pending appeal involving the same parties (OOR Docket AP 2016-0120), the OOR extended the submission deadline in this matter, and Borland granted the OOR an extension of time to issue this Final Determination. (Reproduced Record, 3 and 4.); see § 67.1101(b)(1).

On May 19, 2016, WBASD submitted the same position statement described previously, relative to Appeal No. 2016-7654 (OOR Docket AP-2016-0120), and Kinsman's supplemental affidavit. (Reproduced Record, 10 and 11.) On July 19, 2016, the OOR issued its Final Determination, granting Borland's appeal and requiring that WBASD provide all responsive records within thirty (30) days. (Reproduced Record, 12.) WBASD filed its Notice of Appeal to this Court on August 18, 2016.

WBASD Appeal No. 2016-8668 (OOR Docket AP -2016-0497)

On February 8, 2016, Borland submitted a request to the City of Wilkes-Barre (the "City"), seeking:

All applications, with all attachments, for permits by Panzitta Enterprises, and/or subcontractors of Panzitta Enterprises, and by or on behalf of the Wilkes-Barre Area School District for or related to any work performed at or about the Mackin School, 13 Hillard Street, Wilkes-Barre, for all periods from January 1, 2014 through the present, and all permits issued. (Reproduced Record, 1.)

On February 16, 2016, the City purportedly granted the request by providing two pages of responsive records. (Id.)

On March 8, 2016, Borland filed an appeal with the OOR, asserting that not all of the responsive records were provided. (Id.) The OOR issued an Official Notice of Appeal, inviting both parties to supplement the record and directing the City to notify any third parties of their ability to participate in the appeal. (Reproduced Record, 2.); see § 67.1101(c). By letter dated March 10, 2016, the City notified WBASD of the appeal to the OOR. (Reproduced Record, 3.) On March 18, 2016, WBASD requested to participate in the OOR appeal because the records Borland seeks from the City are a sub-set of the documents at issue in the pending OOR . Docket No. AP 2016-0120. (Reproduced Record, 4.) Accordingly, WBASD submitted the same position statement described above relative to Appeal No. 2016-7654 (OOR Docket AP-2016-0120) and Kinsman's supplemental affidavit. (Reproduced Record, 4 and 13.)

On March 18, 2016, the City submitted a position statement and provided additional responsive records regarding the requested City permits and contracts. (Reproduced Record, 5.) In its position statement,

the City also stated that it was not providing the requested building plans based upon the WBASD's objection to the release of the records. (*Id.*) Further, the City attached to its position statement the affidavit of Attilio Frati, the City's Operations Director, swearing that the City has in its possession no other documents responsive to the request.

On March 23, 2016, the OOR accepted the District as a direct interest participant in the appeal. (Reproduced Record, 7.) Due to a similar pending appeal involving the same parties, at OOR Docket AP 2016-0120, the OOR extended the submission deadline in this matter, and Borland granted the OOR an extension of time to issue its Final Determination. (Reproduced Record, 7 and 8.); see § 67.1101(b)(1). On July 19, 2016, the OOR issued its Final Determination, granting Borland's appeal in part, denying it in part, and dismissing it as moot in part. (Reproduced Record, 14.) Relevant to this appeal, the OOR required the City to provide responsive records, including those building plans and specifications objected to by WBASD, to Borland within thirty (30) days. (*Id.*) WBASD filed its Notice of Appeal to this Court on August 18, 2016.

The WBASD Affidavits

The following are relevant excerpts from the affidavits provided by WBASD in support of its argument that the documents requested in the above-captioned appeals are exempt from production.

Kinsman Affidavit

7. The public release of school building plans and specifications submitted in the course of the project design and PlanCon process creates an immediate and direct safety/security risk to the students, staff and facilities of WBASD or any other school entity whose documents might be released publicly.

8. When school buildings are designed, the building plans and specifications often consist of thousands of pages of material and contain numerous critical features: (1) location and dimensions of rooms; (2) location of entrances and exits; (3) access points to roof and subfloor area; (4) building site details; and (5) column support and load-bearing wall supports.

9. In addition, the plans and specifications also include important security details such as: (1) exact type of, and location of, all structural systems; (2) description of the type and location of mechanical systems; (3) description of the type and location of electrical systems; (4) description of the type and location of plumbing and wastewater systems; (5) description of the type and location of safety and security systems, including locations and operation of security cameras, and fire detection and suppression systems; and (6) description of the kind of data and communication systems and the location of the hardware and connectivity of those systems; (7) any areas of shatterproof glass, whether exterior or interior; (8) the location of drop-down security gates and securable zones throughout the building in the event of a security situation. These systems are critical to maintaining or protecting the health and safety of the individuals within the school facility. These systems provide the life-maintaining water, air and heat for occupants of buildings. The plans and specifications also identify the storage of flammables and other potential explosives in the

building or on the site; and describe the methods of sanitary sewage disposal.

10. The threat of domestic violence, international terrorism, and other types of violence against Pennsylvania school buildings that daily house millions of occupants is very real. An individual or terrorist organization with access to the information in the Mackin Project or High School Project Plans and Specifications could use this information to place explosive charges in order to maximize destruction and loss of life.

11. Each of the occupants of public school facilities are potential targets of domestic violence, domestic and international terrorism and other types of violence that have become national trends.

12. Knowledge of the school facility itself greatly assists the perpetrators of school violence in carrying out their horrific plans that always seem to catch the local community off-guard.

13. To assist in the prevention of further tragic incidents, all public access to floor and site plans for state-funded school construction projects should be strictly prohibited.

14. The planning and construction documents that are necessary to design and build Pennsylvania's public schools and administrative facilities provide extremely detailed information about the project buildings and their sites.

15. The school building plans and specifications for the Mackin project and those being developed for the new high school project include not only information regarding the location of rooms, entrances and exits, access to roof and subfloor areas, possible escape routes, etc., but also includes important security information such as the exact type of, and

location of, all structural, mechanical, electrical, plumbing, data and communication systems.

16. Even the specific means of supplying life-maintaining water, air, and heat, as well as methods of sanitary sewage disposal systems, storage of flammables and other potential explosives, are also documented in the smallest and largest scale, for all on-and off-site systems.

17. These documents also indicate the critical absence of important system protections. This alone could reveal a facilities "Achilles heel" during an attack. Clearly, information this detailed does not need to be accessed by the building inhabitants or those who may harbor ill-will against them.

18. As a secondary matter, requiring WBASD to copy these planning and construction documents could create serious legal issues regarding the ownership of the intellectual property that these documents represent. When the creator of the documents, such as the Architect, Engineer, Hazardous Materials Consultant, etc., retains ownership of the copyright of the intellectual property, which is the case here, it could be illegal for WBASD to copy the documents and distribute them to others.

19. Additionally, the plans for the new high school project remain in the earliest development stages and are not even in a form to be submitted to PDE as part of the PlanCon process and this work in progress remains the intellectual property of the Design Team and is not property of the WBASD.

Lavan Affidavit

4. As explained more fully below, the public release of school building plans and specification creates an immediate and direct safety and security risk of the students, staff, and facilities of

any school entity whose documents might be released publicly.

5. Any action that establishes precedent for the release of the information contained in school building plans and specifications affect the future safety and security of students, staff, and visitors of the WBASD.

6. Public access to school building plans may represent the single greatest asset to one who would seek to inflict the greatest amount of harm to the largest number of students and staff.

7. School plan documents containing blueprints or drawings can yield insights into the structural integrity of the building as well as other structures used in escape or evacuation, such as stairways and elevators.

8. Illicit uses for plans of transport lines for flammable or hazardous liquids and noxious or explosive gases – otherwise part of a safe heating and cooling system, are also obvious risks to the safety of students, staff and building structures.

9. Public access to escape and evacuation routes open the possibility of secondary attacks.

10. Knowledge of HVAC routing and ducting can be used to facilitate entry of lethal gases as common as auto exhaust.

11. Information that water and sewage diagrams provide can render the fresh water systems vulnerable to cross flow from sewage as well as waterborne chemical or biological contamination.

12. Often building and security coverage diagrams reveal areas where surveillance is difficult.

a. Those areas may be used for drug-selling, fighting, sexual misconduct or other illicit activities.

b. They may also allow individuals to secrete themselves until such time as they may have unencumbered access to the school's valuables and simply leave through a one-way exit door – out.

c. Hiding places for weapons contraband may also be identified through the floor plans and diagrams.

14. One critical area of vulnerability is the school's computer network. Access to terminals and lines could put an entire school district system at risk as well as parents, teachers and administrators whose personal information is stored there.

15. Our schools are already considered targets by some. There are numerous examples of school attacks that include Columbine and Sandy Hook where significant loss of life occurred. Persons intending to do harm to large numbers of people more readily plan and carry out attacks if they have access to school building plans and specifications.

Endler Affidavit

5. It is our position that the work we have performed for the District on Kistler and the High School Project at this time is preliminary, our work-product and proprietary and the intellectual property of Barton-Lawson...

7. Because we retain the ownership of our work product and these documents, we restrict the use as a result of the ever-changing development of the design and site configuration. It would be premature for our plans to be used for anything but ongoing

development of the building design by the District. This applies to both the High School and Kistler projects.

8. As stated earlier, the District is not the owner of these planning and construction documents, and the ownership of the intellectual property that these documents represent resides in the Design Team. As architects and engineers, we retain ownership of the copyright of this intellectual property and it should not be disturbed [by] anyone except those for which it is specifically intended.

This Court held a consolidated argument in the above-captioned matters on December 2, 2016.

Standard of Review

The standard of review for an appeal from a determination of an OOR appeals officer is *de novo* and the scope of review is broad or plenary. Bowling v. Office of Open Records, 621 Pa. 133, 173, 75 A.3d 453, 477 (Pa. 2013).

Law and Discussion

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, 1042 (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. Office of Open Records, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), aff'd 75 A.3d 453 (Pa. 2013).

WBASD and the City are local agencies subject to the RTKL that are required to disclose public records. 65 P.S. §§ 67.102 and 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 § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. See § 67.708(b). Section 708(a) states, "(1) [t]he 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." § 67.708(a). A preponderance of the evidence is "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 Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd., 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). While a statement made under the penalty of perjury may be competent evidence to sustain an agency's burden of proof under the RTKL, conclusory statements are not sufficient to meet such burden. Office of the Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) ("...a generic determination or conclusory statements are not sufficient to justify the exemption of public records"); see Sherry v. Radnor Twp. Sch.

Dist., 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); Moore v. Office of Open Records, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

WBASD has failed to meet its burden of proof that the requested documents are exempt under Section 708(b)(1)(ii) of the RTKL (Personal Security)

Pursuant to Section 708(b)(ii) of the RTKL, "...the following are exempt from access by a requester under this act...[a] record, the disclosure of which...would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual." Id. To establish that this exemption applies, an agency must establish the existence of "... (1) a 'reasonable likelihood' of (2) a 'substantial and demonstrable risk' to a person's security." Del. County v. Schaefer, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012). Further, the OOR, noting a significant change from the prior RTKL, has held that "[b]elief alone without more, even if reasonable, does not meet this heightened standard." Zachariah v. Pa. Dep't of Corr., OOR Dkt. AP 2009-0481, 2009 PA O.O.R.D. LEXIS 216; see also Lutz v. City of Philadelphia, 6 A.3d 669, 676 (Pa. Commw. Ct. 2010) (holding that "[m]ore than mere conjecture is needed" to establish that this exemption applies). To invoke the exception, the prior version of the RTKL required a showing by the agency of only a potential impairment to personal security. Zachariah, OOR Dkt. AP 2009-0481.

WBASD has failed to demonstrate that the disclosure would create "... (1) a 'reasonable likelihood' of (2) a 'substantial and demonstrable risk' to a person's security." Schaefer, 45 A.3d 1149, 1156. In support of its argument that the exception applies, WBASD cites as authority the OOR decision in Knauss v. Unionville-Chadds Ford School District. However, it is noteworthy that a decision of the OOR is non-precedential and non-binding on this Court. More importantly, the Commonwealth Court of Pennsylvania has stated, "[g]eneral, broad-sweeping conclusions will not be a substitute for actual evidence of the likelihood of a demonstrable risk to the individuals involved posed by a particular disclosure." Schaefer, 45 A.3d 1149, 1158. In Governor's Office of Administration v. Purcell, the Commonwealth Court of Pennsylvania held the personal security exception to the RTKL protected the date of birth of public employees, based on the record created by the government. Governor's Office of Administration v. Purcell, 35 A.3d 811 (Commw. Ct. 2012). The Purcell Court held that the government met its burden to invoke the exemption where it provided documents from various experts explaining in detail the staggering increases in instances of identity theft; the fact that birth dates are tools criminals use to steal a person's identity; that many federal statutes and guidelines acknowledge birth dates as personally identifiable information, and that the disclosure of such information would create a

significant and predictable increase in certain forms of phishing attacks. Id. at 813-814 (emphasis added).

Unlike the government in Purcell, WBASD failed to meet its burden for invoking the personal security exemption because it demonstrated only a possible, rather than reasonably likely, risk of harm to persons within the school. In Purcell, the government's record established a link between the release of the information requested and a predictable increase in harm. In the current matter, WBASD has made no such connection to establish any predictable increase in a recognized and substantial harm. While WBASD provided detailed information about the plans and how such plans could possibly be used for criminal purposes, it has failed to show that the disclosure would result in a predictable increase in, or the creation of, a demonstrable harm. WBASD simply cannot establish that any such harm is *reasonably likely* to occur.

To demonstrate this lack of evidence from WBASD, one should consider that the vast majority of the information in a construction plan is readily ascertainable upon visual inspection of the constructed building. WBASD operates many existing schools that thousands of people have observed from both the outside and in for over one hundred years; still, it cannot provide any examples of the harms it identifies in its affidavits as having ever occurred or having been close to occurring. There were no reports provided of any individuals placing or attempting to place

biological agents in the ductwork of any of the WBASD schools. WBASD presented no information about anyone accessing its computer system from an onsite or offsite location. Additionally, even if WBASD was unable to find any such examples in its own schools, it was free to explore attempts or instances of similar harms in other schools in Pennsylvania or across the country, but no such information has been offered. Further, WBASD has provided no statistical studies, comparisons, or analysis, that is more than anecdotal, to demonstrate the likelihood of increased harm based upon the release of the requested information.

In relation to the crimes identified in the Lavan affidavit, such as drug dealing/usage, theft, or assault, this Court acknowledges that WBASD could likely cite numerous instances of such activities within its schools over the years. However, WBASD cannot provide any evidence that the disclosure of the requested documents would result in any predictable increase in the crimes mentioned. For example, a review of this Court's criminal docket would reveal that drug crimes, thefts, and assaults occur often in buildings throughout Luzerne County, but WBASD has provided no evidence that these crimes are effectuated through the use of construction plans. Indeed, reason would dictate that such crimes within this Commonwealth and even across the country occur in the absence of detailed knowledge of a building's infrastructure. For the reasons explained above, WBASD has failed to satisfy its burden of proof

to invoke an exemption to disclosure under Section 708(b)(1)(i) of the RTKL.

WBASD has failed to meet its burden of proof that the requested documents are exempt from disclosure under Section 708(b)(3)(iii) of the RTKL (Building Security)

Pursuant to Section 708(b)(3)(iii) of the RTKL, a record will be exempt from disclosure if its disclosure "...creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include ... building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems." § 67.708(b)(3)(iii). For this exemption to apply, "the disclosure of" the records — rather than the records themselves — must create a reasonable likelihood of endangerment to the safety or physical security of certain structures or other entities, including buildings and infrastructure. See § 67.708(b)(3).

Again, WBASD relies on its insufficient affidavits to argue that the construction plans are exempt from disclosure because such disclosure would create a reasonable likelihood of endangering the safety or physical security of the building. This Court finds that, for the reasons set forth at length above, WBASD has failed to meet its burden of

demonstrating a *reasonable likelihood* of endangering the safety or physical security of the building. While the WBASD affidavits describe in detail how the disclosure of the construction plans could endanger the safety or physical security of the building, it failed to provide evidence that such potential danger is reasonably likely. See Office of the Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) ("...a generic determination or conclusory statements are not sufficient to justify the exemption of public records").

WBASD has failed to meet its burden of proof that the requested documents are exempt from disclosure under Section 708(b)(11) of the RTKL (Confidential Information)

Section 708(b)(11) of the RTKL exempts from disclosure "[a] record that constitutes or reveals a trade secret or confidential proprietary information." § 67.708(b)(11). The RTKL defines "confidential proprietary information" as "[c]ommercial or financial information received by an agency: (1) which is privileged or confidential; and (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information." § 67.102. An agency must establish that both elements of this two-part test are met for the exemption to apply. See Sansoni v. Pa. Hous. Fin. Agency, OOR Dkt. AP 2010-0405, 2010 PA O.O.R.D. LEXIS 375.

Even assuming, *arguendo*, that the documents requested are privileged or confidential, WBASD has completely failed to prove that the

disclosure of the information would cause substantial harm to the competitive position of the person who submitted the information. The affidavits of both Kinsman and Endler merely conclude that the construction plans are the proprietary information of the design team. See Scolforo, 65 A.3d 1095. The record is devoid of any information whatsoever regarding the competitive positions of the members of the design team. Accordingly, WBASD has failed to meet its burden of proof with respect to the RTKL's confidential information exemption.

Conclusion

This Court's review of the facts of the instant matter, as applied to the Pennsylvania Right to Know Law (the "RTKL"), reveals that the statute requires WBASD to deliver responsive documents to the RTKL requests at issue. WBASD failed to meet its burden of proof that any of the statutory exemptions from public disclosure apply, thus, disclosure is necessary to fulfill the intent of the RTKL and the legislature that enacted it. In the instant matter, as established by the legislature and courts of this Commonwealth, the public has a right of access to the documents requested "...to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." Bowling v. Office of Open Records, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), aff'd 75 A.3d 453 (Pa. 2013). Accordingly, WBASD and the City shall provide to Borland,

within twenty-five (25) days, all responsive documents within their possession.¹

(END OF OPINION)

Order entered separately as page 23.

¹ This opinion does not encompass any possible redaction of the documents by WBASD, as the issue was not argued before this Court.

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2016 DEC 12 PM 3:26

CLERK OF COURT
LUZERNE COUNTY

ORDER

AND NOW, this 12th day of December, 2016, it is hereby

Ordered and Decreed that the Final Determinations of the Office of Open
Records in the above-captioned matters are AFFIRMED. The Wilkes-Barre Area
School District and the City of Wilkes-Barre shall deliver to Kimberly D. Borland,

Esq. all responsive documents within twenty-five (25) days of the date of this Order.

The Clerk of Judicial Records/ Prothonotary is ORDERED AND DIRECTED to mail a copy of this Order and attached Opinion to the parties/counsel of record pursuant to Pa. R.C.P. No. 236.

BY THE COURT:



LESA S. GELB, J.

Copies to:

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