

# Supreme Court of Pennsylvania Holds That Individuals Have A Constitutional Right To Privacy In Their Home Addresses And Other Private Information

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*Pennsylvania State Education Association v. Commonwealth*, 2016 Pa. LEXIS 2337, 2016 WL 6087684, (Pa. Oct. 18, 2016) (“PSEA”). The Supreme Court of Pennsylvania recently held that individuals have a constitutional right to privacy in their home addresses under Article 1, Section 1 of the Pennsylvania Constitution and that individuals have a right to “informational privacy” which may not be violated unless this right is outweighed by a public interest favoring disclosure.

## SUMMARY AND FACTUAL BACKGROUND

On July 23, 2009, after receiving numerous Right to Know Law (“RTKL”) requests for the names and addresses of public school employees, the Pennsylvania State Education Association and several member public school employees sought preliminary and permanent injunctive relief to prevent the release of home addresses of public school employees, and a declaration that the home addresses of public school employees are exempt from public access. On July 28, 2009, the Commonwealth Court entered an order granting PSEA’s request for a preliminary injunction prohibiting the disclosure of the home addresses of its members.

The case progressed through the court system for several years. During this time, the preliminary injunction remained in place. On February 17, 2015, the Commonwealth Court held that neither the Pennsylvania Constitution nor the RTKL protects the home addresses of public school employees from disclosure in response to a RTKL request.

On appeal, the Pennsylvania Supreme Court (“Court”) reversed, holding that the right to informational privacy is guaranteed by Article 1, Section 1 of the Pennsylvania Constitution, and may not be violated unless outweighed by a public interest favoring disclosure.

## DISCUSSION

The right to privacy is embodied in multiple sections of the Pennsylvania Constitution. It is most frequently discussed in the context of protection against unreasonable searches and seizures under Article 1, Section 8, which is entitled “Security from searches and seizures.”

To receive protection under this section, a person must (1) establish a subjective expectation of privacy and (2) demonstrate that the expectation is one that society is prepared to recognize as reasonable and legitimate.” In *Commonwealth v. Duncan*, 572 Pa. 438, 817 A.2d 455 (Pa. 2003), the Court indicated that, under Article 1, Section 8, a criminal defendant’s name and address were entitled to no constitutional protection, since “in this day and age where people routinely disclose their names and addresses to all manner of public and private entities,” and are thus readily available to the public, there can be no reasonable expectation of privacy in that information. Relying on this language, the Commonwealth Court held that, in the RTKL context, there is no right to privacy in one’s home address.

However, in *PSEA*, the Court held that in identifying rights to informational privacy under the Pennsylvania Constitution, it applies the broader array of rights granted to citizens under Article 1, Section 1, which is entitled “Inherent rights of mankind:”

All men are born and equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Pa. Const. art. 1, § 1. The Court explained that Article 1, Section 1 of the Pennsylvania Constitution provides even “more rigorous and explicit protection for a person’s right to privacy” than does the United States Constitution. Under the prior Right to Know Act, 65 P.S. §§ 66.1-66.4 (repealed, effective January 1, 2009) (“RTKA”), the Court had on three occasions in *Sapp Roofing, Penn State and Bodack* ruled that certain types of information, including home addresses, implicated the right to privacy under Article 1, Section 1 of the Pennsylvania Constitution, and thus required a balancing to determine whether the right to privacy outweighs the public’s interest in dissemination. Based on this precedent, The Court concluded that the right to informational privacy is guaranteed by Article 1, Section 1 of the Pennsylvania Constitution, and may not be violated unless outweighed by a public interest favoring disclosure.

In the *PSEA* case, the Court concluded that the balancing test established in *Sapp Roofing, Penn State and Bodack* applied and found that the public school employees had strong privacy interests in protecting their home addresses from disclosure and that there was no public benefit or interest in disclosure of perhaps tens of thousands of addresses of public school employees. Moreover, the Court indicated that there was no public interest in procuring personal information about private citizens.

#### **PRACTICAL ADVICE**

It is clear that school districts must withhold the home addresses of an employee when responding to a request under the RTKL unless the public interest outweighs the privacy interest. In most cases, when responding to RTKL request for an employee’s address, the right to privacy will most likely prevail.

The interesting and undecided issue is what other rights are recognized under the undefined “right to informational privacy” guaranteed by Article I, Section 1 of the Constitution and when will the public’s interest in that information outweigh that privacy right. The Court indicated that there is little to no public interest when the RTKL is used to procure personal information about private citizens or to be a generator of mailing lists. The Court did not limit this portion of the opinion to employees, possibly applying this holding to RTKL requests beyond employee addresses, such as lists of tax liens and payments, for example.

Therefore, against this backdrop of uncertainty, school districts should work with their Solicitor before responding to a RTKL request that implicates the right to informational privacy protected by Article 1, Section 1 of the Pennsylvania Constitution, especially if the purpose of the request seeks information about private individuals and the purpose of the request is to generate a mailing list or some other commercial purpose.

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