

Statements of Financial Interest Cannot be Redacted (Section 306; Ethics Act)

Right to Know Law Blog May 20, 2019

In *Guydish v. Crestwood School District*, AP 2019-0643, the requester sought copies of the statements of financial interests filed by the school district's current school board members pursuant to the Public Official and Employee Ethics Act ("Ethics Act"), which requires local agency employees and officials to file statements of financial interests with their local agency by May 1 of each year. These statements of financial interests include a lot of information that appears to be exempt under certain RTKL exemptions, including addresses, employer information, real estate interests, creditor information, sources of income and financial interests in businesses for profit. Accordingly, the District partially granted the Request, but redacted the personal financial information of the school board members pursuant to 65 P.S. § 67.708(b)(6)(i)(A).

Section 708(b)(6)(i)(A) of the RTKL exempts from disclosure certain information appears on statements of financial interests:

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 identification number.

65 P.S. § 67.708(b)(6)(i)(A). Personal financial information includes an individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual's personal finances. 65 P.S. § 67.102.

The Ethics Act, on the other hand, states that the requested statements of financial interests must be made available for public inspection and copying:

All statements of financial interests filed pursuant to the provisions of this chapter shall be made available for public inspection and copying during regular office hours, and copying facilities shall be made available at a charge not to exceed actual cost.

65 Pa.C.S. § 1104(e).

On appeal, the OOR reversed the school district's denial and granted the Request. The OOR noted that the RTKL does not "supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree." 65 P.S. § 67.306. Likewise, the Ethics Act provides that "if the provisions of [the Ethics Act] conflict with any other statute ..., the provisions of [the Ethics Act] shall control." 65 Pa.C.S. § 1112. Accordingly, the OOR held that because the Ethics Act unconditionally establishes the public nature of Statements of Financial Interests filed under the Ethics Act, the RTKL's exemptions do not apply.

The OOR also explained that the redacted information was not protected by the constitutional right to privacy. In *Pa. State Educ. Ass'n v. Commonwealth*, 148 A.3d 142 (Pa. 2016), the Supreme Court of Pennsylvania held that, generally, individuals have a constitutional right to informational privacy and that when privacy interests were implicated, the court would balance the expectation of privacy against the public interest in disclosure. With respect to statements of financial interests, the legislature, by statutorily requiring that the information on the statements be made available for public inspection, had determined that there was a strong public interest in disclosure. Moreover, the Ethics Act provides

that financial information of government officials should be made public to strengthen the faith and confidence in the people of the Commonwealth that their elected officials are not in government to realize personal gain:

The Legislature hereby declares that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. In order to strengthen the faith and confidence of the people of this Commonwealth in their government, the Legislature further declares that the people have a right to be assured that the financial interests of holders of or nominees for public office do not conflict with the public trust. Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this chapter shall be liberally construed to promote complete financial disclosure as specified in this chapter....

65 Pa.C.S. § 1101.1(a). Finally, in *Snider v. Thornburgh*, 436 A.2d 593, 599 (Pa. 1981), the Pennsylvania Supreme Court approved the requirement of disclosing financial information, stating:

The intrusion into appellants' private affairs under the Act is not great; the Legislature's interest in securing public confidence in the government, at all levels, is not small. The financial disclosure requirements of the Act are reasonably tailored to fit a legitimate legislative function.

Accordingly, the OOR held that to the extent that there is any expectation of privacy in this information, these privacy interests are outweighed by the strong public interest in disclosing public officials' financial information.

The *Guydish* determination is useful because it confirms that the OOR believes, and will hold, that Statements of Financial Interests are public records in their entirety and cannot be redacted in any way. In addition, it provides a useful reminder that Open Records Officers, when responding to RTKL request cannot limit their review to the RTKL when evaluating whether a record is public. Other laws can determine whether a record is public or private. Accordingly, Open Record Officers should work with their Solicitors when responding to requests for records under the RTKL.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.