

School Districts Are Not Required To Identify Employees Who Are Subject To Discipline Unless And Until They Are Demoted Or Discharged

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Highlands School District v. Rittmeyer, — A.3d —, 2020 WL 7061810, 163 C.D. 2020 (Pa. Commw. Dec. 3, 2020). Commonwealth Court holds that school districts are not required to disclose the names of employees when issuing a statement of charges or in response to a request for records made pursuant to Pennsylvania's Right-to-Know Law.

BACKGROUND

The Requester submitted two RTKL requests seeking information about employees who were placed on unpaid leave, including their name, job title, length of employment, salary and a statement of the charges that resulted in the disciplinary action. In its response, the District denied access to the employees' names and the statements of the charges. Requester appealed the denial of names.

At issue in this case is the applicability of Section 708(b)(7)(viii) of the RTKL, which excludes "records relating to an agency employee," including "information regarding discipline, demotion or discharge contained in a personnel file" from public disclosure. 65 P.S. §67.708(b)(7)(viii). This exemption does "not apply to the final action of an agency that results in demotion or discharge." *Id.*

Requester appealed the denial of access to the employees' names, but not the denial of the statements of charges because the OOR has recognized that statements of charges are exempt under Section 708(b)(7)(viii) of the RTKL. See *Green v. West Jefferson Hills School District*, AP 2019-1372 (statement of charges constitutes information regarding discipline, demotion or discharge that was contained in the employee's personnel file and was not the "final action" of the District).

In *Rittmeyer*, the OOR concluded that Section 708(b)(7)(viii) was inapplicable to the requested names of the employees subject to the statement of charges because the names of public employees are generally public information. The OOR did not consider it relevant that the Requester was specifically seeking the names of employees who were placed on leave and issued statements of charges.

The District appealed to the Court of Common Pleas of Allegheny County ("Trial Court") which rejected the OOR's rationale for granting access to the names. The Trial Court found that Section 708(b)(7)(viii) exempted the names because, while public employees' names are generally public information, "it is not a random name that is requested, but the name of an employee in connection with disciplinary action." The trial court concluded that an absurd result would occur if Section 708(b)(7)(viii) of the RTKL exempted the statement of charges against the employees but required the disclosure of their names.

DISCUSSION

On appeal to the Commonwealth Court, Requester conceded that both a description of the conduct and the employees' identities would be "statements in the employees' personnel file" subject to non-disclosure under Section 708(b)(7)(viii). However, Requester argued that Section 708(b)(7)(viii) is inconsistent with certain provisions of the School Code and

Sunshine Act that require disclosure and, therefore, trump the exception set forth in Section 708(b)(7)(viii). In making this argument, Requester relied on Section 3101.1 of the RTKL which provides that if there is a conflict between the RTKL regarding access to records and any other Federal or State law, the provisions of the RTKL do not apply. 65 P.S. §67.3101.1.

Accordingly, the issue before the Commonwealth Court was whether the School Code or the Sunshine Act pose any conflict with Section 708(b)(7)(viii). Requester first argued that Section 708(b)(7)(viii) of the RTKL is inconsistent with Section 1127 of the School Code, which sets forth the procedure that a school board must follow prior to dismissing a professional employee. Section 1127 generally provides that before a tenured professional employee, like a teacher, is dismissed by the school board, the school board must provide that employee with a detailed statement of charges upon which the employee's proposed dismissal is based and hold a hearing, after providing proper notice, where the employee is given an opportunity to be heard. See 24 P.S. §11-1127.

To comply with this section, the Commonwealth Court has held that the school board must "resolve to demote the employee and to furnish him with a written statement of the charges prior to the hearing." *School District of Philadelphia v. Jones*, 139 A.3d 358, 368 (Pa. Cmwlth. 2016) (en banc) (quoting *Patchel v. Wilkinsburg School District*, 400 A.2d 229, 232 (Pa. Cmwlth. 1979)). Many school boards comply with this requirement by passing a "Jones" resolution that does not identify the employee subject to the investigation.

Requester argued that the Court should interpret Section 1127 of the School Code to also require the disclosure of a professional employee's identity in order to initiate the disciplinary process. However, in rejecting this argument, the Court noted that Section 1127 contains "no provision relating to public access to records" and "contains no language whatsoever mandating public disclosure of the identity of the employee subject to the initiation of the disciplinary process." Accordingly, the Court found that there was no conflict between Section 1127 of the School Code and Section 708(b)(7)(viii) of the RTKL.

Requester's second argument was that the names were public because Section 708(b)(7)(viii) conflicts with the Sunshine Act. The Sunshine Act generally provides that official action and deliberations of a school board must take place at a meeting that is open to the public. The Sunshine Act contains several exceptions to this general rule, including one set forth in Section 708(a)(1) of the Sunshine Act, which provides that a school board may hold executive sessions closed to the public to discuss employment matters, including the discipline of an employee. 65 Pa.C.S. §708(a)(1). While the discussion can take place in private, Section 708(c) mandates that official action on that discussion take place in public. 65 Pa.C.S. §708(c).

In rejecting Requester's second argument, the Court held that the Sunshine Act was consistent with Section 708(b)(7)(viii). Specifically, the Court found that although the discussions concerning an employee's discipline may be conducted in an executive session that excludes the public, the school board's resolution initiating the disciplinary process must be voted upon at a public meeting. Importantly, however, the Court noted that "no provision of the Sunshine Act mandates that such a resolution must entail public disclosure of the name of the employee subject to discipline."

Accordingly, the Court found that the School Code and the Sunshine Act do not mandate disclosure of the employees' identities prior to such "final action of an agency that results in demotion or discharge." Accordingly, since the employees' names were statements in the employees' personnel file subject to non-disclosure under Section 708(b)(7) of the RTKL, the Court found that these names were properly redacted.

PRACTICAL ADVICE

This decision is important for two reasons. First, it confirms that Districts are not required to provide the names of employees facing discipline in response to a RTKL request. In addition, it confirms that the process adopted by many school districts of omitting an employee's name when issuing a statement of charges is permitted by the School Code and

Sunshine Act.

As noted by the Court, the identity of the employee subject to discipline will not remain confidential in perpetuity. The caveat in Section 708(b)(7)(viii) of the RTKL states that the exemption from public access “shall not apply to the final action of an agency that results in demotion or discharge.” 65 P.S. § 67.708(b)(7)(viii). Accordingly, if the disciplinary process ultimately results in demotion or discharge, then records relating to that final action will be subject to disclosure under the RTKL.

The Rittmeyer decision provides some clarity for school districts when dealing with employment issues. Nevertheless, school districts should work with their administrators and solicitors to ensure compliance with these matters.

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