IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KATHLEEN REHBEIN AND THE PENNSYLVANIA ASSOCIATION OF SCHOOL RETIREES,	:	
Appellants	:	
	:	
v.	:	**No. 09-3310**
	:	
PENNSYLVANIA OFFICE OF OPEN RECORDS AND THE PANTHER VALLEY SCHOOL DISTRICT,	:	
Appellees	:	

Amy C. Foerster, Esquire	**Counsel for Appellants**
Robert T. Yurchak, Esquire	**Counsel for Appellee Panther Valley School District**

Civil Law – Right to Know Law (RTKL) – Status of a Retired Employee's Home Address - Public Benefits/Right of Privacy – Personal Security Exception to Disclosure – Judicial Order Exception to Disclosure

1. **Under the Right to Know Law (RTKL), the trial court's review of a final determination by the Office of Open Records (OOR) is *de novo*. The record on review consists of the request, the agency's response, the appeal filed with the OOR, the hearing transcript, if any, and the final written determination of the appeals officer, all of which may be supplemented through a hearing before the reviewing court.**

2. **The RTKL is remedial legislation 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.**

3. **Under the RTKL, information in the possession of a Commonwealth or local agency is presumed to be a public record, accessible and available to the public, unless one of several statutory exceptions apply.**

4. **The personal security exception contained in Section 708 (b)(1)(ii) of the RTKL, creates a privacy exception to RTKL's general rule of disclosure.**

5. Under the personal security exception to disclosure, an individual's right to privacy must be balanced by the public benefits that would result from disclosure. Because the disclosure of a person's home address is not intrinsically physically harmful, where neither the requestor nor the agency presents evidence from which the Court can ascertain and balance any particular potential impairment to personal security against any legitimate public interest, the statutory presumption in favor of disclosure prevails.

6. Under the RTKL, for a person's home address to be kept confidential, evidence must be presented showing the existence and extent of potential harm which might result from disclosure, which harm must create a "substantial and demonstrable risk of physical harm to or the personal security of an individual."

7. In addition to the RTKL's personal security exception to disclosure, the RTKL further provides that information barred by judicial order or decree from being released is not a public record.

8. In construing the order of an appellate court enjoining the release of the home addresses of public school employees pursuant to the RTKL, deference to the order of a superior tribunal bars a lower court from ignoring the language of an order which one party contends is overbroad. Instead, the appellate court itself must be the source of the clarification and distinction sought.

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v.	:	No. 09-3310
PENNSYLVANIA OFFICE OF OPEN	:	

RECORDS AND THE PANTHER VALLEY :
SCHOOL DISTRICT, :
Appellees :

Amy C. Foerster, Esquire — Counsel for Appellants
Robert T. Yurchak, Esquire — Counsel for Appellee Panther Valley School District

MEMORANDUM OPINION

Nanovic, P.J. – May 5, 2010

PROCEDURAL AND FACTUAL BACKGROUND

The Pennsylvania Association of School Retirees ("Association") is a non-profit organization whose membership consists of former public school employees. Its primary purpose is to promote the interests and welfare of its members through educational and social opportunities, to improve public education, and to provide community service through member participation.

On July 31, 2009, Kathleen Rehbein on behalf of the Association filed a request under Pennsylvania's Right to Know Law ("RTKL"), 65 P.S. §§ 67.101 - 67.3104, with the Panther Valley School District ("District") to obtain copies of public records showing the names and addresses of all individuals who retired from the District between 2004 and the time of the request. In response, the District provided the names of twenty-nine retirees. Their home addresses were not provided because the District believed it was prohibited by a recent

court order from releasing this information.

The order referred to was one entered by Senior Judge Rochelle S. Friedman of the Commonwealth Court on July 28, 2009, in the case of Pennsylvania State Education Association, et al. v. Office of Open Records, et al. (hereinafter referred to as PSEA), No. 396 MD 2009. Therein, Judge Friedman ordered verbatim:

> **(1) The release of the home addresses of all public school employees is hereby stayed until further order of this court;**
> **(2) The Office of Open Records is enjoined from directing the release of the home addresses of public school employees pursuant to the Right-to-Know Law until further order of this court; and**
> **(3) The Office of Open Records is directed to take all reasonable steps necessary to notify public school districts of the Commonwealth of the existence of this litigation and that the release of employee home addresses is stayed until further order of this court.**

The order, in the form of a preliminary injunction, further stated that an opinion would follow. That opinion is reported at 981 A.2d 383 (Pa.Cmwlth. 2009).

On August 26, 2009, the Association appealed the District's denial to the Pennsylvania Office of Open Records ("OOR") contending that the injunction in PSEA prohibits only "the release of home addresses for *current* public school employees, and not [the] addresses for retirees." (Petition for Review, Exhibit D (emphasis added)). The OOR, while in disagreement with the PSEA Court's conclusion that an employee's

privacy interest in his home address outweighs the public interest in disclosure, nevertheless determined that absent clarification from the Commonwealth Court as to the meaning of the term "employees",[1] it was bound by the injunction issued by Judge Friedman. *See* Rehbein v. Panther Valley School District, OOR Dkt. AP 2009-758; *see also* 65 P.S. § 67.102 (a record is not public if its release is prohibited by judicial order or decree). On November 2, 2009, the Association filed its Petition for Review appealing the final determination of the OOR to this Court.[2] A hearing on the appeal was held on February 4, 2010.[3]

DISCUSSION

At the outset it is important that we put the issue before us in proper context. "The intent of the RTKA is to allow individuals and entities access to public records to discover information about the workings of government, favoring

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[1] The OOR was unable to determine whether Judge Freidman's reference to all employees was limited only to current acting employees or also included former employees who are now retired.

[2] On November 23, 2009, we granted the Association's motion for leave to file its petition for review *nunc pro tunc*. This motion was not opposed by the appellees.

[3] In Bowling v. Office of Open Records, 990 A.2d 813 (Pa.Cmwlth. 2010), the Court determined that "a reviewing court, in its appellate jurisdiction, independently reviews the OOR's orders and may substitute its own findings of fact for that of the agency." Id. at 818. The record reviewed "consists of the request, the agency's response, the appeal filed with the OOR, the hearing transcript, if any, and the final written determination of the appeals officer." Id. at 816. In conducting its review, the RTKL allows the reviewing court to supplement the record through hearing, as was done here, or remand. *See* id. at 820. Accordingly, as the reviewing court in this case, our review is of the broadest scope and is independent in nature; we are not limited to the rationale set forth in the OOR's written decision. *See* id.

transparency and public access regarding any expenditure of public funds." Pennsylvania State University v. State Employees' Retirement Board, 935 A.2d 530, 533 (Pa. 2007).[4] From this perspective, the broad issue is whether the RTKL provides any protection against the disclosure of sensitive personal information possessed by a public agency. The specific issue in this case is whether the RTKL requires public disclosure of a retired school employee's home address.

To answer these questions, we begin with the language of the RTKL itself. Section 102 of 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 the 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.**

65 P.S. § 67.102. The RTKL further defines a "public record" as:

> **A record, including financial record, of a**

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[4] The current Right-to-Know Law, 65 P.S. §§ 67.101 - 67.3104, enacted February 14, 2008, and effective January 1, 2009, repealed the former Right-to-Know Act (RTKA), 65 P.S. §§ 66.1 - 66.9. In this opinion, we distinguish between the two by referring to the current version of the statute as the RTKL, and the repealed law as the RTKA. Although Pennsylvania State University was decided under the former law, we believe the intent behind both statutes is the same. *See* Bowling, 990 A.2d at 824 ("the [RTKL] is remedial legislation 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").

> **Commonwealth or local agency that:**
> **(1) is not exempt under section 708;**
> **(2) is not exempt from being disclosed under any other Federal or State law or regulation or *judicial order or decree*; or**
> **(3) is not protected by a privilege.**

65 P.S. § 67.102 (emphasis added). Under the RTKL, information in the possession of a Commonwealth or local agency is presumed to be a public record, accessible and available to the public, unless one of these exemptions applies. 65 P.S. § 67.305(a). The purpose of the RTKL further requires that the exemptions be construed narrowly. *See* Bowling v. Office of Open Records, 990 A.2d 813, 824 (Pa.Cmwlth. 2010).

The Section 708 Exemption

Section 708(b) of the RTKL lists thirty separate types or categories of information exempt from disclosure. 65 P.S. § 67.708(b). Relevant to this discussion are the following exemptions limiting access to publicly held information:

> **(1) A record, the disclosure of which:**
> **(i) . . . .**
> **(ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.**
>
> *** * ***
>
> **(6) (i) The following personal identification formation:**
> **(A) 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 personal identification number.
>
> (B) A spouse's name, marital status or beneficiary or dependent information.
>
> (C) The home address of a law enforcement officer or a judge.
>
> * * *
>
> (30) A record identifying the name, home address or date of birth of a child 17 years of age or younger.

65 P.S. § 67.708 (b)(1)(ii), (6)(i), and (30).

As is evident from the foregoing, the only express reference to protecting an individual's home address from disclosure is with respect to law enforcement officers, judges, and minors. By themselves, these express references imply the exclusion of all others thereby, in this case, favoring disclosure. *See* Commonwealth v. Ostrosky, 866 A.2d 423, 430 (Pa.Super. 2005), *affirmed*, 909 A.2d 1224 (Pa. 2006). Section 708(e) of the RTKL instructs, however, that we should not confine ourself to a single exemption but must consider and apply each exemption separately. 65 P.S. § 67.708(e).

In this regard, the exemption at Section 708(b)(1)(ii), like that under the former law, creates a personal security exemption from disclosure. It is not dependent on the status of the person as a current or former employee. Because the term "personal security" which appears in

the RTKL was also used in the RTKA, and acquired a special meaning thereunder, we review the earlier cases interpreting this language for a better understanding of the present statute. *See* 1 Pa.C.S.A. § 1922(4) (in ascertaining legislative intent, it is presumed that when the Pennsylvania Supreme Court has construed statutory language, and that language is not changed in subsequent versions of the statute, the legislature "intends the same construction to be placed upon such language").

In Rowland v. Commonwealth, Public School Employees' Retirement System, 885 A.2d 621 (Pa.Cmwlth. 2005), the Association[5] requested the names, addresses, dates of birth, and various employment-related information with respect to every member of the Public School Employees' Retirement System ("PSERS") receiving annuity benefits. PSERS denied the request for address and date of birth information on the basis that such information was not a "public record" under the definition of that term contained in Section 1 of the RTKA, 65 P.S. § 66.1. Under the RTKA, "public record" was defined to be:

> **Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of**

[5] In Rowland, as here, the request for information was at the behest of the Pennsylvania Association of School Retirees. Richard Rowland, whose name appears in the caption, and who also testified in the proceedings before us, is the executive director of the Association.

> any person or group of persons: Provided, [t]hat the term "public records" ... shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security....

65 P.S. § 66.1.

In examining this definition, the Commonwealth Court observed that the language of the Act "requires disclosure of a broad range of official information, but ... balances the need for public access to such information against the need to maintain the confidentiality of specific types of otherwise public information." Rowland, 885 A.2d at 626. The Court further noted that the above-quoted language contains two express exceptions to the disclosure of publicly-held information. The exceptions "prohibit disclosure of any record, document or material, where disclosure is (1) prohibited by statute [or order or decree of court] or (2) would operate to the prejudice or impairment of a person's reputation or personal security." Id. at 627. The Court held that both exceptions barred the disclosure of the requested information on employees' addresses and dates of birth to the Association.

As to the first exception, the Court held that Section 8502(i) of the Public School Employees' Retirement Code, 24 Pa.C.S.A. § 8502(i), imposes an affirmative duty on PSERS to

protect its members' right to privacy and confidentiality, which includes keeping confidential their addresses and dates of birth. *See* id. at 628. More important to the issue before us, the Court also held that the personal security and reputation exception contained in the former law created "a privacy exception to the Right-to-Know Law's general rule of disclosure." Id. This right of privacy arises out of the "personal security" exception and is not distinct from it. *See* id. at 629 n.11; Pennsylvania State University, 935 A.2d at 538 ("The RTKA accounts for the individual's right to privacy by excluding from the definition of 'public record' 'any record, document, material, exhibit, pleading, report, memorandum or other paper, ... which would operate to the prejudice or impairment of a person's reputation or personal security.'").[6]

The right of privacy in the RTKA is not absolute: "When analyzing this exception we apply a balancing test, weighing the privacy interests, and the extent to which they may

[6] In Whalen v. Roe, the United States Supreme Court held that the right to privacy extends to both "the individual interest in avoiding disclosure of personal matters, and . . . the interest in independence in making certain kinds of important decisions." 429 U.S. 589, 599-600 (1977) (citations omitted). Our state constitution, as well, under Article 1, Sections 1 and 8, recognizes and guarantees the right to privacy. *See* Denoncourt v. Commonwealth State Ethics Commission, 470 A.2d 945, 948 (Pa. 1983). These provisions are a factor to be taken into account in statutory construction. 1 Pa.C.S.A. § 1922(3) (in ascertaining legislative intent, it is presumed that the legislature "does not intend to violate the Constitution of the United States or of this Commonwealth").

The scope of the right to privacy independently grounded in the Constitution is broader and deeper than that encompassed within the personal security exception. In this case, however, no argument has been made that the personal security exception, as interpreted by our courts, is too narrow and, in consequence, is constitutionally invalid.

be invaded, against the public benefits that would result from disclosure." Rowland, 885 A.2d at 629; *see also* Pennsylvania State University, 935 A.2d at 538 ("The appropriate question is whether the records requested would potentially impair the reputation or personal security of another, and whether that potential impairment outweighs the public interest in the dissemination of the records at issue.").[7]

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[7] In Pennsylvania State University v. State Employees' Retirement Board, the Supreme Court concluded its discussion with the following significant statement:

For clarity's sake, we now hold, as stated above, that where privacy rights are raised as a bar to disclosure of information under the RTKA, our courts must determine whether the records requested would potentially impair the reputation or personal security of another, and must balance any potential impairment against any legitimate public interest. The issue of whether a particular disclosure is intrinsically harmful may be relevant in determining the weight of any privacy interest at stake for purposes of conducting the appropriate balancing test, as indeed intrinsic harmfulness may affect the reasonableness of any privacy expectation. Intrinsic harmfulness, however, may not be regarded as the sole determining factor in the privacy analysis. Our courts may not forgo the balancing of interests where privacy rights and public interest conflict.

935 A.2d 530, 541 (Pa. 2007) (citation omitted). "To be intrinsically harmful, the requested record must itself operate to impair the personal security of another, and not merely be capable of being used with other information for harmful purposes." Buehl v. Pennsylvania Department of Corrections, 955 A.2d 488, 491 (Pa.Cmwlth. 2008).

Under the balancing test, the court balances the public interest purpose for disclosure of personal information against the potential invasion of individual privacy. In Buehl, where a state inmate sought documents that would explain the Department of Correction's definition of "inclement weather" contained in Section 1 of the Prison Exercise Act, 61 P.S. § 101, the public purpose was "the public interest in ensuring that the Department complies with its statutory mandate in Section 1 of the Prison Exercise Act to provide prisoners at SCI-Smithfield with two hours of outdoor yard time each day." 955 A.2d at 493. In Sapp Roofing Company, Inc. v. Sheet Metal Workers' International Association, Local Union No. 12, 713 A.2d 627 (Pa. 1998), where a labor union requested access to the payroll records of a school district for the stated purpose of ensuring the school district's compliance with the Prevailing Wage Act, this public purpose justified the release of the wage information requested. However, other personal information contained in the payroll records (names, addresses, social security numbers, and phone numbers) bore no relationship to this public purpose, nor furthered any other public interest, and, because its release would have infringed upon the individual employees' privacy rights, was required to be redacted from the payroll records prior to their release to

In applying the exception to the facts before it, the Rowland Court began with the generally accepted premise that "a person has a privacy interest in his or her home address." 885 A.2d at 628. Having thus determined that the information sought implicated a privacy interest, in weighing that interest against the public benefits of disclosure the Court found that all of the reasons for disclosure put forth by the Association – "that the Association offers its members, retirees and the public at large significant benefits, such as 'services, advocacy, volunteer opportunities, discounts and many other advantages'" – are benefits that ultimately inure to the members of the Association, not to the public at large. *See* id. at 629 ("The real benefit is to the Association itself, which has an interest in sustaining its own existence through recruitment of new members."). Finding that no public benefits were identified against which to balance the privacy interests of PSERS' members, and having previously noted that the burden is upon the requester to establish that the requested documents are "public records", the Court held that the balance tipped "easily in favor of non-disclosure of the requested information." Id. at 629-30.

In the instant proceedings, the evidence of record appears similar to that which existed in Rowland. The

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the labor union. *See* Buehl, 955 A.2d at 493 (summarizing the holding of Sapp Roofing).

Association has set forth the same reasons for disclosure as it did in Rowland, including its own privacy policy which limits the dissemination of information it receives. As in Rowland, these reasons, while beneficial to the Association, are not public benefits to be weighed as part of the balancing test.[8] Conversely, while the District has identified the existence of a privacy interest to be balanced – the expectation of privacy in one's home address - other than pointing out that such an interest exists, it has presented no evidence that disclosure will cause, or would be likely to cause, any particular or peculiar harm to any of its retirees.

There is nothing intrinsically physically harmful in releasing the names and addresses of state retirees. *See* Mergenthaler v. State Employes' Retirement Board, 372 A.2d 944, 947-48 (Pa.Cmwlth. 1977).[9] Indeed, the names and addresses of

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[8] As noted by the Rowland court, the private purpose for which documents will be used is irrelevant to the balancing test. *See* Rowland, 885 A.2d at 629. The RTKL treats all requesters equally; if the Association is entitled to receive the information, any member of the public is likewise entitled to receive this information, regardless of the purpose for the request. *See* id.; Penn State University, 935 A.2d at 537 ("When the media requests disclosure of public information from a Commonwealth agency pursuant to the RTKA, the requester then stands in the shoes of the general public, which has the right to know such information."); *see also* 65 P.S. §§ 67.302(b), 67.703.

[9] In Mergenthaler v. State Employes' Retirement Board, 372 A.2d 944 (Pa.Cmwlth. 1977), the Court held that disclosure of the names and addresses of retired state employees would not impair the employees' personal security. At the time Mergenthaler was decided, personal security was considered to be distinct from personal privacy; the term personal security was then understood to mean "freedom from harm, danger, fear or anxiety." Id. at 947. Also, unlike today, the law at the time of the Mergenthaler decision required that "for records to fall within the personal security exception they must be intrinsically harmful and not merely capable of being used for harmful purposes." Id at. 947. Consequently, while Mergenthaler is no longer good law overall, its reasoning, given the then-accepted meaning of the personal

individuals are routinely compiled and disseminated in a public telephone directory. Nor is this a case where the release of home addresses, coupled with the release of other personal information, combines to jeopardize the personal security of school retirees. *See*, *e.g.*, Tribune-Review Publishing Company v. Allegheny County Housing Authority, 662 A.2d 677, 684 (Pa.Cmwlth. 1995), *appeal denied*, 686 A.2d 1315 (Pa. 1996); Buehl, 955 A.2d at 492 n.9. Instead, the District's position appears to be that absent proof to the contrary, as was the case in Rowland, the potential harm which might result from the release of a home address precludes its disclosure.

This position, however, ignores two significant changes in the law which exist between the RTKA and the RTKL that affect the personal security exception. First, at the time Rowland was decided, the burden was upon the requester to establish that the document requested was a public record. *See* 885 A.2d at 627. Under the current RTKL, information possessed by a local agency is presumed to be a public record; the burden is upon the local agency to prove to the contrary. 65 P.S. §§ 67.305(a), 67.708(a)(1). Second, in order to bar disclosure, the RTKL expressly requires that disclosure of the home address will likely create a "substantial and demonstrable risk of physical harm to or the personal security of [the retiree]." 65

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security exception, supports the conclusion that the release of the names and addresses of retired state employees is not intrinsically physically harmful.

P.S. § 67.708(b)(1)(ii). Given this statutory design, where neither party presents evidence from which the court can ascertain and balance any particular potential impairment to personal security against any legitimate public interest, the statutory presumption prevails.[10]

The Judicial Order or Decree Exemption

The RTKL provides that information is not a public record if it is barred by judicial order or decree from being released. It is on this basis that both the OOR and the

[10] Were the privacy interests in a person's home address sufficient *per se* to overcome this presumption, the exceptions relating to the home addresses of law enforcement, judges, and minors would be meaningless, and the need to prove the existence and extent of potential harm under the personal security exception would be eliminated. This, of course, would be contrary to fundamental principles of statutory construction, especially where good reasons are readily ascertainable in support of the exceptions. 1 Pa.C.S.A. § 1922 (2) (in ascertaining legislative intent, it is presumed that the legislature "intends the entire statute to be effective and certain"). Balancing must occur on a case-by-case basis, examining in each case the evidence presented and the privacy interests and public benefits at stake; it cannot occur on an *a priori*, generalized, and non-specific basis.

Nor does the conclusion we reach impugn Judge Friedman's opinion in Pennsylvania State Education Association, et al. v. Office of Open Records, et al., 981 A.2d 383 (Pa.Cmwlth. 2009) (hereinafter referred to as PSEA). Each case is dependent on its facts and the record before the court. In PSEA, Judge Friedman expressly noted that the "[e]mployees presented testimony establishing a privacy interest in their home addresses, whereas the Commonwealth presented no evidence regarding its interest in disclosing [e]mployees' addresses to the public." 981 A.2d at 386. Here, no evidence has been presented on behalf of any of the retirees whose addresses the Association seeks to obtain.

We believe it is also appropriate to note that none of the cases cited by Judge Friedman holding that the benefits of public disclosure of home addresses are outweighed by an individual's privacy interest in his or her address was decided under the RTKL. All were decided under the RTKA which places the burden of proving the public benefits of disclosure on the requester. In reversing this presumption, absent evidence to the contrary, the RTKL places the public interest in favor of disclosure over the private interest against release of such information.

Finally, as the decision of one judge, the opinion in PSEA is not binding upon us. 210 Pa.Code § 67.55 (providing that "[a] single-judge opinion, even if reported, shall be cited only for its persuasive value, not as binding precedent.").

District denied the Association's request for the home addresses of retired public school employees.

Judge Friedman's order of July 28, 2009, states in broad terms that "the release of the home addresses of all public school employees is hereby stayed until further order of this court" and requires that all public school districts within this Commonwealth be notified of this stay. While the Association asks that we construe this order narrowly because a preliminary injunction "must be narrowly tailored to address the wrong pled and proven," we are not aware of any authority that permits us as a trial court to narrowly interpret an order of an appellate court granting a preliminary injunction. *See* Appellants' Post-Hearing Brief, p. 4. Nor does the rationale expressed in Judge Friedman's opinion distinguish between active employees and those who are retired. Indeed, the Rowland case, cited by Judge Friedman to support the withholding of home addresses, involves retirees and involves the same Association with which we now deal.

The Association argues that because an "employee" is a person who works for and is subject to the control of an employer, whereas a "retiree," at the most basic level, is a person who has stopped working, Judge Friedman's order does not apply to retirees. We understand the logic of this argument, however, we cannot say with any degree of certainty that this

distinction was intended by Judge Friedman. On this point, the OOR in examining Judge Friedman's order and opinion stated:

> **Neither the Injunction [order] nor the Opinion specifically defines the term "employee" except to the extent that the Opinion identifies each of the Plaintiffs collectively as "Employees." Nor, as suggested by the Requester, did the Injunction or Opinion specify whether the injunction was applicable only to *current* employees. PSEA is a named Plaintiff. PSEA's members include current and retired school employees. *See* PSEA website, http://www.psea.org.**
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> **The injunction does not apply only to those school employees that are members of PSEA, but all school employees; therefore, the OOR finds that the injunction also applies to the release of addresses of all retired employees and not just those who are members of PSEA.**

OOR Final Determination, pp. 5-6 (citation omitted).[11]

As a lower court, we are not free to disregard the lawful orders of a superior tribunal nor may we parse its orders, finding distinctions which may never have been intended, in order to conclude that an order means what we think it should mean. Pa.C.J.C.Canon 2(A) (requiring judges to respect and comply with the law). To do so would be not only presumptuous but an inappropriate trespass upon the province of a higher court. Instead, the Commonwealth Court must be the source of

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[11] **We further note that a true and correct copy of the Pennsylvania State Education Association's Petition for Injunctive Relief in the Commonwealth Court has been attached to the Association's Post-Hearing Brief, together with the Pennsylvania State Education Association's Petition for Review. Therein, the Pennsylvania State Education Association avers that it and the other petitioners have filed their action on behalf of themselves and on behalf of the members of the Pennsylvania State Education Association. (Petition for Review, ¶ 19).**

the clarification and distinction the Association asks for.[12] To do otherwise would inevitably lead to disagreement and confusion among our trial courts, each struggling to decipher an intent which is unexpressed. The deference to which Judge Friedman's order is entitled, requires that we, like the OOR, deny the Association's request on this basis.[13]

The Privilege Exemption

Finally, the RTKL excludes from the category of a public record, information which is protected by a privilege. For these purposes, privilege is defined within the RTKL as:

> **The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.**

65 P.S. § 67.102. No claim has been made that a retiree's home address is protected by any applicable privilege. Accordingly,

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[12] ***See, e.g.***, Miller v. Berschler, 621 A.2d 595, 597-98 (Pa.Super. 1993). The Miller Court noted that if a higher court's opinion is to be narrowed, it must be done by that higher court. *See* id. at 598. Miller was overruled on other grounds by McMahon v. Shea, 657 A.2d 938, 941 (Pa.Super. 1995); however, the McMahon Court reiterated that judicial decisions are precedental authority for later cases with similar facts and similar questions of law. *See also* L.B. Foster Company v. Charles Caracciolo Steel & Metal Yard, Inc., 777 A.2d 1090, 1096 (Pa.Super. 2001) ("a lower tribunal may not disregard the standards articulated by a higher court"); Commonwealth v. Crooks, 70 A.2d 684, 685 (Pa.Super. 1950) ("It is important that trial courts do not extemporaneously define [terms material to proceedings]. The pronouncements of the appellate courts should be followed."); Sherer v. St. Luke's Hospital, 19 Monroe L.R. 111 (Pa.Com.Pl. 1957) (a subordinate court is bound by the pronouncements of superior courts, even at the risk of reversal).

[13] In its final determination, the OOR noted that it had asked the Association to extend the deadline for issuance of its final determination until after the Commonwealth Court in PSEA issues a decision regarding the public status of school employee home addresses. The Association denied this request. The OOR further noted that the Association, as the requester, holds the sole authority to extend the deadline for issuance of a final determination. 65 P.S. § 67.1101(b)(1).

this exception has no bearing on our decision.

CONCLUSION

The RTKL, like its predecessor, recognizes that when a request is made to disclose private personal information possessed by an agency, the agency is required to weigh the privacy interest involved against the public benefits that would result from disclosure. Unlike the RTKA, however, the RTKL initially presumes, until shown otherwise, that all information held by an agency should be made public. Given this presumption and absent a showing that disclosure of a retiree's home address "would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual," we find that the home address of a retired school employee is a public record under the RTKL. Notwithstanding this finding, because the RTKL provides for the denial of access to records that are exempt from disclosure under a judicial order and because the Commonwealth Court's order of July 28, 2009, appears intended to do just that, the Association's appeal to this court is denied.

BY THE COURT:

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P.J.