

THE SCHOOL DISTRICT OF PHILADELPHIA
SCHOOL REFORM COMMISSION
440 N. BROAD STREET, SUITE 313
PHILADELPHIA, PENNSYLVANIA 19130-4015

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February 2, 2012

Via Express Mail / Overnight Delivery
Victor Skinner, Communications Specialist
Education Action Group
801 W. Norton Avenue
Suite 1
Muskegon, MI 49441

RE: Open Records Request – dated June 24, 2011

Dear Mr. Skinner:

I am writing this letter in further response to your request, dated June 24, 2011, for certain information sought pursuant to the Commonwealth of Pennsylvania's Right-to-Know Law ("Act") that was submitted *via* electronic transmission and addressed to The School District of Philadelphia's ("School District") Office of Open Records. By letter, dated July 1, 2011, the School District acknowledged receipt of your request and initially sought an extension of time until August 1, 2011 to respond in accordance with the provisions of the Act. Given the extensive nature of your request and bona fide staffing limitations, the School District sought an additional extension of time to respond.¹ More specifically, you requested the following documents and/or data:

"... I am writing to request a copy of information providing the following items for the 2010-11 school year:

1. The total cost of health insurance premiums for employees represented by the Philadelphia Federation of Teachers.
2. The total amount the School District contributed toward health insurance premiums for employees represented by the Philadelphia Federation of Teachers.
3. The total amount employees represented by the Philadelphia Federation of Teachers contributed toward health insurance premiums.
4. The total amount the School District contributed toward the "Health and Welfare Fund" outlined in the PFT contract, pg 41.
5. The total amount the School District contributed toward the "Legal Services Trust Fund" outlined in the PFT contract, pg 42.
6. The total amount the School District contributed toward the "Career Development Fund" outlined in the PFT contract, pg 43.

¹ Given the agency's inability to meet this deadline, and the extensive number of professional courtesies afforded by and patience of your organization, the School District has chosen to waive most, if not all, legal defenses applicable to the production of some of the data you requested. With that said, there were still a number of items where the School District does not disaggregate the data as requested or cannot provide because of confidentiality laws. In these limited circumstances, appropriate notations are made.

7. The total amount the School District contributed toward the "Wage Continuation Program" outlined in the PFT contract, pg 45-46.
8. The total amount the School District contributed toward the "School District of Philadelphia' Masters Degree Partnership Program" outlined in the PFT contract, pg 38.
9. The total amount the School District spent on termination pay for employees represented by the PFT.
10. The School District's leave policy for employees represented by the PFT.
11. The individual total numbers of paid sick, personal, vacation and professional leave days taken by employees represented by the PFT.
12. The total amount the School District paid to employees represented by the PFT for individual categories of leave days cited in [Item] [N]umber 9.
13. The total amount the School District spent on substitutes for employees represented by the PFT.
14. The total amount the School District paid (in either dollars or time or both) to employees represented by the PFT for lost preparation time.
15. The total amount the School District paid employees represented by the PFT for staff development.
16. The total cost of step increases for employees represented by the PFT.
17. The total cost of the 3 percent raise paid to employees represented by the PFT in 2010, and the total projected cost of the 3 percent raise for PFT employees slated for 2012.
18. The total amount the School District paid to employees represented by the PFT for reimbursement for national board certification.
19. The total amount in national board certification bonuses the School District paid to employees represented by the PFT.
20. The total amount the School District paid employees represented by the PFT as a bonus for food service managers, as outlined in the PFT contract, pg 133.
21. The total amount the School District paid in extra-curricular and athletic salaries.
22. The total amount the School District paid employees represented by the PFT for work on school and joint school-union committees.
23. The names, job class codes, total annual compensation and total amount of release time for each and every employee released from their duties with pay to work for the PFT.
24. The total number of employees in the School District represented by the PFT.
25. The average base salary of employees represented by the PFT.
26. The average gross annual earnings of employees represented by the PFT.
27. IRS W-2 forms for the 50 highest paid district employees represented by the PFT.
28. The three most recent performance ratings for employees cited in [Item] [N]umber 25.
29. The total cost to the district for expense allotments dedicated for use by employees represented by the PFT.

For the reasons stated herein, your request is hereby DENIED in part and GRANTED in part.

Pursuant to 65 P.S. §67.703 of the Act, a written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested. For example, an agency is not required to speculate as to what a requester "might" be seeking or bear an unreasonable burden in determining what may or may not satisfy a

request under the Act.² In addition, and pursuant to Final Determinations of the Pennsylvania Office of Open Records, the Act does not require an agency to answer questions, but rather, a request must satisfy the criteria as set forth in 65 P.S. §67.703 of the Act and must seek access to "records" as defined therein.³ Your request, as written and in pertinent parts, seeks information falling under very broad categories such as "athletic salaries" (see Item No. 21) or amounts paid to employees for work on "school and joint school-union committees" (see Item No. 22), for example. Kindly be specific and clarify the documents you are requesting in order to allow the School District to determine whether the records you are requesting, in fact, exist and whether they are public records subject to disclosure pursuant to the provisions of the Act. Although the agency has done its best to interpret and/or identify records that may be responsive to the various items as contained in your request, those portions are hereby denied in pertinent parts as noted below.

Nonetheless, and as a general rule, "a public record, legislative record or financial record shall be accessible for inspection and duplication." See 65 P.S. §67.701. The right to public access and review of agency records is not absolute, however. For example, a public record does not include information that is exempt from disclosure under any other "Federal or State law or regulation or judicial order or decree" or is "protected by privilege" including the attorney-client privilege. See 65 P.S. §§67.102 and 305(a). More importantly, an agency is not required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which it does not currently compile, maintain, format or organize the record.⁴ The School District, however, determined that it is in the public's best interest to promote transparency and disclosure of its records whenever possible. After engaging representatives of several offices and business units within the School District, the following information and/or documents were identified as being responsive to your request:

Item Nos. 1 and 2 – Granted.

By way of background, the School District provides a variety of employee benefits, including medical and other health-related insurance coverage, negotiated through collective bargaining with each of its classes of employees and those afforded to non-represented employees through an outside provider – Independence Blue Cross. *Please note* that the coverage afforded to and premiums paid by the School District and eligibility for any particular employee benefit depends on, for example, which collective bargaining unit an employee belongs to, years of service to the agency, whether the collective bargaining unit administers the benefit itself, etc. Some of the benefits include medical coverage (by enrollment in either a Health Maintenance Organization ("HMO") or a Preferred Provider Organization ("PPO") plan, dental, vision and prescription plans, life insurance, wage continuation and retirement plans, and flexible spending accounts. A summary of programs, services, eligibility for and co-payments required of each plan, and opt-out provisions are enclosed. In response to Item Nos. 1 and 2, and for the Fiscal Year ending June 30, 2011, the School District's Benefits Office reports that health insurance premiums for employees represented by The Philadelphia Federation of Teachers

² See e.g., *In the Matter of John E. Bowders v. York Township*, OOR Dkt No. AP 2009-0822, dated November 20, 2009

³ See e.g., *In the Matter of Mary Ann Pacelli v. City of Hazelton*, OOR Dkt No. AP 2010-0492, June 29, 2010.

⁴ See 65 P.S. §67.705; *Please note* that is exemption may be tendered in response to a number of items contained in your request and is noted where appropriate.

("PFT") was \$166,121,181.96 of which \$165,850,631.16 was paid by the agency while \$270,550.80 represent employee contributions toward the PPO plan.

Item No. 3 – Granted in part.

The agency hereby incorporates its response to Item Nos. 1 and 2 above as if set forth more fully herein. In addition, representatives of the School District's Benefits Office report that the total number of PFT members contributing toward PPO health insurance premiums for the Fiscal Year ending June 30, 2011 was 641. There is no single record that documents this activity, however.

Item No. 4 – Granted.

In accordance with provisions of collective bargaining agreements, there are a number of employee benefits that are administered by the bargaining unit itself. For example, and as documented by records provided in response to Item, Nos. 1 and 2, dental, vision and prescription benefits are administered and offered by the PFT to its membership through its Health and Welfare Fund. For the Fiscal Year ending June 30, 2011, the School District contributed a total of \$173,937,358.75 for all claims paid on behalf of members of all eligible collective bargaining units of which \$66,175,784.13 represents that portion contributed toward the PFT Health and Welfare Fund.⁵ *Please note* that this amount was only 1.5% higher than it was in 2009.

Item No. 5 – Granted.

As required by the collective bargaining agreement with the PFT effective September 1, 2009 and ending August 31, 2012, the School District is required to make a contribution to the PFT's Legal Services Trust Fund at a rate of \$155 per pay period on behalf of eligible members for a total of 20 bi-weekly pay periods during the school year. The purpose of this benefit is to provide eligible members with funds to cover the cost of personal legal services in accordance with and restricted by the limitations of a qualified group legal services plan administered by the PFT. For the Fiscal Year ending June 30, 2011, the School District contributed \$2,614,571.00 toward this fund.

Item No. 6 – Granted.

In addition to in-house professional development afforded to all employees of the agency, and to ensure the continuing education and re-certifications of all teachers, paraprofessionals, non-teaching assistants, secretaries, and others in career and technical and early childhood education, the School District budgets \$400,000 on an annual basis for tuition reimbursement assistance. On an individual basis, this amount is distributed at \$50 per college credit for a maximum of six credits in any one year or otherwise \$300 per eligible employee can be reimbursed provided that the employee submits all proper paperwork and a grade of B or better is attained. This is a fringe benefit, however, and its individual employee cost is included in the calculation of all employee benefits as mentioned above. More specifically, the School District

⁵ A large majority of this data can be extracted from various portions of the School District's Comprehensive Annual Financial Report ("CAFR") that is published by the agency on an annual basis. Although all books and records for the Fiscal Year ending June 30, 2011 are closed, the Controller of the City of Philadelphia has not yet completed its financial audit. For previous fiscal years, however, you may access CAFRs by using the following link: http://www.philasd.org/offices/cbo/finance/general_report.html

attributes \$24.00 per eligible employee of the total per employee allocation made to the PFT. For the Fiscal Year ending June 30, 2011, this benefit cost the School District a total of \$119,965.

Item No. 7 – Granted in part.

The Wage Continuation Plan is an employee benefit that is afforded to all eligible employees of the School District, and is meant to insure against wage loss in the case of an illness, non-work related injury or other short-term disability which extends beyond an individual's available sick leave. The amount of an individual contribution, and time afforded to an employee who so qualifies depends upon a number of factors, including the amount of accumulated sick leave, number of years of service to the agency and an employee's salary. A description of this benefit is included herein. For the Fiscal Year ending June 30, 2011, the School District contribution was a total of \$7,187,654.51 for all eligible employees.⁶

Item Nos. 8 and 18 – Granted.

As part of its five-year strategic plan, *Imagine 2014*, the School District embarked on an aggressive strategy to improve the quality of teachers in classrooms since data shows that teacher retention and effectiveness is directly aligned with student outcomes. Recognizing the critical importance of improving the overall quality of education afforded to its student body, the agency began to make targeted investments to support the growth and development of its teachers. In collaboration with the University of Pennsylvania ("University,") the School District provides for tuition reimbursement in connection with the attainment of a Master's Degree in Urban Education whose curriculum is tailored to the needs of chronically low performing schools. More specifically, and after a rigorous application process, eligible teachers are selected to participate in a Masters Degree Partnership Program where the employee, the School District and the University each pay a third of the cost of the tuition each year. On an individual basis, each participant can receive reimbursement of up to six credits per year at a rate of \$400 per credit for a maximum reimbursement amount of no more than \$2,400 per year. Employees must complete the program within five years of his or her acceptance and must commit to an assignment at a High Needs School for at least two years following degree attainment. Failure to fulfill these requirements results in action against the employee, i.e., reimbursement of the full tuition cost by the employee. For the Fiscal Year ending June 30, 2011, the School District paid a total of \$45,600 towards the Masters Degree Partnership Program, and a total of \$579,457.48 in support of all tuition reimbursement programs. In addition, the School District paid approximately \$6,642.69 towards professional membership fees for those represented by the PFT which includes national board certifications.

Item No. 9 – Granted in part.

When an employee resigns, retires or his/her employment status is otherwise terminated, an employee is generally entitled to the payment of accrued and unused personal, sick, and vacation days and otherwise represents an employee's severance pay. Because of its sheer size, however, the School District is unable to disaggregate the amount of funds that represent "Termination Pay" by collective bargaining unit. Nonetheless, and for the Fiscal Year ending June 30, 2011, the School District paid a total of \$15,834,847 to employees following separation of employment with the agency.

⁶ Please note that this benefit is not only extended to PFT members, however.

Item No. 10 – Granted.

Employees represented by the PFT earn "Leave Benefits" in accordance to the provisions of the collective bargaining agreement in effect at any given time. More specifically, "Leave Benefits" are detailed in Appendix E (pages 123-127) of the Collective Bargaining Agreement between the PFT and the School District covering the period September 1, 2009 through August 31, 2012, a copy of which is attached for your convenience and easy reference.

Item No. 11 – Granted in part.

In response to this item, the School District is enclosing a Leave Detail Report generated from extracting data within the agency's various human resource modules. *Please note*, however, that the agency's data system is limited to only providing the union status as of the date of the report. Consequently, some of the days as reported may have occurred while an employee was in or enjoyed a different union status at the time the absence occurred. In addition, the School District is providing a report generated by the Office of Talent Acquisition which captures the number of teachers at each school and the number of teacher absences per month for the 2010-2011 school year.

Item Nos. 12, 13, 14, 15 and 29 – Granted in part.

In response to Item Nos. 12, 13, 14, 15 and 29 of your request which seeks information that pertains to the costs associated with individual categories of leave days as referenced in Item No. 9, substitutes, lost preparation time, and in-house professional staff development for PFT members only, the School District is enclosing two reports which extract various data from the agency's human resources and financial modules. The data contained in each report varies slightly, however, and may be the result of the deactivation of certain PFT employee titles or other variables including human error since codes are inputted manually. For example, one systems report captures data using "Category," "Category Name," "Pay Type," "Pay Type Name," and "Amount" while the other captures data using an "Object" code and "Object Type." As you will see, the total amount paid for all personal leave days for those belonging to the PFT totaled approximately \$5,048,443.18 in one report while the other captured \$5,042,614.89 for a difference of \$5,828.29. *Please note* that "substitutes" are coded in the School District's human resources module as "Per Diem" or hourly employees and are included in this category as captured by the reports. This category is not exclusive, however, of any other class of employee and may include other employees besides academic substitute teachers. In addition, there is no single category that captures "expense allotments" dedicated to PFT members and employee reimbursable expenses are only afforded in accordance with district-wide Policy Nos. 311, 324 and 325, copies of which are enclosed for your convenience and easy reference. *Please also note* that these reports were subject to change since each was generated prior to the final closing of all books and records for the Fiscal Year ending June 30, 2011, a full reconciliation of all expenditures and revenues and may not reflect actual costs as reported in the School District's CAFR.⁷

⁷ By way of further example, the cost of Termination Pay is reported as \$21,123,531.95 in the report capturing costs by category while the Accounting Services Unit reports this number as \$15,834,847 without regard to union affiliation. This could be the result of delayed retirements and/or call backs following the comprehensive reduction in force experienced by the agency this summer.

Item Nos. 16 and 17 – Denied in part.

The School District was unable to disaggregate the costs associated with "step" increases from those representing the three percent cost of living increase afforded to PFT members for the Fiscal Year ending June 30, 2011 at this time since a large majority of these increases all occurred at the same time or otherwise on the same date.⁸ Nevertheless, the projected cost of the three percent cost of living increase for PFT members for the Fiscal Year ending June 30, 2012 is \$14.4 million dollars.

Item No. 20 – Granted.

Although the School District is required to make a performance bonus equal to \$2.00 per meal above 2,000 meals served to food service managers represented by the PFT in accordance with the terms of the collective bargaining agreement, only one employee achieved the 2,700 base meal equivalent to be eligible for such a bonus for the Fiscal Year ending June 30, 2011. This employee's total meal equivalent was 2,817, and received \$2.00 for every meal served above 2,000 rendering a bonus of \$1,634.00

Item No. 21 – Granted.

The School District is required to pay extra-curricular pay to eligible members of various collective bargaining units in accordance with agreements in effect at the time. In response to this item, the School District is enclosing a report capturing extra-curricular pay to various employees holding PFT job titles for the Fiscal Year ending June 30, 2011 for a total of \$23,606,414.77. In addition, and found in one of the reports (highlighted for your convenience) provided in response to Item Nos. 12, 13, 14, 15 and 29 as noted above, the School District paid a total of \$5,388,077.41 towards extra-curricular pay in support of the agency's Athletic Program.

Item No. 22 – Denied.

The School District is unable to disaggregate data to provide you with costs associated with participation on "school" or "joint school-union" committees unless further defined. For example, the agency may be able to provide you with costs associated with those PFT members serving on the Labor Negotiations Team. Please clarify whether this is the type of information that you seek, however. Otherwise, the School District directs you to its responses to Item Nos 21 above and 23 below.

Item No. 23 – Granted.

For the Fiscal Year ending June 30, 2011, the School District is enclosing a report which captures the names, original appointment dates, union status, base salaries and job titles of those employees on reimbursed full-time leave to a collective bargaining unit which includes the PFT. In total, the agency sought reimbursement from the PFT in the amount of \$3,050,663.20 for those on leave to the union which includes the cost of all base salaries and fringe benefits. *Please note* that employees on leave to the PFT are on such leave on a full-time basis.⁹

⁸ Given staff limitations and other agency priorities, this effort would need to be assigned to a representative in the Office of Information Technology and would require a manual reconciliation of *all* salary adjustments per employee.

⁹ A brief review of records show that an employee is on leave to the PFT on a short-term basis only one or two times a year, and is not representative of employees on permanent leave to this collective bargaining unit.

Item Nos. 24, 25 and 26 – Granted in part.

The School District is enclosing a Personnel Report which captures the names, titles and base salaries of those represented by the PFT for the Fiscal Year ending June 30, 2011. As you will see from the report, the total number of employees equals 16,888 with an average base salary of \$56,676.10. *Please note*, however, that this report does not resemble current staffing levels since the School District underwent a comprehensive reduction in force during the summer of 2011 and continues to implement further budget reduction initiatives during this fiscal year.¹⁰

Item No. 27 – Denied in part.

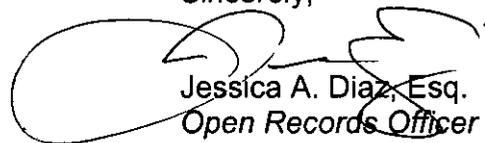
In accordance with recent decisions of the Commonwealth Court of Pennsylvania, Internal Revenue Service W-2 forms are considered confidential information, and are not subject to public disclosure.¹¹ Notwithstanding the above, the School District is enclosing a Salary History Report capturing the names, and various categories of pay of the top 50 wage earners who are members of the PFT.

Item No. 28 – Denied.

Pursuant to 65 P.S. §67.708 (b)(7)(ii) of the Act, records that reflect or are akin to “performance ratings or reviews” are specifically shielded from public disclosure and are considered confidential personnel records. This is true even if the performance rating or review is used by an agency to support a performance bonus. Several administrative rulings of the Pennsylvania Office of Open Records as well as courts in this jurisdiction have held that even an individual employee is unable to get a copy of his or her own performance rating by submitting a request under the Act.

Should you require any assistance in understanding or clarification of the information provided to you, please do not hesitate to contact me. I thank you once again for your patience as we processed your request.

Sincerely,



Jessica A. Diaz, Esq.
Open Records Officer

Enclosures

¹⁰ This report can be refreshed and provided for the Fiscal Year ending June 30, 2012. Again, and as previously noted, final numbers will not be available since the School District is currently implementing further budget reduction initiatives which includes the elimination of programs and services and the reduction of staff.

¹¹ *See Office of the Budget v. Campbell*, 25 A.3d 1318 (Pa. Cmwlth. 2011), a copy of which is enclosed for your convenience and easy reference.



Employee Benefits



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 - Dental
 - Optical & Rx
 - Life Insurance
 - Wage Continuation
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 - TransitCheks
 - COBRA
 - Retiree Medicare Options
 - Open Enrollment
 - Voluntary Early Retirement Incentive Program
 - Alternatives To COBRA 403(b) & 457(b)
 - Voluntary Retirement Plans
 - Employee Assistance Program
- Policies & Procedures
- Forms
- FAQ
- Contact Us
- Dependent Information
- 440 N. Broad Street
Suite G10
Philadelphia, PA 19130
Phone: 215-400-4630
- Related Departments
 - Retirement Department
- Related Resources
 - Contributions Changes to 403b/457b Plans
 - Philadelphia Federation of Teachers (PFT)

Programs & Services

What Are My Benefits?

School District of Philadelphia Benefit offerings

- *Medical Coverage*
 - Available Programs:
 - Open Enrollment
 - Opt Out
 - Diabetic Supplies
 - Retiree Medicare Options
 - COBRA
 - Alternatives to COBRA
- *Dental*
- *Optical & Rx*
- *Life Insurance*
- *Wage Continuation (Short-term Disabi*
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- *Employee Assistance Program (EAP)*

ITEM
NOS 142