



### **FINAL DETERMINATION**

**IN THE MATTER OF**

**JOSHUA PRINCE,  
Requester**

**v.**

**CITY OF LANCASTER,  
Respondent**

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**Docket No.: AP 2015-0638**

### **INTRODUCTION**

Joshua Prince, Esq. ("Requester") submitted a request ("Request") to the City of Lancaster ("City") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking records related to the City's Legal Defense Fund. The City partially denied the Request, citing the attorney-client privilege and an exemption for donor information. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted** and the City is not required to take any further action as directed.

### **FACTUAL BACKGROUND**

On February 26, 2015, the Request was filed, seeking:

all records, including, but not limited to, financial records pursuant to Section 102, since January of 2015, relating to the National Rifle Association (NRA) v. City of Lancaster, including, but not limited to, the following:

(1) All records, including, but not limited to, City of Lancaster's Legal Defense Fund, information of which can be found at <http://www.commonsenselancaster.com> and <http://www.cityoflancasterpa.com/blog/message-mayor-gray-nra-lawsuit>. As provided for by Section 102, this specifically includes, but is not limited to, the names, addresses, and amounts of any donations to/receipts by the City of Lancaster;

(2) All records, including, but not limited to, all financial accounts and financial institutions utilized by the City of Lancaster, in relation to request (1);

(3) all records, including, but not limited to, contracts, communications, and billings, from or to Dechert, LLP or any other law firm or attorney hired to review the legal issues relating to request (1); and

(4) Any other record in any way relating to the current litigation in *NRA v. City of Lancaster*.

On March 4, 2015, the City invoked a thirty-day extension of time to respond to the Request pursuant to 65 P.S. § 67.902. On April 1, 2015, the City purported to grant the Request, stating that it was providing responsive records upon payment of \$104.50. The Requester subsequently paid for the records. On April 6, 2015, the City sent a response granting access to certain records, but noting that, in response to Items 1 and 2 of the Request, it redacted the names, addresses and e-mail addresses of donors to the Legal Defense Fund. *See* 65 P.S. § 67.708(b)(13) (exempting from disclosure “[r]ecords that would disclose the identity” of donors). With respect to records responsive to Items 3 and 4, the City stated that those records are protected by the attorney-work product doctrine, the attorney-client privilege and 65 P.S. § 67.708(b)(10) (permitting the withholding of internal, predecisional deliberations).

On April 22, 2015, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the City to notify any third parties of their ability to participate in the appeal pursuant to 65 P.S. § 67.1101(c). On May 4, 2015, the City provided a position statement, arguing that the appeal

should be dismissed because the Requester allegedly failed to address the City's reasons for denying access to the requested records. *See* 65 P.S. § 67.1101(a)(1). For the first time on appeal, the City alleges that disclosing the identity of donors would violate the First Amendment of the United State Constitution and Section 7, Article 1 of the Pennsylvania Constitution.<sup>1</sup> Additionally, the City argues that the records responsive to Items 1 and 2 of the Request are exempt from disclosure under 65 P.S. 67.708(b)(13) (relating to donor identities) and that "[i]t is the burden of the Requester to prove that the donation is intended for, or restricted to, providing remuneration or personal tangible benefit to a named public official or employee of the agency." The City also argues that it is not required to provide notice of this appeal to potential third party donors because 1) "the need for the donors to file documents in this case would pose a burden upon the free exercise of citizenship and political association that is unwarranted and unnecessary to serve the legitimate purposes of the" RTKL; 2) the City denied the Request as it relates to donors; and 3) the City believes the donor information to be exempt under 65 P.S. § 67.708(b)(13). The City also included an affidavit signed under penalty of perjury from its Solicitor as to the completeness of the record and an affidavit from its Open Records Officer, who affirms that donations to the Legal Defense Fund are deposited "in the City's comingled cash account at Fulton Bank" and that "[t]here was not a separate bank account established for the Fund." The City did not provide any information in support of its response to Items 3 and 4 of the Request.

On May 4, 2015, the Requester submitted a brief arguing that records responsive to Items 1 and 2 of the Requester constitute financial records. The Requester also argues that 65 P.S. §

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<sup>1</sup> The City is not prohibited from raising these new grounds for denial on appeal. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

67.708(b)(13) only applies to individuals who have “lawfully” made a donation and that the donations in this case were illegally made because:

[t]he City ... did and continues to solicit individuals to fund and support its litigation involving its unlawful ordinances, so that it can continue to enforce these illegal and unlawful ordinances. It seems clear that the City, Mayor Gray and the City Council are involved in attempting to solicit people to conspire [18 Pa.C.S. § 6120] and anyone donating in support would likewise be attempting and conspiring to violate Section 6120....  
Any donation made to this fund clearly is a criminal act....

The Requester also argues that the City should be prohibited from raising any reasons for denying access in its April 6, 2015 letter because the Requester received the City’s April 1, 2015 response and paid for records prior to the City’s April 6, 2015 correspondence. The Requester included a notarized statement alleging that the City’s Legal Defense Fund is being used to benefit the named defendants in the NRA lawsuit, the Mayor and members of the City Council.

On May 5, 2015, the City filed an additional position statement arguing that the Legal Defense Fund does not provide a tangible personal benefit for the Mayor and individual members of City Council. The City also provided an affidavit signed under penalty of perjury from its Solicitor as to the timeliness of its April 6, 2015 response.

On May 8, 2015, the Requester submitted an additional statement arguing that the City has not provided competent evidence to withholding access to the requested records. On May 14, 2015, the OOR confirmed the Requester’s agreement to an extension of time to issue a final order in this matter and provided the parties with an opportunity to further supplement the record before the OOR in order to address whether Items 3 and 4 of the Request are privileged or exempt from public access and in order to further develop the constitutional arguments raised. *See* 65 P.S. § 67.1101(b)(1); 65 P.S. § 67.1102(a)(1). On May 21, 2015, both the Requester and

the City submitted additional position statements. The City did not provide any additional information supporting its response to Items 3 and 4 of the Request.

### **LEGAL ANALYSIS**

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “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.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing, and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. §

67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

### **1. The appeal is properly before the OOR**

The City asserts that the Requester did not sufficiently appeal its denial of the Request. Section 1101(a)(1) of the RTKL requires requesters to “address any grounds stated by the agency for ... denying the request.” 65 P.S. § 67.1101(a)(1). In *Pa. Dep’t of Corrections v. Office of Open Records*, the Commonwealth Court held that it is “statutorily required that a requester specify in [an] appeal to the [OOR] the particular defects in an agency’s stated reasons for denying a RTKL request.” 18 A.3d 429, 434 (Pa. Commw. Ct. 2011). In that case, the requester submitted only a single conclusory statement that the records he sought were public. *Id.* at 431. The Commonwealth Court determined that the appeal to the OOR was deficient, noting that “we are not requiring a requester to *prove* anything; the provision merely places a burden on a requester to *identify* flaws in an agency’s decision denying a request.” *Id.* at 434 (emphasis in

original); *see also Housing Authority of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209, 215 (Pa. Commw. Ct. 2012).

In *Levy v. Senate of Pa.*, the Supreme Court stated: “[C]ourts should liberally construe the RTKL to effectuate its purpose of promoting 'access to official government information in order to prohibit secrets, scrutinize actions of public officials, and make public officials accountable for their actions.'" 65 A.3d 361, 361 (Pa. 2013) (quoting *Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 125, 1034 (Pa. Commw. Ct. 2011)).

In the present case, the Requester used the OOR's standard appeal form and checked boxes stating that:

The agency's denial of my request is flawed and the requested records are public records because ...

- The records document the receipt or use of agency funds.
- The records are in the possession custody or control of the agency and are not protected by any exemptions under Section 708 of the Right-to-Know Law, are not protected by privilege, and are not exempted under any Federal or State law or regulation.
- Other[;] Approval of the request in full and legal arguments of admission, waiver, reliance and estoppel. All issues will be addressed in our brief.

Based on a review of the appeal form, the Requester has sufficiently challenged the City's denial, and satisfied Section 1101(a) of the RTKL. *See Barnett v. Pa. Dep't of Pub. Welfare*, 71 A.3d 399 (Pa. Commw. Ct. 2013); *see, e.g., Kirk v. Mifflin County*, OOR Dkt. AP 2014-0493, 2014 PA O.O.R.D. LEXIS 439.

**2. The Requester is not entitled to the records under the theories of waiver, reliance and estoppel<sup>2</sup>**

The Requester argues that he is entitled to the records because the City, in its April 1, 2015 response, purported to fully grant the Request and stated that it would provide access to

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<sup>2</sup> In subsequent submissions, the Requester did not further address his claim of admission. Therefore, the OOR need not reach how this legal argument applies.

records upon the Requester's payment of \$104.50 for copying costs. After the Requester paid that amount, the City sent correspondence on April 6, 2015, stating that it was partially denying the Request under various exemptions and privileges.

With respect to the Requester's argument concerning waiver, the Supreme Court has previously held that parties are able to raise new defenses before the OOR concerning access to records that were not included in an agency's response. *Levy*, 65 A.3d at 383. Similarly, the Commonwealth Court has held that agencies may raise defenses on appeal to the OOR, even if they *never* issued a response. *See McClintock v. Coatesville Area Sch. Dist.*, 74 A.3d 378, 384 (Pa. Commw. 2013). Because the City raised its defenses prior to the Requester's appeal, the City did not waive its defenses by failing to include them in its April 1, 2015 response.

The Requester also argues that promissory estoppel and detrimental reliance apply. These terms are interchangeable and are discussed herein accordingly. *See Peluso v. Kistner*, 970 A.2d 530, 532 (Pa. Commw. Ct. 2009). In order to establish that promissory estoppel applies, a party must demonstrate that:

- 1) the promisor made a promise that he should have reasonably expected would induce action or forbearance on the part of the promisee;
- 2) the promisee actually took action or refrained from taking action in reliance on the promise; and
- 3) injustice can be avoided only by enforcing the promise.

*Crouse v. Cyclops Indus.*, 745 A.2d 606, 610 (Pa. 2000); *see also Peluso*, 970 A.2d at 532 (noting that promissory estoppel allows a party to enforce a contract-like promise that otherwise would be unenforceable under traditional contract law principles). In the present case, there is no dispute that the City stated that records would be provided upon payment and that the Requester paid the requested amount, meaning that the first two elements are met. The question, then, is whether "injustice can be avoided only by enforcing the promise."



Under the RTKL, “[a]ll applicable fees shall be paid in order to receive access to the record[s] requested.” 65 P.S. § 67.901. If a requester seeks to only challenge an agency’s substantive reasons for denying access, requesters may pay for all records provided (even if redacted) prior to filing an appeal. *See Ind. Univ. of Pa. v. Loomis*, 23 A.3d 1126, 1128 (Pa. Commw. Ct. 2011). As the issuance of a response is a “ministerial and administrative” function, courts, recognizing that agencies may have legitimate interests in withholding access to certain sensitive records, have rejected arguments that agencies must wholesale provide access to all requested records based on defects in an agency’s response in *Levy and McClintock*. *See Bd. of Supervisors of Milford Twp. v. McGogney*, 13 A.3d 569, 573 (Pa. Commw. Ct. 2011). Because the Requester would have had to paid the City \$104.50 in order to file an appeal to the OOR under *Loomis*; courts have rejected wholesale waiver arguments in *Levy and McClintock*; and the Requester is entitled to an adjudication on the merits of this dispute before the OOR justice does not require the City to provide access to all records based on the argument of promissory estoppel.

**3. Records responsive to Items 1 and 2 of the Request are not exempt from disclosure under Section 708(b)(13)**

The City argues that the names, addresses and e-mail addresses of donors to its Legal Defense Fund are exempt under 65 P.S. § 67.708(b)(13).<sup>3</sup> Section 708(b)(13) provides that:

[r]ecords that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

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<sup>3</sup> The City did not argue that the e-mail addresses are exempt from disclosure under 65 P.S. 67.708(b)(6)(i)(A). *See Office of the Lieutenant Governor v. Mohn*, 67 A.3d 123 (Pa. Commw. Ct. 2013).

65 P.S. § 67.708(b)(13). This exemption has only ever been applied to “natural persons” as defined by 1 Pa.C.S. 1991, and not corporations, partnerships, associations and other entities. *See Roxbury News v. City of Harrisburg*, OOR Dkt. AP 2012-1748, 2012 PA O.O.R.D. LEXIS 1457. This exemption also does not apply to financial records. *See* 65 P.S. § 67.708(c) (“The exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) OR (17)”). The RTKL defines a “financial record” as:

Any of the following:

- (1) Any account, voucher or contract dealing with:
  - (i) the receipt or disbursement of funds by an agency; or
  - (ii) an agency’s acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.
- (3) A financial audit report. The term does not include work papers underlying an audit.

65 P.S. § 67.102; *see also North Hills News Record v. Town of McCandless*, 722 A.2d 1037 (Pa. Commw. Ct. 1999) (stating that, under the repealed RTKL, the “accounts/vouchers/contracts category ... must bear a sufficient connection to fiscally related accounts, vouchers or contracts”).

The parties in this matter do not dispute that the records deal with the “receipt ... of funds by an agency,” as the records deal with the City’s receipt of donations to its Legal Defense Fund. Accordingly it must be determined whether the redacted records constitute an “account” or “voucher” related to the City’s receipt of funds.<sup>4</sup> Neither the RTKL nor the Pennsylvania Rules of Statutory Construction define either of these terms. “Words and phrases shall be construed according to rules of grammar and according to their common and approved usage....” 1 Pa.C.S. § 1903(a). According to Merriam-Webster’s Collegiate Dictionary, the term “account” means,

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<sup>4</sup> The Requester does not allege that the records of donations constitute a contract.

among other things, “a record of debit and credit entries...” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 8 (11th ed. 2012). Similarly, a “voucher” is “a documentary record of a business transaction.” *Id.* at 1403.

In the present case, the Requester provided a copy of the redacted records, which the City describes as “Common Sense Lancaster Defense Fund Online Contributions” and “Common Sense Lancaster Cash/Check Contributions.” Both redacted records show various dollar amounts with corresponding dates as to when the donations were made and the total dollar amount of the donations (totaling \$18,390.00), but the names, e-mail addresses and addresses of the donors have been redacted. As these records are chronological listings of donations made to the City, these records constitute an “account” or “voucher” within the definition of financial records under 65 P.S. § 67.102. Because records responsive to Items 1 and 2 of the Request are financial records, “[t]he exceptions set forth in subsection (b) shall not apply” except for certain specific exemptions. *See* 65 P.S. § 67.708(c). Because Section 708(c) prevents the application of 65 P.S. 67.708(b)(13) to financial records as a matter of law, the City has not established that the records of donations to its Legal Defense Fund are exempt from public access. *See* 65 P.S. § 67.708(a)(1) (“The burden of proving that a record of a ... local agency is exempt from public access shall be on the ... local agency receiving a request by a preponderance of the evidence”); *see also Prince v. City of Harrisburg*, OOR Dkt. AP 2015-0350, 2015 PA O.O.R.D. LEXIS 462 (holding that the identities of donors to the City of Harrisburg’s legal defense fund are subject to public access), *appeal pending* No. 2015-CV-4163-MP (Dauph.Com.Pl.).

As a result of this holding, the OOR need not address the Requester’s argument that the City’s firearms ordinances are illegal and that, as a result, the donors illegally contributed to the City’s Legal Defense Fund.

**4. Records responsive to Items 1 and 2 of the Request are not protected by the Pennsylvania or Federal constitutions**

For the first time on appeal, the City argues that the First Amendment of the United States Constitution and Section 7, Article I of the Pennsylvania Constitution protect records responsive to Items 1 and 2 of the Request from public access. Notably, the City argues that the release of the donor information would infringe upon the constitutional right of freedom of association, but does not argue that the release of the information would also impact individuals' constitutional right of privacy.

Article I, Section 7 of the Pennsylvania Constitution provides:

The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

PA. CONST. art. I, § 7. Similarly, the First Amendment of the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. 1. The Pennsylvania Constitution “affords greater protection for speech and conduct than does the First Amendment.” *Pap’s A.M. v. City of Erie*, 812 A.2d 591, 596 (Pa. 2002).

Political contributions are protected under Article I, Section 7 of the Pennsylvania Constitution. *See DePaul v. Commonwealth*, 969 A.2d 536, 548 (Pa. 2009) (“[P]olitical contributions are a form of non-verbal, protected expression”). As explained by United States Third Circuit Court of Appeal:

It is, of course, now well established that there is a constitutionally protected “freedom of association.” In one aspect, it protects an individual’s “choice[] to enter into and maintain certain intimate human relationships,” which is “a fundamental element of personal liberty.” *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18, 82 L. Ed. 2d 462, 104 S. Ct. 3244 (1984). Its other aspect “recognize[s] a right to associate for the purpose of engaging in those activities protected by the First Amendment -- speech, assembly, petition for the redress of grievances, and the exercise of religion.” *Id.* at 618.

*Fraternal Order of Police, Lodge No. 5 v. City of Phila.*, 812 F.2d 105, 119 (3d Cir. 1987).

Both parties appear to agree that there is no case law directly on point dealing with donations to a municipality. A review of the case law reveals that, generally, tribunals have disfavored revealing membership lists of individuals engaged in political activities. *See, e.g., Brown et al. v. Socialist Workers '74 Campaign Comm. (Ohio) et al.*, 459 U.S. 87 (1982); *Shelton v. Tucker*, 364 U.S. 479 (1960) (holding that a statute requiring disclosure of teachers’ contributions and associations to political organizations and other entities was unconstitutional); *NAACP v. Alabama*, 357 U.S. 449, 462 (1960) (“It is hardly a novel perception that compelled disclosure of affiliation with groups **engaged in advocacy** may constitute as effective a restraint on freedom of association .... Compelled disclosure of membership in an organization **engaged in advocacy** of particular beliefs is of the same order”) (emphasis added); *see also Campbell v. Pocono Mountain School District*, OOR Dkt. AP 2009-0766, 2009 PA O.O.R.D. LEXIS 388 (holding that the names of contributors to political action committees were not subject to public access); *Pennsylvanians For Union Reform v. Pa. Office of Admin.*, OOR Dkt. AP 2014-0795, 2014 PA O.O.R.D. LEXIS 654 (holding that “[t]he government may not disclose *both* the

employee's name *and* the amount of any financial contribution [to a political action committee] without infringing on the employee's right to freedom of association").

Courts have required the disclosure of the names of members of non-political organizations in certain other cases. *See Allegheny West Civic Council v. City Council of the City of Pittsburgh*, 484 A.2d 863 (Pa. Commw. Ct. 1984) (requiring the disclosure of the membership lists of a civic organization); *United States v. Judicial Watch*, 266 F. Supp. 2d 1, 20 (D.C. Dist. 2002) (noting that "courts have enforced IRS summonses that require churches to reveal their membership lists"); *Marshall v. Bramer*, 110 F.R.D. 232 (W.D.Ky. 1985) (requiring the disclosure of membership lists of the Ku Klux Klan and related organizations).

In the present case, the governmental agency involved, the City, is not requiring entities to turn over a membership list; instead, the City solicited individuals for the purpose of making contributions to the City and *created* the list of donors. The City did not receive the donations from a separate political entity, as the evidence establishes that the donations are received from each individual directly into its sole bank account. As the donor lists were created by the City, they are presumptively subject to public access under the RTKL. *See* 65 P.S. § 67.305(a). Although certain City officials are members of political parties, the City, as a political subdivision, is not inherently a political organization or otherwise "engaged in advocacy." *See generally* 53 P.S. §§ 35101-39701; *NAACP*, 357 U.S. at 462. As a municipality, the City cannot limit its residents to that of a particular political belief or restrict its municipal services to individuals that profess a belief other than that of the elected political party in control of various City offices. *See generally* PA. CONST. art. I, § 26 ("Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right"). Although the donations were solicited for

a specific, arguably-political purpose (the defense of a lawsuit filed by the NRA), because the City is a non-partisan, political subdivision and the donor list documents the City's receipt of funds into the City's bank account, the City has not established that revealing the names and other information concerning the donors would infringe upon the freedom of association provided by the Pennsylvania and United States Constitutions.

To the extent that access is granted to individual's home addresses, any release is subject to the Court's holding in *Pennsylvania State Education Association v. Office of Open Records*, 110 A.3d 1076, 1086 (Pa. Commw. Ct. 2015).

**5. The City has not established that records responsive to Items 3 and 4 of the Request are exempt or privileged**

The City, in its April 6, 2015 correspondence, argues that records responsive to Items 3 and 4 of the Request are protected by 65 P.S. § 67.708(b)(10)(i)(A), the attorney-client privilege and the attorney-work product doctrine. In his appeal, the Requester specifically stated that he was seeking “[a]pproval of the request **in full**,” placing the City on notice that its response as to Items 3 and 4 of the Request are at issue. Similarly, the Requester argued that he was entitled to records responsive to these portions of the Request in his May 4, 2015 submission. As the City did not provide any argument concerning why records responsive to Items 3 and 4 of the Request should be withheld, the OOR, on May 14, 2015, reopened the record specifically for the purpose of allowing “both parties to submit relevant evidence and legal argument as to whether records responsive to [Items 3 and 4] of the Request are subject to public access.” The City, however, did not subsequently submit any materials in support of withholding records responsive to Items 3 and 4 from public access. Accordingly, based on the lack of evidence provided by the City, the City has not overcome its burden of proof. *See* 65 P.S. § 67.708(a)(1).

## CONCLUSION

For the foregoing reasons, Requester's appeal is **granted** and the City is required to provide the Requester with all responsive records within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Lancaster County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: June 12, 2015**



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APPEALS OFFICER/ ASSISTANT CHIEF COUNSEL  
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