



Home Addresses of Public Employees: Keep Them Public

By Craig J. Staudenmaier

Pennsylvania's new Right-to-Know Law (RTKL) does not expressly exempt home addresses of public employees except for judges and law enforcement personnel. Home addresses of public employees are generally considered to be a matter of public record. However, whether they should remain so is now an issue with which agencies and the courts are grappling. The Pennsylvania Supreme and

Commonwealth courts are reviewing the question in a case involving public school employees. In July 2009, the Commonwealth Court issued a preliminary injunction prohibiting the further release of public school employee addresses at the request of the Pennsylvania State Education Association (PSEA). Two days later, the Pennsylvania Office of Open Records (OOR) issued a general moratorium on the release of any public employee addresses pending the final outcome of the PSEA case.

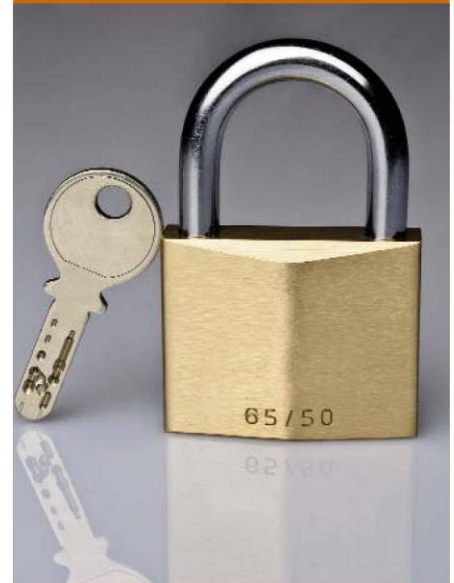
Although those who assert that public employee addresses should not be a matter of public record raise various arguments, the two main arguments allege a constitutional right of privacy in one's home address and personal security fears. However, such arguments lack a solid legal or factual basis and also fail to take into account the existing protections built into the RTKL regarding personal security. There exists a compelling public interest in such information, with one key example being the need to identify public employees whose conduct or misconduct becomes a matter of public interest.

Neither the Pennsylvania Constitution nor applicable case law provides that public employees as a group have a right of privacy in their home addresses. Where a right of privacy has been recognized, that right has been deemed to be an *individual* right, not a right applicable to a group as a whole. Even in situations where an individual asserts a subjective expectation of privacy, that expectation must be reasonable under the circumstances presented and is not absolute. Instead, it must be balanced against the competing and potentially greater public interest in disclosure. When a privacy claim involving disclosure of public records has been upheld, that holding has been founded in statutory protection (i.e., the personal security exemption), not in constitutional analysis.

When the Legislature debated the new RTKL, it carefully considered on several occasions whether home addresses of public employees should be exempt. In each instance, the Legislature rejected such an exemption. The Legislature did provide for exemption of home addresses for judicial and law enforcement officers and minors. In addition, the Legislature included in the RTKL a specific *statutory* exemption for individuals who could demonstrate that disclosure of such information “would be *reasonably likely* to

result in a *substantial and demonstrable risk*” to personal security. 65 P.S. §67.708(b)(1)(ii). (Emphasis added.) This provision contains a specific method by which access to an individual public employee's home address information can be blocked if necessary to protect that employee's security. This specific language of the statute evidences the clear intention of the Legislature that there should not be a wholesale exemption of a class of employees (e.g., public school employees) and that such public records may only be withheld after a demonstrable showing of a substantial likelihood that the release will reasonably impair that individual's personal security. This is consistent with our Supreme Court's most recent statement on privacy as it relates to the RTKL — that personal security analysis necessarily subsumes the issue of privacy. *Pennsylvania State University v. State Employees' Retirement Board*. As Justice James J. Fitzgerald III wrote, “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 dissemination of the records at issue.”

A wholesale exemption of home addresses for any group under a claimed constitutional right of privacy cannot be reasonable. Such a claim ignores the realities of the easy availability of such information through such sources as the Internet, telephone directories, voter registration records and real property tax assessment records, among others. Such sources are easy to use and are accessed without any notice to the individual. If one knows the correct spelling of a person's name, public or private, and the county in which he or she lives, one can locate that person's home address within a few minutes from those numerous counties that provide tax assessment information online or, if not, at the county assessment office itself. Even our Supreme Court recognized in



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the 2003 case of *Commonwealth v. Duncan* that any subjective expectation of privacy a person might have in his home address is not “objectively reasonable in light of the realities of the modern age.” Simply put, there exists no constitutional protection of public employees’ addresses as a whole. The Pennsylvania Legislature recognized this in its debate on the issue and in its final decision not to exempt public employees’ home addresses. Rather, consistent with prior law, the Legislature did provide a specific exemption for those individuals who can satisfy the statutory test and overcome the public’s right and need for such information.

The wholesale desire to exempt public employee addresses also fails to recognize that such information is vitally important to the proper monitoring of government by the public. There are instances where knowing the home address of a public employee is necessary to verify that the employee is complying with the terms and conditions of his or her employment or the use of public funds, property or equipment. This information is extremely important to the public and the media as a crucial tool for safeguarding against governmental waste, fraud and abuse. It also enables the public and press to identify correctly the employee who is engaged in misconduct and to ensure that employee is not confused with a person who is not culpable. Indeed, without access to public employees’ addresses, the chances of misidentifying an employee are greatly increased and, thus, the public availability of such information actually aids in the protection of the reputation and security of public employees rather than threatens it.

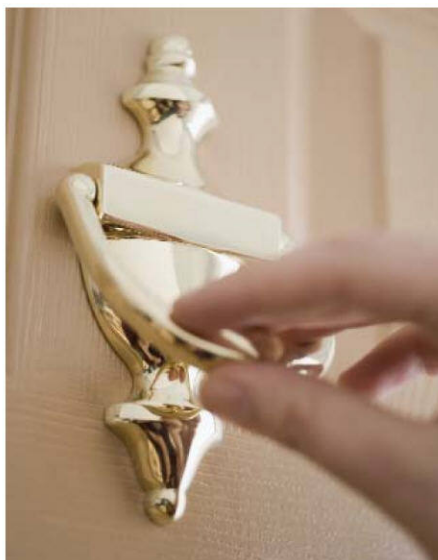
Following are several examples of situations where obtaining the home address of a public employee was essential in properly identifying an employee and to discovering and reporting upon that employee’s involvement in criminal and civil cases:

- A home address was used to confirm that a public school teacher was indeed the same person arrested on child molestation charges.
- Home address records were crucial in uncovering the fact that a public school board member had moved out of the school district but never told anyone.
- The ability to access home address records was a critical factor in the eventual removal of a standing school board president with a felony record who should never have been allowed to run for elective office.
- Home address records were key in discovering that a school district had attempted to sell public school property at below market price to a district teacher without it being first placed for public sale or bid.
- Public employee home addresses were used to help identify a convicted forger who was hired to handle accounts receivable for a borough tax office.
- Public employee home addresses were used to identify a municipal tax auditor who also had a personal lien for unpaid taxes.

Access to public employee home address information serves several other important functions, including the following:

- Taxpayers have relied on these records to contact like-minded supporters to fight proposed tax increases as well as to prevent the closure of a school targeted for consolidation.
- Candidates for elective office use them to communicate with voters.
- Charities, including volunteer fire and ambulance companies, use lists of home addresses to seek donations.

This analysis is not meant to minimize the concern public employees have for their own safety and the safety of their homes and families. The public nature of their employment, however, does separate them from the private sector because their employment involves work on the public's



behalf and at public expense. Although this scrutiny is not limitless, nor should it be, it is real and necessary to the proper functioning of our government and the protection of the principles upon which our government is based. The RTKL specifically does not exempt all public employees' addresses but contains a test whereby, in those rare circumstances where disclosure would put an individual employee's personal security at risk, such information may be protected without resort to a broad, over-reaching exemption.

The public's right to know how its government and its government's employees are functioning and how its tax dollars are spent is a vital public interest, recognized in Pennsylvania by both our courts and our Legislature. Public employees' addresses must remain public. Finally, although not necessary for this article, but believed by this writer to be necessary for the integrity of the position set forth, I live at 4713 Great Oak Lane, Harrisburg, Pa. 17110. ♦



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to the Pennsylvania Freedom of Information Coalition.

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