[J-16-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

THE PENNSYLVANIA STATE UNIVERSITY, RICHARD ALTHOUSE, RODNEY A. ERICKSON, JOSEPH V. PATERNO, AND GARY C. SCHULTZ, Appellants v. STATE EMPLOYEES' RETIREMENT BOARD, Appellee JAN MURPHY AND THE PATRIOT NEWS COMPANY, Intervenors	:	No. 107 MAP 2006 Appeal from the Order of the Commonwealth Court entered on August 12, 2005 at No. 2633 CD 2004, affirming the decision of PSERS entered on November 16, 2004 at No. 2003-06. 880 A.2d 757 (Pa. Commw. 2005) ARGUED: May 14, 2007

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY **DECIDED: November 20, 2007**

Because I do not agree that the records at issue in this matter are "public records" as defined in The Right to Know Act, 65 P.S. § 66.1, I must respectfully dissent. Distinct from the majority, I find our decision in Tribune-Review Pub. Co. v. Dep't. of Community and Economic Development, 859 A.2d 1261 (Pa. 2004), compels such a result in this case.

At issue in Tribune-Review was whether a log kept by the Department of Community and Economic Development was a public record under The Right to Know Act. In reviewing this issue, a majority of this court stated that "we have recently confirmed that the [Right to Know Act] is designed to require disclosure only of documents prepared by the

government agency or at the express direction of the government agency." Id. at 1268. While the dissenting opinion disagreed with this statement, it concluded that the statutory definition of a public record "applies to a wide range of documents that contain information relating to the disbursement of public funds or an action of an agency that fixes the rights or obligations of individuals." Id. at 1270 (Saylor, J. dissenting). Under either theory of The Right to Know Act, it is clear that the records in this case are not public records, since the information that is being sought -- the salaries of non-retired PSU employees and their service history -- is neither a record prepared by SERS or at its express direction nor does the information relate to the disbursement of public funds or fix the rights or obligations of non-retired employees.

Indeed, Tribune-Review makes this very point when it concluded that a database, which was "simply an electronic storage facility, and not a decisional document" was not a public record. Id. at 1268. Furthermore, we explained that "a log" compiled by a state agency, which is merely a collation of data provided by applicants, did not amount to a public record. Id. "Consequently, a database that is simply an assemblage of information provided by applicants cannot be deemed a public record simply because the agency undertakes the secretarial task of inputting data." Id.

In this case, we are faced with a similar situation. Until the employee retires, the salary and years of service information is not utilized by SERS for any purpose. Rather, it is information that is simply collated and/or assembled by SERS for use at some date in the future when the employee is ready to or has retired. That information may become a public record at the time the retirement benefits are computed and paid by SERS, but until that point, there has been no disbursement of public funds or even the anticipation of disbursement of public funds to the employees under The Right to Know Act. Likewise, there is no "fixing" of employees rights or obligations at this point. Accordingly, I would conclude that the instant matter is controlled by Tribune-Review, and I respectfully dissent.

Mr. Justice Castille joined this dissenting opinion.