



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

:

**BRITTANY SUSZAN,  
Requester**

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**v.**

**: Docket No: AP 2020-1138**

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**CITY OF HARRISBURG POLICE  
DEPARTMENT,  
Respondent**

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### **INTRODUCTION**

Brittany Suszan (“Requester”), with SpotCrime, submitted a request (“Request”) to the City of Harrisburg Police Department (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a call log. The City denied the Request, stating that records do not exist. 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 required to take further action as directed.

### **FACTUAL BACKGROUND**

On July 6, 2020, the Request was filed seeking, “‘Call log Grid’ file again, but for the dates 3/23/2020 thru 3/29/2020. Please send in excel format to my email... with the following columns: Call number, Call type, Date rpt, Time, Location.” On July 13, 2020 the City denied the Request, stating that records do not exist.

On July 14, 2020, 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 July 15, 2020, the Requester submitted a statement that regardless of the City changing vendors, the CODY system is a database and she is only seeking the data.

On August 26, 2020, the City submitted its position statement reiterating its reason for denial. The City states that its software system changed and that the software does not have a function to export the data into a report. The City also submitted a statement made under the penalty of perjury from Lieutenant Todd Abromitis from the City's Police Department.

### **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” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. 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.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing; however, the OOR has the necessary 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 the 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 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 *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

The City argues that it does not possess the requested report and is unable to create such a report by extracting information from its database. Section 705 of the RTKL states that “an agency shall not be required to create a record which does not currently exist or to compile, maintain format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705. “[D]rawing information from a database does not constitute creating a record under the [RTKL].” *Commonwealth v. Cole*, 52 A.3d 541, 547 (Pa. Commw. Ct. 2012) (citing *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Unpub. LEXIS 38 (Pa. Commw. Ct. 2012)). “... [A]n agency can be required to draw information from a database, although the information must be drawn in formats available to the agency. In short, to the extent required information exists in a database, it must be provided; an agency cannot claim otherwise under Section 705 of the [RTKL].” *Id.* at 548. However, an agency is not required to compile information into a spreadsheet for a requester; as the Court in *Cole* recognized: “Our holding does not require such acts, as that would eviscerate Section 705 of the [RTKL]. Rather, the information contained in databases that is subject to disclosure under the [RTKL] must simply be provided to requesters in the same format that it would be available to agency personnel.” *Id.* at 549 n.12.

Here, Lieutenant Abromitis attests, in relevant part:

4. The City of Harrisburg Bureau of Police adopted a new records management software, from CODY systems, in January of 2020.
5. The new system does not have a feature that creates a report that includes the requested information.
6. The Bureau of Police is currently working with its vendor, CODY systems, to create a function in a program to create this report; however, the City and CODY have not finished creating that function of the City’s new software.

7. Unless the City creates such a function within the software there is no way to export the requested data into a report or document, regardless of the form requested.

The City also states that “[o]nce the record exists it will likely become subject to public access, and certainly become subject to an appeal on the merits of whether the requested information is public; however, nothing in the [RTKL] requires the City ... to create this record on a timeline dictated by the Requester.” The City concludes that it is not required to “create new capabilities in its software in response to a request...”

Lieutenant Abromitis’ attestation demonstrates that the City does not currently possess a report of the requested information; however, the City’s evidence also indicates that its database contains the responsive information. While the City has credibly attested to the difficulties in obtaining the requested information from the database and that the City is working to create such a functionality, the Commonwealth Court has repeatedly stressed that information in an agency database is subject to public access. *See, e.g., Feldman v. Pa. Comm’n on Crime & Delinquency*, 2018 A.3d 167, 173-74 (Pa. Commw. Ct. 2019) (discussing an agency’s obligation to provide information in its database); *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018) (“DOC has the duty to obtain information corresponding to inmate medications in the form in which Pharmacy Contractor maintains it.... Pulling information from a database is not creating a record”) (citing *Cole, supra*). The Court has not made any exceptions based upon the difficulty of obtaining the information and the evidence is clear that the responsive information is contained in the City’s database and is able to be viewed by City personnel. Pursuant to *Cole*, information in the City’s database is subject to access under the RTKL. *See also Unger v. Pa. Dep’t. of Labor & Industry*, OOR Dkt. AP 2020-0940, 2020 PA O.O.R.D. LEXIS 2410

(Information contained within an agency's database is subject to public access regardless of the agency's difficulty in retrieving the information).

### CONCLUSION

For the foregoing reasons, Requester's appeal is **granted**, and the City is required to provide all responsive records to the Requester 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 Dauphin 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. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: October 23, 2020**

*/s/ Jill S. Wolfe*

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APPEALS OFFICER  
JILL S. WOLFE, ESQ.

Sent via email to: Brittany Suszan;  
Isaac Gaylord, Esq.

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<sup>1</sup> See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).