



FINAL DETERMINATION

IN THE MATTER OF

**BRITTANY SUSZAN,
Requester**

v.

**CITY OF YORK,
Respondent**

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Docket No: AP 2021-1010

INTRODUCTION

Brittany Suszan (“Requester”), with SpotCrime, submitted a request (“Request”) to the City of York (“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 April 13, 2021, the Request was filed seeking, “police department log for the dates 4/1/21-4/12/21. I am looking for data similar to what used to be made available on the city/police department website ...which was a list of public crime incidents from the RMS/CAD system. Please send in excel format ...with the following columns: incident type, date, time, location.” On April 15, 2021, the City invoked a thirty day extension to respond pursuant to 65 P.S. § 67.902.

On May 20, 2021, the City partially granted the Request, stating that it withheld information pursuant to 65 P.S. § 67.708(b)(6).

On May 24, 2021, 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 21, 2021, 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 Sergeant John Reisenweber from the City's Police Department and Patricia Siebert, City's Open Records Officer.

Also on July 21, 2021, the Requester submitted a statement that this matter is similar to a prior appeal at *Suszan v. City of Harrisburg*, OOR Dkt. AP 2020-1138, 2020 PA O.O.R.D. LEXIS 3010 (finding the police blotter information must be provided regardless of the difficulty in pulling it from the database).

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 decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

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, Sergeant Reisenweber attests, in relevant part:

4. I informed the Open Records Officer that the York City Police Department blotter is not currently available on the website. Following the destruction of the City of York’s computer servers in August of 2020, the York City Police Department began using the CODY reporting system. Subsequently, the department no longer has the ability to print blotters.

...

6. After researching the matter with Lt. Daniel Lentz, a spreadsheet was produced for the response that included the incident type, date, time and location of incident. The only difference between the blotter that was on the York City website in the past and the spreadsheet produced for this request using CODY is the omission of the block of the street where the incident occurred.

7. York City Police Department blotters had the ability to reference incident location by providing a block reference (i.e. '200 block of'). The CODY system does not allow this, and the information would need to be changed manually for each individual entry to add this information, resulting in the creation of a record that cannot otherwise be generated by the CODY reporting system.

Ms. Siebert also attests that "I would have redacted the specific address (i.e. property numbers) had they been included on the spreadsheet, I advised Sergeant Reisenweber that the report that he created was satisfactory."

While the City has credibly attested to the difficulties in obtaining the requested information from the database, 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).

Additionally, the Request seeks police blotter information, which has been found to be a public record. *See* 18 Pa.C.S. § 9104(b) (“Court dockets, *police blotters* and press releases and information contained therein shall, for the purpose of this chapter, be considered public records.”) (emphasis added); *see also* 65 P.S. § 67.708(b)(16) (“This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. § 9102 ...”). A police blotter is defined as “[a] chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.” 18 Pa.C.S. § 9102. Therefore, the City must provide the Requester with the requested information. *See* 65 P.S. § 67.306 (“Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree”).

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 York 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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

FINAL DETERMINATION ISSUED AND MAILED: July 19, 2021

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent via email to: Brittany Suszan;
 Patricia Siebert