



### **FINAL DETERMINATION**

**IN THE MATTER OF**

**RHONDA GLADDEN,  
Requester**

**v.**

**ALLEGHENY COUNTY,  
Respondent**

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**Docket No.: AP 2021-1268**

### **INTRODUCTION**

Rhonda Gladden (“Requester”) submitted a request (“Request”) to Allegheny County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking certain 911 audio recordings and call sheets. The County partially denied the Request, arguing that 911 recordings are not subject to public disclosure. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the County is not required to take any further action.

### **FACTUAL BACKGROUND**

On June 16, 2021, the Request was filed, seeking “audio copies of two 911 calls and associated call sheets” for two identified domestic incidents.<sup>1</sup> On June 23, 2021, the County partially denied the Request, asserting that the responsive records are exempt 911 recordings, 65

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<sup>1</sup> The Request provides details of the two incidents, including, but not limited to, the date and time of the calls, the address to which police were dispatched and the person who made the calls.

P.S. § 67.708(b)(18)(i).<sup>2</sup> On June 29, 2021, the Requester appealed to the OOR, challenging the denial of the audio calls and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On July 13, 2021, after being afforded additional time to do so, the County submitted a position statement, reiterating its grounds for denial. Accompanying the submission was the sworn affidavit of Rebecca Frazier, Assistant Chief/Deputy Director of the County's Department of Emergency Services. The Requester did not submit additional evidence on appeal.

### **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. 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.* Here, neither party requested a hearing.

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<sup>2</sup> The County did provide a copy of the relevant time response log entries.

The County is a local agency subject to the RTKL that is required to disclose public records. *See* 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. 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. 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)).

In the instant matter, the County contends that the responsive 911 records are exempt pursuant to Section 708(b)(18) of the RTKL, which protects from disclosure “[r]ecords or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.” 65 P.S. § 67.708(b)(18)(i). However, “[t]his paragraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.” 65 P.S. § 67.708(b)(18)(ii).

Here, the Request seeks records that are expressly exempt under Section 708(b)(18) of

the RTKL. *See Pa. Game Comm'n v. Fennell*, 149 A.3d 101, 104 (Pa. Commw. Ct. 2016) (holding that evidence may be unnecessary when an exemption is clear from the face of the record). While the RTKL does not preclude the County from releasing the records, the County has not indicated that the public interest in disclosure of the records outweighs nondisclosure, and that determination is the County's to make. 65 P.S. § 67.708(b)(18)(ii); *see also Irwin v. Wayne Cnty. Dist. Atty's Office*, OOR Dkt. AP 2016-0983, 2016 PA O.O.R.D. LEXIS 943; *Hammond v. Lancaster Cnty. Dist. Atty's Office*, OOR Dkt. AP 2016-0494, 2016 PA O.O.R.D. LEXIS 600. While the Requester states that she is seeking the records on behalf of her client, the OOR is without authority to compel the County to exercise its discretion in favor of disclosing the records. *Pa. Dep't of Pub. Welf. v. Froelich*, 29 A.3d 863 (Pa. Commw. Ct. 2011); *Brady v. Franklin Cnty.*, OOR Dkt. AP 2020-0219, 2020 PA O.O.R.D. LEXIS 439; *Loro v. Delaware Cnty.*, OOR Dkt. AP 2019-0779, 2019 PA O.O.R.D. LEXIS 590. Therefore, the responsive 911 recordings may be withheld.

### CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the County is not required to take any further action. 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 Allegheny 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>3</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

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

**FINAL DETERMINATION ISSUED AND MAILED: July 22, 2021**

/s/ Magdalene C. Zeppos-Brown

MAGDALENE C. ZEPPOS-BROWN, ESQ.

DEPUTY CHIEF COUNSEL

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