



FINAL DETERMINATION

IN THE MATTER OF

**TERRY WAYNE SIFORD, JR.,
Requester**

v.

**FRANKLIN COUNTY,
Respondent**

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Docket No: AP 2021-1993

INTRODUCTION

Terry Wayne Siford, Jr. (“Requester”), an inmate at SCI-Fayette, submitted a request (“Request”) to Franklin County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records regarding calls for service from the County’s Department of Emergency Services. The County granted the Request. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part, denied in part and dismissed as moot in part**, and the County is required to take further action as directed.

FACTUAL BACKGROUND

On August 10, 2021, the Request was filed, seeking: “Call for service numbers (CAD reports) from August 1, 2013 [through] August 5, 2021 for these specific addresses: [25 addresses omitted].” On August 12, 2021, the County sought clarification from the Requester and on August 25, 2021, the Requester indicated that he was narrowing his Request to seek “only police calls.”

On September 1, 2021, the County granted the Request and provided a list of Computer Aided Dispatch (“CAD”) reports for the specified timeframe, while stating that not all of the addresses had a police related incident during the timeframe requested.

On September 20, 2021, the Requester appealed to the OOR, challenging the County’s response, arguing that the County did not prove that no additional records exist, that call service numbers were not provided, and that the County did not provide a response under the RTKL.¹ The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On September 29, 2021, the County submitted a position statement, arguing that also on September 29, 2021, it notified the Requester that it was making available to him CAD reports that were updated from the original document provided to the Requester to include the call for service numbers, as well as the total number of pages that exist for each incident that would be provided upon receipt of payment of copying fees. Additionally, the County argues that upon receipt of payment from the Requester, the County will redact personal identification information, 65 P.S. § 67.708(b)(6); records of 911 calls, 65 P.S. § 67.708(b)(18); and information that is protected by the constitutional right to privacy. The County also argues that redactions are required pursuant to 35 Pa.C.S. § 5399, which prohibits the disclosure of identifying information related to an individual calling a 911 center. Accompanying the County’s submission were the affidavits of Jean C. Byers, Open Records Officer for the County, and William R. Smith, 911 Training and Quality Coordinator for the County’s Department of Emergency Services. The Requester did not submit any additional legal argument or evidence on appeal.

¹ The Requester does not challenge the County’s assessment of a \$.25 per page copying fee; therefore, while the OOR will not address this issue, it notes that a \$.25 per copy fee is permitted under the OOR’s Fee Schedule. See <https://www.openrecords.pa.gov/RTKL/FeeStructure.cfm>.

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 sought a hearing.

The County 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)(1). 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)). Likewise, “[t]he 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).

1. The County provided access to records during the course of the appeal

During the appeal, the County provided the Requester with an updated CAD report list that included the actual call for service number, as well as the total number of pages for each incident that would be provided upon receipt of payment of copying fees. As such, the appeal as to the call service numbers is dismissed as moot. *See Kutztown Univ. of Pa. v. Bollinger*, 2019 Pa. Commw. Unpub. LEXIS 521, *6 (holding that an appeal is properly dismissed as moot where no controversy remains).

2. The County may redact certain information from the responsive CAD reports

Mr. Smith states that upon receipt of payment, the County will redact the CAD reports as follows:

1. 17022511656 - The name of an individual calling to request services, vehicle identification information and the owner’s name and address.
2. 16021108177 - Vehicle identification information and the owner’s name and address.
3. 15052932958 - Vehicle identification information and the owner’s name and address.

4. 14010801274 - The name, address and telephone number of an individual calling to request services.
5. 14010801279 - The name and address of an individual calling to request services.
6. 15070140690 - The name of an individual calling to request services.
7. 14020907061 - The name of an individual calling to request services.
8. 16040719902 - The name, address and telephone number of an individual calling to request services. Vehicle identification information and the owner's name and address.
9. 13123068914 - The name, address and telephone number of an individual calling to request services.
10. 14011702984 - The name and address of an individual calling to request services.
11. 14051725805 - The name, address and telephone number of an individual calling to request services.
12. 16071942130 - The name and address of an individual calling to request services.
13. 14012704571 - The name and address of an individual calling to request services. The name of the resident at the address to which services were implicated.
14. 10012103176 - The name, address and telephone number of an individual calling to request services. The name of the resident at the address to which services were implicated.
15. 11032313475 - The name, address and telephone number of an individual calling to request services.
16. 1508145211 - The name, address and telephone number of an individual calling to request services.
17. 15102870598 - The name, address and telephone number of an individual calling to request services.

18. 15120578434 - The name and address of an individual calling to request services. Vehicle identification information and the name of the DES operator.

19. 16071841910 - The name, address and telephone number of an individual calling to request services. Vehicle owner's name and address.

20. 15120177555 - The name and address of an individual calling to request services.

a. The County may redact individual identifying information pursuant to the Emergency Services Law

As set forth above, the County asserts that once payment is received, it will redact from the CAD reports the names, addresses, and telephone numbers of individuals making calls for service. The County argues that the CAD reports will be redacted as required by the Emergency Services Law, which provides, in pertinent part:

(a) Prohibition.--Notwithstanding any other law, in a response to a [RTKL request], a [Public Safety Answering Point] may not release individual identifying information of an individual calling a 911 center, victim or witness...

(c) Definition. – “identifying information” includes name, telephone number and home address. The term does not include:

(1) The location of the incident, unless the location is the caller's, victim's or witness's home address or the disclosure of the location would compromise the identity of the caller, victim or witness.

(2) The street block identifier, the cross street or the mile marker nearest the scene of the incident, which shall be public.

35 Pa.C.S. § 5399. Mr. Smith attests that the CAD reports contain the names, telephone numbers and addresses of the individuals calling to report a need for services. Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the County has acted in bad faith, “the averments in [the affidavit]

should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Therefore, the County has demonstrated that it may redact names, telephone numbers and addresses of the callers from the responsive CAD reports. *See Siford v. Franklin County*, OOR Dkt. AP 2021-1170, 2021 PA O.O.R.D. LEXIS 1191 (finding that the County properly redacted from CAD reports identifying information, such as names, telephone numbers and addresses of individuals calling to requests services).

b. Names and addresses of private citizens are protected by the constitutional right to privacy

The County also asserts that upon receipt of payment, it will redact vehicle identification information and the vehicle owner’s name and address. Additionally, the County asserts that it will redact the name of a Department of Emergency Services’ operator, as well as the names and addresses of the residents to which services were implicated. The Pennsylvania Supreme Court has held that an individual possesses a constitutional right to privacy in certain types of personal information. *Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142 (Pa. 2016). When a request for records implicates personal information not expressly exempt from disclosure under the RTKL, the OOR must balance the individual’s interest in informational privacy with the public’s interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest. *Id.*; *see also Pennsylvania State Univ. v. State Employees’ Retirement Bd.*, 935 A.2d 530 (Pa. 2007) (employing a balancing test with respect to home addresses sought under the former Right-to-Know Act).

Although the Pennsylvania Supreme Court did not expressly define the types of “personal information” subject to the balancing test, the Court recognized that certain types of information, including home addresses, by their very nature, implicate privacy concerns and require balancing.

Pa. State Educ. Ass’n, 148 A.3d at 156-57; *see also Tribune-Review Publ. Co. v. Bodack*, 961 A.2d 110, 117 (Pa. 2008) (finding telephone numbers to constitute personal information subject to the balancing test); *Pa. State Univ.*, 935 A.2d at 533 (finding home addresses, telephone numbers and social security numbers to be personal information subject to the balancing test); *Sapp Roofing Co. v. Sheet Metal Workers’ International Assoc.*, 713 A.2d 627, 630 (Pa. 1998) (plurality) (finding names, home addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test).

To determine whether the constitutional right to privacy precludes disclosure of an individual’s personal information, the OOR must apply the balancing test enunciated in *Denoncourt v. Pa. State Ethics Comm’n*, 470 A.2d 945 (Pa. 1983), and applied in the public records context in *Times Publ. Co., Inc. v. Michel*, 633 A.2d 1233, 1237 (Pa. Commw. Ct. 1993), “weighing privacy interests and the extent to which they may be invaded, against the public benefit which would result from disclosure.”

Here, the Requester has not articulated any public interest supporting the disclosure of the names and home addresses of private citizens whose personal information was transmitted through the County’s emergency services, and the OOR is unable to perceive of any such interest in this case. However, the County has not proven that it may withhold the name of a Department of Emergency Services operator. *See Pa. State Univ. v. State Employees’ Retirement Bd.*, 935 A.2d 530 (Pa. 2007) 534 (holding that there is no privacy interest in a public employee’s name, service history and salary). Therefore, the County may redact all names and home addresses of private citizens from the responsive records but must provide the name of the County operator.

c. Vehicle identification information may be redacted under the RTKL

The County also argues that vehicle identification information may be redacted pursuant to the emergency services exemption of the RTKL. Section 708(b)(18) 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). In support of the County’s assertion that vehicle identification information may be redacted from reports, Mr. Smith attests as follows:

[A] CAD report is generated when an emergency telecommunicator receives a telephone call from a private citizen individual reporting a need for services and/or is communicating on the radio dispatch system with an emergency responder. A CAD report is also generated when a police officer contacts an emergency telecommunicator requesting information or assistance.

A statement made under the penalty of perjury is competent evidence to sustain an agency’s burden of proof under the RTKL. *See Sherry*, 20 A.3d at 520-21; *Moore*, 992 A.2d at 909. Therefore, the County has demonstrated that vehicle identification information may be redacted pursuant to Section 708(b)(18) of the RTKL. 65 P.S. § 67.708(b)(18).

3. The County proved that no additional records exist

The Requester argues that the County has failed to prove that other than the CAD reports identified, no other records of incidents occurred at the twenty-five addresses requested. The County argues that other than the CAD reports that have been identified and provided to the Requester, no additional responsive reports exist. In support of the County’s argument, Mr. Smith attests that the County “searched our records and found the attached applicable CAD reports attached to the Affidavit submitted by Jean Byers, with [the Department of Emergency Services] not being in possession, custody or control of any other CAD reports that fit the parameters of the August 25, 2021 [R]equest.” Therefore, based on the evidence submitted, the County has proven

that no additional responsive records exist within the County's possession, custody or control. *See Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part** and **dismissed as moot in part**, and the County is required to provide the name of the employee from the Department of Emergency Services. 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 Franklin 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. 65 P.S. § 67.1303. 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.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 14, 2021

/s/ Kathleen A. Higgins

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Sent to: Terry Wayne Siford, Jr., MQ4204 (via U.S. Mail only);
Jean Byers (via email only);
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² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).