



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**PATRICIA MCCANN,  
Requester**

**v.**

**BOROUGH OF CARLISLE,  
Respondent**

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**Docket No: AP 2020-0954**

### **INTRODUCTION**

Patricia McCann (“Requester”) submitted a request (“Request”) to the Borough of Carlisle (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a complete police report. The Borough partially denied the Request, redacting certain information pursuant to the personal identification information exemption of the RTKL. 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 Borough is not required to take any further action.

### **FACTUAL BACKGROUND**

On May 18, 2020, the Request was filed, seeking “a copy of a police report for the incident at [D]ollar [T]ree on April 22<sup>nd</sup>.” On May 26, 2020, the Borough partially denied the Request, providing a report that was redacted pursuant to the personal identification information exemption of the RTKL. *See* 65 P.S. § 67.708(b)(6).

On June 11, 2020, the Requester appealed to the OOR, challenging the redactions and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On June 23, 2020, the Borough submitted a position statement made under penalty of perjury reiterating its grounds for denial. The Borough claims that birth dates, cellular or personal phone numbers and home addresses were redacted pursuant to the personal security, 65 P.S. § 67.708(b)(1)(ii), and personal identification information exemptions of the RTKL and the constitutional right to privacy. The Borough further notes that while the Requester claims the report is incomplete and missing pertinent information and that it contains false statements, none of these are properly before the OOR under the RTKL.<sup>1</sup>

### 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

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<sup>1</sup> The OOR is not the proper venue to challenge the completeness and veracity of the report.

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, the parties did not request a hearing, however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The Borough 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)).

**1. The Borough may redact cellular or personal telephone numbers**

The Borough provided the requested report with redacted telephone numbers. Section 708(b)(6) of the RTKL explicitly exempts from disclosure certain personal identification information, including “home, cellular or personal telephone numbers.” 65 P.S. § 67.708(b)(6)(i)(A). The Borough solicitor, Keith Brenneman, submitted the Borough’s position statement under penalty of perjury, stating that cellular or personal telephone numbers of individuals were redacted.

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 Borough has acted in bad faith or that the records exist, “the averments in [the statement] 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)). The Borough has demonstrated that the phone numbers were properly redacted.

**2. The Borough may redact home addresses and dates of birth pursuant to the constitutional right to privacy**

Similarly, Attorney Brenneman states that birth dates and home addresses were redacted pursuant to the constitutional right to privacy. 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) .

While dates of birth are not expressly exempt under Section 708(b)(6), the OOR has also found that “there is a strong privacy interest” in one’s date of birth. *McKelvey et al. v. Pa. Dep’t of Health*, OOR Dkt. Ap 2017-1443, 2018 PA O.O.R.D. LEXIS 72 (citing *Delaware County v. Schaefer*, 45 A.3d 1149, 1153 (Pa. Commw. Ct. 2012) (noting that dates of birth “could be misappropriated or misused”)), *aff’d in part, Mission Pa., LLC v. McKelvey*, 212 A.3d 119 (Pa. Commw. Ct. 2019).

Here, the Requester has not articulated any public interest supporting the disclosure of home addresses or birth dates of witnesses, and the OOR is unable to perceive of any such interest in this case. Therefore, the Borough properly redacted all home addresses and birth dates from the responsive report.

## CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Borough 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 Cumberland 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.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: July 31, 2020**

*/s/ Erin Burlew*

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ERIN BURLEW, ESQ.  
APPEALS OFFICER

Sent to: Patricia McCann (via email only);  
Keith O. Brenneman, Esq. (via email only);  
Joyce Stone (via email only)

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<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).