



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

TED CZECH,
Complainant

v.

YORK COUNTY,
Respondent

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Docket No. AP 2009-0310

INTRODUCTION

Ted Czech (“Citizen”) submitted a request to York County (“County”) seeking time response logs with addresses included from York County 911 pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The County granted the request in part and denied the request for inclusion of addresses. Citizen timely filed an appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, Citizen’s appeal is **granted**, and the County is required to take further action as directed.

FACTUAL BACKGROUND

On April 10, 2009, the Citizen submitted a right-to-know request to the County seeking “[t]ime response logs from York County 911 for December 2008 and January and February 2009 with addresses included, i.e., where the units dispatched were headed.” (“Request”).

On April 14, 2009, York County Solicitor Michael W. Flannelly, Esquire timely responded on behalf of the County as follows:

Please be advised that time response logs include the following information:

- The time the call was received by the 911 Center
- The time the dispatcher contacted or dispatched the appropriate agency for response
- The time the appropriate agency arrived on the scene
- The time the appropriate agency went available

As a result, your request for addresses is hereby denied. Please let me know if you still want the time response logs without the addresses.

(“Denial”). The Citizen accurately points out that the County failed to provide the specific reasons for the denial. An agency is required to support its denial with citation to supporting legal authority pursuant to 65 P.S. §67.903.

In his appeal, the Citizen states “the time response logs, as they are defined by law, are extremely limited in what information may be extrapolated from them.”¹ In support of his position, the Citizen argues “[t]he time response logs gain considerable importance – in terms of serving the public’s interest – when street addresses are attached. Knowing where fire trucks, medical technicians or medic units were headed when they dispatched makes the time they were dispatched relevant: it can then be determined if their response times were within acceptable parameters.” The Citizen further asserts that under the RTKL an agency can “release additional information at their discretion” and that “an agency should not withhold information simply because it may do so legally.” (“Appeal”).

The OOR invited each party to submit additional information in support of its position. The County responded by providing an Affidavit of Cindy Dietz, Director of 911 for York County. Ms. Dietz states: “I do not contend that I cannot produce addresses. I do contend that addresses are not required to be produced under Section 708(b)(18).” She acknowledges that “time response log” is not defined in the RTKL and provides the Pennsylvania Chapter of the

¹ The OOR is uncertain as to the law Citizen is referring to and understands Citizen as referring to the definition of “time response log” provided by the County. The legal definition of “time response log” is yet to be determined.

National Emergency Number Association's ("PA NENA") definition of time response log as follows:

- The time the call was received by the 911 Center
- The time the dispatcher contacted or dispatched the appropriate agency for response.
- The time the appropriate agency responded.
- The time the appropriate agency arrived on the scene.
- The time the appropriate agency went available.

See *Dietz Affidavit*. The County also offered a copy of pages 415 and 416 of the House Legislative Journal from February 11, 2008 as evidence that addresses were not intended to be included in the definition of time response log, but rather in the incident log as follows:

Mr. Fairchild. Thank you, Mr. Speaker, and thank you for bringing together this amendment. It think it goes a long way, and I applaud all those on both sides of the aisle here and both sides of the aisle in the Senate for working to bring us where we are this evening.

I do have a question on legislative intent. I notice the amendment did not take out the time response logs information, and for legislative intent, I visualize the time response logs as a log of when a call comes into a 911 center, when action is taken and when it is complete. Is that your interpretation, or what is your definition or intent as far as a time response log?

Mr. King. Mr. Speaker, I would say that is a fair interpretation of legislative intent.

Mr. Fairchild. Thank you.

Then just to solidify here, it is not the incident log itself, which has all the detailed information of a caller – the address, the telephone number, the date of birth, all that stuff?

Mr. King. Mr. Speaker, that is correct.

Citizen counters by pointing out that other counties include addresses in their time response logs. In support he provides a printout of a Lancaster County 911 time response log which includes a "Location" column identifying what appears to be the cross streets closest to the incident location.

The Lancaster County 911 time response log consists of 9 columns as follows:

Type	Location	Municipality	Primary Agency	Origination	Dispatched	Responding	On Scene	Completed
POLICE	Willow Street Pike/ Kinder Ave	West Lampeter Township	West Lampeter Twp PD	04/01/2009 06:33:06	04/01/2009 06:35:25	04/01/2009 06:35:41	04/01/2009 06:43:42	04/01/2009 07:17:27

Citizen further asserts that the County's Department of Emergency Services, under which York County 911 falls, has a live incident status page on the internet in which incidents are listed, including addresses. This is not contested. Citizen queries: "If the addresses are included on the Web site, which is available to the public, then why not in a time response log?"

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. §67.302. Records of a local agency are presumed to be "public" unless: (1) the record is exempt under Section 708(b); (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. §67.305.

The County does not argue that time response logs are not public records, instead it contends that addresses are not part of the time response logs and are, therefore, not public records. Section 708(b)(18) protects from release "records 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) (emphasis supplied).

Because time response logs are a public record by definition pursuant to Section 708(b)(18), the County is required to release all "time response log" information under the

RTKL. "Time response log" is not defined by the RTKL. . Absent a clear statutory definition, the OOR has been vested with the authority to interpret the RTKL and all of its provisions. 65 P.S. §67.1310. The OOR finds compelling that the York County 911 includes addresses in a similar record it makes publicly available on the internet.

The RTKL is clear that "the burden of proving that a record of a ...local agency is exempt from public access shall be on the... local agency receiving a request by a preponderance of the evidence." 65 P.S. §67.708(a). To prove by "preponderance of the evidence" means to prove by the "greater weight of the evidence." *Commonwealth v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001).

In the instant case, the County has not met its burden of proof that addresses are protected under Section 708(b)(18). The County does not assert that it does not have the addresses. The County does not deny that addresses can be produced. *See Dietz Affidavit*. The legislative intent to expressly include time response logs as public information is to allow the public the ability to assess the efficiency of the emergency responders. The OOR agrees that without the cross street it would be impossible to determine whether or not the response times listed in the log were within acceptable parameters. A caller's name and the reason for the call are not necessary to gauge efficiency. However, an address *is* necessary. Without such, the time data is meaningless. The County has offered no support in the Act that permits them to withhold an address within a time response log, which they admit that they possess. Therefore, in a request for time response logs, the County is required to release the incident street addresses, or at the very least the nearest cross street.

It is important to note that the Citizen only appealed the denial of "street addresses . . . where fire trucks, medical technicians or medic units were headed when they were dispatched."

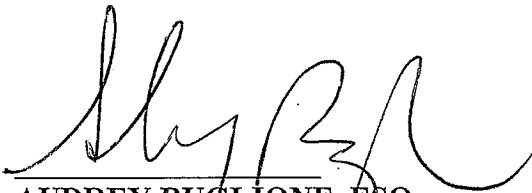
Therefore, only the denial of addresses is addressed in this decision and not other elements of a time response log..

CONCLUSION

For the foregoing reasons, Citizen's appeal is **granted**. The OOR concludes that "time response logs" include the destination address. The County is directed to provide the requested time response logs as defined heretofore within thirty (30) days.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either 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 according to court rules. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED: May 22, 2009


AUDREY BUGLIONE, ESQ.
APPEALS OFFICER