



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**LINN WALKER,
Complainant**

v.

**MACUNGIE POLICE DEPARTMENT,
Respondent**

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Docket No. AP 2009-0509

INTRODUCTION

Linn Walker (the “Citizen”) submitted a request to Macungie Police Department (the “Department”) seeking the police work schedule for certain weeks in May/June 2009 pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The Department denied access under Section 708(b)(2). The Citizen timely appealed to the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the Citizen’s appeal is **denied**, and the Department is not required to take further action as directed.

FACTUAL BACKGROUND

On June 4, 2009, the Citizen submitted his right-to-know request via hand-delivery to the Department seeking “police work schedule for the week of 24 May through May 30; 31 May through 6 June” (the “Request”). On June 9, the Open Records Officer (“ORO”) for the Department, Police Chief Edward A. Harry, Jr., denied the Request stating that “police work schedules are exempt” under Section 708(b)(2)(3) [sic] (the “Denial”).

The Citizen timely filed an appeal of the Denial to the OOR on June 18th. In support, he explains that he seeks “*past* work schedules” as opposed to future schedules, which, he contends, do not reveal any protected information (the “Appeal”). He advises that the police do not work the same schedule each week and that he has a concern about the adequacy of coverage of the police force and needs documentation of past schedules to demonstrate the need for patrols.

The OOR invited both parties to submit additional information, and requested the Department to clarify and support the basis for its Denial of the police work schedules. In response, the Department submitted a letter of its Police Chief and ORO advising that the disclosure of the work schedules would compromise safety of the Township and his officers (the “Department Submission”). He explains that the Department is comprised of five full-time and four part-time officers, and that there are three primary shifts, and several overlapping shifts where a second officer is assigned. He states that the officers work a common rotation, and the overlapping shifts are normally assigned on the same times and days of the week. He advises

Even providing past schedules will allow people to easily figure out the shift rotation as well as the normal times a second officer is present since the [D]epartment utilizes a set rotation. This knowledge, if disclosed to the wrong persons, would be reasonably likely to jeopardize the safety of the officers as well as the public who they protect by allowing persons to know when the likelihood of limited police coverage exists.

[*Department Submission.*] With regard to knowledge of a schedule in advance, he notes that knowing when a specific officer is on duty would permit a person to target that officer. *Id.*

The Department also asserts Section 708(b)(3), stating in support that the physical building that houses the Township Administration and the Department, also houses the information systems and is not protected when the Administration offices are “unmanned.” The Department states in support that a person who is aware of the calls via radio scanner who is watching the building, would “be aware the building is unprotected, thereby jeopardizing the safety of the building and the contained information storage system.” *Id.*

The Police Chief later submitted a verification as to the facts contained within the Department Submission pursuant to 18 Pa. C.S. §4904. No other material was submitted.

LEGAL ANALYSIS

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). The Department addressed the Request as a local agency. There is no dispute of the Department's agency status as a part of Macungie Township that is subject to the RTKL. 65 P.S. §67.302. Records of the Department are presumed to be "public" unless the record is: (1) exempt under Section 708(b); (2) protected by a privilege; or (3) exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. §67.305. To protect the police work schedules at issue, the Department asserts the public safety exception at Section 708(b)(2) and the infrastructure security exception at (b)(3). Each is addressed in turn.

1. The Public Safety Exception protects the police work schedules sought here.

Section 708(b)(2) protects "a record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity." 65 P.S. §67.708(b)(2). The Department bears the burden of establishing its asserted exceptions by a preponderance of the evidence, meaning the "greater weight of the evidence." *See Com. v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001). As the OOR held in *Meachem v. East Stroudsburg Area School District*, OOR Dkt. AP 2009-0486, this exception requires *two* elements, one being that the record is maintained by the agency in connection with its law enforcement or other public safety activity. The Department performs law enforcement and public safety functions on behalf of Macungie Township, a point which is acknowledged by both parties in their submissions. As the police work schedules are a record related to the Department performing this safety function, this element is met.

To meet its burden of proving that the past police work schedules qualify for protection under Section 708(b)(2), the Department must also demonstrate that the record at issue would be “reasonably likely” to threaten public protection if released. *Id.* To establish that the release of the past police work schedules would be “reasonably likely” to jeopardize public safety and/or preparedness, the Department submitted a letter of its Police Chief, which was subsequently verified under 18 Pa. C.S. §4904. The facts verified by the Police Chief show that the past work schedules of police coverage are not the same every week, but would indicate “the normal times a second officer is present since the Department utilizes a set rotation.” He advises that release of the work schedules would indicate “when the likelihood of limited police coverage exists.”

The Department’s argument regarding the limited police coverage, and the possibility that past work schedules could indicate future coverage is compelling. The Department’s concern that specific knowledge of police coverage for the Township would be reasonably likely to threaten public safety given the limited police available in Macungie, which at times means only one officer on duty at a time, is both credible and plausible. The Police Chief verified that the schedules rotate on a set rotation, and that the overlapping shifts, *i.e.*, shifts where more than one officer is assigned, are at the same times and days of the week.

The OOR finds the Department submitted sufficient facts upon which the OOR could conclude that the past work schedules, if known, would be reasonably likely to threaten public safety. The Department met its burden of proof with regard to the work schedules at issue because they are past work schedules that the Police Chief verified indicate future coverage, and thus expose vulnerability on a certain day or at a certain time. As release of past schedules would reveal coverage for two weeks of every month, the OOR could conclude from the facts presented that the release of the work schedules has a strong connection to the threat the Department asserts. The OOR finds that the Department established Section 708(b)(2) applies.

2. The Department did not establish that the Infrastructure Security Exception applies.

The Department also asserted that the physical security of the building in which the Department and Township Administration are located is placed at risk. Section 708(b)(3) protects a “record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of any building, public utility, resource, infrastructure, facility or information storage system...” 65 P.S. §67.708(b)(3). The Police Chief asserts that if a person is aware when only one officer is on duty, that the safety of the Administration building is compromised because after 4 PM the offices are unmanned. He also notes that the building houses the information storage system, such that a person aware that the Administration building is “unmanned” at certain times could jeopardize the safety of the building.

The Infrastructure Security Exception requires an agency to establish that the release of the record is “reasonably likely” to endanger the safety or physical security of the building. The examples included by the Legislature in that exception illustrate the types of records intended to be protected, such as building plans that show the location and configuration of critical systems that, if manipulated, could damage the systems. The Department did not adequately support this exception with its argument and did not submit any facts to illustrate the connection between past police work schedules and endangering the security of the building. The relationship of the work schedules to the actual building and/or systems is not apparent on its face, unlike a request for network operations as described in (i) or building plans as described in (iii). Because the Department did not meet its burden of proof with regard to this exception, the records cannot be protected under Section 708(b)(3).

CONCLUSION

For the foregoing reasons, the Citizen's Appeal is **denied**. Although the Department did not show that the release of work schedules would endanger the safety or physical security of the Administration offices under Section 708(b)(3), the OOR concludes that the Department met its burden to show that the disclosure of past police work schedules would be reasonably likely to threaten public safety or preparedness under Section 708(b)(2). Accordingly, the Department is not required to take any further action.

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 Lehigh 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 as per Section 1303. This Final Determination shall be posted at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: July 20, 2009



LUCINDA GLINN, ESQ.
APPEALS OFFICER

Sent to: Linn Walker; Chief Edward A. Harry, Jr. of Macungie Police Department