



(the “Request”). She advises she would like the information electronically if possible.

After invoking the thirty-day extension, Regina Armitage, the County Open Records Officer (ORO), timely denied the Request stating that the record is exempt under Section 708(b)(2) and (b)(3) (“Denial”). The County explained that the records are created and maintained by the Department of Security and that the system is used to control access in order to protect employees, sensitive areas and the public. The County contended the VIP parking lot is also part of the overall security system, and notes that parking lot records of access by detectives and probation officers are protected under Section 708(b)(1)(ii), the personal security exception.

The Requester filed a timely appeal only as to the card swipes in (a) and (b) (the “Appeal”). In support, she argues that the attendance records of Gudknecht and Rosenthal do not expose the inner-workings of the County security system because the card-swipes are the only method of assessing entrance to the building since Gudknecht has no time card as an elected official. She contends that Director of Security Chris Daley stated he can easily produce a record of card swipes for anyone with an ID. She argues that a record of entering the building poses no security risk.

The County supported its Denial with a notarized affidavit of Chris Daley, Director of Security, made under 18 Pa. C.S. §4904, who has 13 years security experience (“Affidavit”). Mr. Daly attests that the purpose of the Security System, which includes card swipes, is to “provide a secure environment to employees, as well as visitors in County buildings and parking lots,” not for attendance purposes. While conceding that the protocol of entering the buildings is common knowledge, he contends the data recorded constitutes a “security record” since the County relies upon it to “investigate suspicious activity,” determine a person’s whereabouts, secure the physical security of the building, and assist in emergencies. He contends releasing the requested record poses a “public safety risk” because the County cannot reveal (1) what kind of information is tracked; (2) how information is tracked; and (3) when/where an individual enters the County’s secured buildings.

The County explained that the purpose of the card swipes is not to show attendance, but to serve as a security system that controls who has access to which parts of the building. The County argues that records of card swipes would show information that is not tracked by the system, thus exposing potential weaknesses. The card swipes of judges, detectives and probation officers are recorded, which the County also contends should be protected by Section 708(b)(1).

The only issue in this Final Determination is whether the log of card swipes by two identified County employee/officials showing exit and entry to the County courthouse are public.

### **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 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. The County cited the security exceptions under Section 708(b): the public safety exception at (b)(2); and the infrastructure security exception at (b)(3).<sup>1</sup> The County bears the burden of establishing its exceptions by a preponderance of the evidence, meaning “greater weight of the evidence.” *See Com. v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001). Each is addressed below.

#### **1. The County did not prove the Public Safety exception (b)(2) applied.**

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). As the OOR held in *Walker v.*

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<sup>1</sup> The County also asserted Section 708(b)(1)(ii) generally as to any card swipes by judges, probations officers, detectives, etc. However, those records were not sought in the Request, and are not at issue in this appeal. Therefore, that exception is not addressed herein.

*Macungie Police Department*, OOR Dkt. AP 2009-0509, this exception requires *two* elements, the first being that the record is maintained by the agency in connection with its law enforcement or other public safety activity.

The Affidavit from Security Director Daly is sufficient evidence to show that the data of card swipe access entry to and from the Courthouse is maintained by the County in connection with its law enforcement and public safety activities. He attested that the purpose of the data is to monitor whereabouts and maintain security of the buildings and the public that uses the buildings. Therefore, the County met this initial element for the exception.

The second element that must be shown to establish that the public safety exception applies is that the release of the record at issue would be “reasonably likely” to jeopardize or threaten public safety. The County has failed to establish this element for the public safety exception. The County did not show how a log of card swipes of the two named individuals over a three and a half month period could be connected to a threat to public safety or preparedness. The allegations in the Affidavit were vague and general as to the record being an alleged “security record.” The fact that a record may be a security record, maintained for security purposes does not mean that its release would be reasonably likely to jeopardize or threaten public safety. The County is required to show that the data revealing the time of the card-swiped entry and exit to the Courthouse by those two persons would pose the alleged risk.

The fact that the data maintained on the security system may contain information that is protected by the public safety exception does not permit the County to withhold the specific data sought. Section 706 requires the County to produce those parts of a record that are public. As there is no articulated basis that the times of entry and exit of the Courthouse by two individuals poses a risk to the public safety, that data cannot be protected by this exception.

**2. The County did not prove the Infrastructure Security exception (b)(3) applied.**

The County also asserted that the physical security of the County's buildings would be placed at risk were the data regarding swiped entry and exit by two persons revealed. 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 County relied upon the Affidavit to prove that the record sought, if released, would be reasonably likely to endanger the physical security of the building. However, the County did not meet its burden.

Whereas the request for any and all data regarding the card-swiping system may conceivably pose a reasonable likelihood of danger to the physical building, the specific data sought here is not of the type that would reflect the security of the buildings. The only information that is sought in the Request (a) and (b), are the card swipes for entry and exit of the Courthouse, not each of its rooms within, and the times of entry and exit for two named persons. The County did not illustrate how releasing that limited bit of information is reasonably likely to endanger the physical security of the building, or to compromise the integrity of the security system of which the card-swiping is a component. Having not submitted any evidence to show how the information at issue poses the alleged risk, the County did not establish that the information is protected by (b)(3).

**CONCLUSION**

For the foregoing reasons, the Requester's Appeal is **granted**. The County did not meet its burden that either Section 708(b)(2) or (b)(3) applied, and therefore the County is directed to disclose the limited information sought in the Requests (a) and (b) 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 Bucks 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 AND MAILED: December 21, 2009**



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**LUCINDA GLINN, ESQ.  
APPEALS OFFICER**

Sent to: Jenna Portnoy for *The Intelligencer*; Regina Armitage, ORO for County



January 26, 2010

*Via U.S. Mail*

Jenna Portnoy  
c/o The Intelligencer  
333 N. Broad Street  
Doylestown, PA 18901

Regina Armitage  
Open Records Officer  
Bucks County  
55 East Court Street  
Doylestown, PA 18901

**Re: AP 2009-1007, *Portnoy/The Intelligencer v. Bucks County* (“County”)**

**CORRECTED FIRST PAGE/CAPTION**

Dear Parties:

Please see attached a corrected copy of the first page of the Final Determination for your records. The caption and introduction have been amended to reflect the proper paper as *The Intelligencer* rather than the *Legal Intelligencer*. Kindly excuse any inconvenience this may have caused.

Please be advised that the corrected copy will be posted on the website, and does not alter the actual issuance and mailing date of the original Final Determination.

Thank you for your kind attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Lucinda Glinn".

Lucinda Glinn  
Appeals Officer



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#### **1. The County did not prove the Public Safety exception (b)(2) applied.**

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). As the OOR held in *Walker v.*

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The County also asserted that the physical security of the County's buildings would be placed at risk were the data regarding swiped entry and exit by two persons revealed. 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 County relied upon the Affidavit to prove that the record sought, if released, would be reasonably likely to endanger the physical security of the building. However, the County did not meet its burden.

Whereas the request for any and all data regarding the card-swiping system may conceivably pose a reasonable likelihood of danger to the physical building, the specific data sought here is not of the type that would reflect the security of the buildings. The only information that is sought in the Request (a) and (b), are the card swipes for entry and exit of the Courthouse, not each of its rooms within, and the times of entry and exit for two named persons. The County did not illustrate how releasing that limited bit of information is reasonably likely to endanger the physical security of the building, or to compromise the integrity of the security system of which the card-swiping is a component. Having not submitted any evidence to show how the information at issue poses the alleged risk, the County did not establish that the information is protected by (b)(3).

**CONCLUSION**

For the foregoing reasons, the Requester's Appeal is **granted**. The County did not meet its burden that either Section 708(b)(2) or (b)(3) applied, and therefore the County is directed to disclose the limited information sought in the Requests (a) and (b) 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 Bucks County Court of Common Pleas. 65 P.S. §67.1302(a). All parties must be served with notice of the appeal. The OOR also

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