



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

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**GARY EVANS,
Complainant**

v.

Docket No.: AP 2009-1126

**YORK COUNTY,
Respondent**

INTRODUCTION

Gary Evans (the “Requester”) filed a right-to-know request (the “Request”) with York County (the “County”), pursuant to the Right to Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. He sought copies of medical records and all his visitors for 2007 while in work release. The County partially granted and partially denied the Request. The Requester filed a timely appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **granted** and the County is required to release the 2007 visitor log.

FACTUAL BACKGROUND

The Requester filed the Request with the County on November 17, 2009.

Specifically, he sought :

- A copy of all medical records and my visitor logs while I was in York County Prison. I need to know who visited me from 2006 – 2009.

In a timely response, the County indicated that it would need an additional thirty days to respond to the Request. In a letter dated December 14, 2009, the County denied the Request for medical records and partially granted and denied the Request for visitor information. The County granted the Request and provided access to the Inmate Visitor History, but noted that it does not include visitors such as attorneys. That information is maintained in a separate log which does not refer to which attorney is visiting which prisoner. The information is not requested from the visitor so as to maintain certain aspects of the attorney/client privilege. The County stated that as a result the prison has no means of reviewing the log to determine what professional visitors the Requester may have had during the relevant time period.

The Requester filed an appeal with the OOR on December 22, 2009. The Requester limited his appeal to the attorney information in his visitor log. The Requester subsequently informed the OOR that he had not received copies of his 2007 visitor log(s) and that receipt of them would resolve his appeal.

The County subsequently provided the Requester with copies of his 2007 Inmate Visitor History. In addition, the County provided the sworn Affidavit of Mary Sabol, Warden of the York County Prison. She stated that all visitors entering the secure area must sign into a Visitor Log. The Visitor Log does not indicate which prisoner is being visited. It is simply an extensive list of visitors. Attorneys and chaplains sign in as well.

Ms. Sabol stated that the Prison does not release the information because such information may reveal confidential information about the attorney/client relationship, chaplain/prisoner relationship, or appointments with outside medical providers. Release of the information could also result in serious physical danger to the visitor. As an example, she mentioned that a rival gang member could request the records to see who may have visited on a particular day.

In a letter dated January 7, 2010, the Requester declined to withdraw the appeal stating that while he had received the 2007 Inmate Visitor History, he still had not received copies of his attorney visits.

LEGAL ANALYSIS

The Office of Open Records 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. See 65 P.S. § 67.302.

Section 708 of the RTKL states that the burden of proof rests with the public body to demonstrate by a preponderance of the evidence that the record is exempt. See 65 P.S. 67.708(a)(1). Preponderance of the evidence has been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (8th ed. West 2004). *See also Commonwealth v. Williams*, 615 A.2d 716 (PA. 1992).

The OOR notes from the outset that the Requester sought copies of everyone who visited him. He did not receive copies of attorney visits as requested. In response to the Request for the attorney visits, the County argues that the release of such information may reveal confidential information about the attorney/client relationship. In addition, the County argues that the release of the information could result in serious physical danger to the visitor.

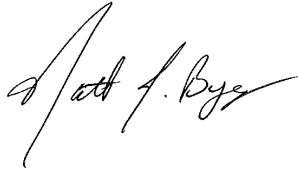
The County concedes that the Visitor Log is an extensive list of visitors which does not indicate which inmate is being visited. The County argues that release of the Visitor Log may reveal confidential information about the attorney/client relationship. However, the County provides no explanation of how release of such a list with no link to specific inmates would jeopardize the attorney/client relationship. Therefore, the OOR finds that the County has failed to meet its burden with respect to the attorney/client privilege.

Likewise, the County does not indicate how release of the Log would jeopardize the personal safety of any of the visitors. The RTKL requires the agency to demonstrate that release of the record would be “*reasonably likely* to result in a *substantial and demonstrable* risk of physical harm to or the personal security of an individual.” See 65 P.S. 65 P.S. 67.708(b)(1)(ii)(emphasis added). Belief alone without more, even if reasonable, does not meet this heightened standard. See *Stein v. DOC*, OOR Dkt. 2009-0414. Here, unlike in *Stein*, the County does not demonstrate that the release of the log will result in a *substantial and demonstrable* risk of physical harm to or the personal security of an individual in the Visitor Log. Therefore, the OOR finds that the County has failed to meet its burden with respect to this exception.

CONCLUSION

For the foregoing reasons, the appeal is **granted**. The County is directed to provide the Requester with a copy of the Visitor Log for 2007 within thirty days. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the Common Pleas Court of York County. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S. §67.1301. The parties are further advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

FINAL DETERMINATION ISSUED AND MAILED January 21, 2010



**APPEALS OFFICER
NATHANAEL J. BYERLY, ESQUIRE**

Sent to:
Gary Evans
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