



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**LAUREN MARKS,  
Complainant**

**v.**

**DELAWARE COUNTY,  
Respondent**

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**Docket No. AP 2009-1146**

### **INTRODUCTION**

Lauren Marks (the “Requester”) submitted a request to Delaware County (“County”) seeking names and addresses of dog owners pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”). The County denied based upon *PSEA et al, v. OOR, et al*, 981 A.2d 383 (Pa. Commw. 2009). The Requester timely appealed to the Office of Open Records (“OOR”).

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

### **FACTUAL BACKGROUND**

On December 1, 2009, the Requester submitted a right-to-know request to the County seeking “names and addresses of dog owners in the following zip codes: 19087, 19080, 19088, 19089” (the “Request”). She sought electronic copies. Anne Coogan, Open Records Officer (ORO) for the County, denied the Request based upon *PSEA et al, v. OOR, et al*, 981 A.2d 383 (Pa. Commw. 2009) (“Denial”). The Requester timely appealed. She contends that dogs older than three months are required to be licensed in the County, and the addresses are not exempt

under Section 708. She also notes the order in the *PSEA* case exempts only addresses of public school employees.

No additional information was submitted by either party.

### **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. In this case, the County asserts a judicial order, *i.e.*, the preliminary injunction issued by the Commonwealth Court in *PSEA et al, supra*, protects the records sought.

The preliminary injunction order issued July 28, 2009, and currently before the Supreme Court on appeal at Docket No. 76 MAP 2009, specifically applies to public school employees only. The Order mandates: “The release of the home addresses of public school employees is hereby stayed until further order of the court.” It further enjoins the Office of Open Records “from directing the release of the home addresses of public school employees pursuant to the Right-to-Know Law until further order of this court.” Therefore, to the extent that the “names and addresses of dog owners” in certain zip codes are also the addresses of public school employees, the OOR is currently enjoined from directing their release.

The RTKL requires the agency to overcome the presumption of openness, and when a judicial order is asserted as the reason that certain records are exempt from public access, the agency bears the burden, at a minimum, of showing that the records sought in a request are the same as the records protected under the judicial order cited. Here, the County did not properly assert or support the exemption. The County did not explain in its denial that addresses of dog

owners in certain zip codes are equivalent to the home addresses of public school employees. While there may be some overlap, the County cannot withhold *all* home addresses on that basis.

The Order protects the addresses of public school employees, and therefore, to the extent that the addresses of dog owners in the zip codes requested belong to public school employees, the OOR does not order their release. However, it is the County's burden to withhold only those addresses that are protected under the judicial order cited as the County asserted no other grounds, and has no grounds for withholding the addresses in their entirety. Conceivably, many of the addresses at issue belong to individuals who are *not* public school employees and are not entitled to the protection afforded by the preliminary injunction granted.

The Office of Open Records recognizes the extraordinary burden placed upon this agency, and others similarly situated, that require them to sift through perhaps thousands of documents to separate home addresses of public school employees to ensure no addresses of public school employees are released per the Court order. Such action further underscores the problems that will continue to arise in right-to-know requests by isolating and precluding release of home addresses of public school employees from otherwise public records, including but limited to, tax records, deeds, police reports, dog licenses, and other records that contain a home address not exempted under Section 708. Given the Commonwealth Court's order, however, the Office of Open Records has no alternative but to obey the Court and require the agency to separate home addresses of public school employees from home addresses of others in releasing these public records.

### **CONCLUSION**

For the foregoing reasons, the Requester's Appeal is **granted in part and denied in part**, and the County is directed to release the home addresses for all *non*-public school employees who are dog owners in the specified zip codes within thirty (30) days. The County

may permissibly withhold, and the OOR does not direct the release of, the addresses belonging to any public school employees.

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 Delaware 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: January 20, 2010**



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**LUCINDA GLINN, ESQ.  
APPEALS OFFICER**

Sent to: Lauren Marks; Anne Coogan for County