

security exception, (b)(2), the public safety exception, and (b)(16) and (17), as records relating to a criminal or noncriminal investigation (“Denial”). The Denial did not explain how the exceptions applied. The Requester timely appealed arguing that the County failed to meet its burden by a preponderance of the evidence for any of its cited exceptions (“Appeal”).

The County supplemented the record with a letter from the ORO with an enclosure of the functions for the County Park Police, which outlines its role protecting public safety and having an investigatory role. The ORO states a Park Police Officer’s shifts would reveal his whereabouts and schedule, including investigations of the Officer. No affidavit was submitted and no details are supplied regarding how time cards, including the total weekly hours worked for a pay period, pose a risk.

LEGAL ANALYSIS

The RTKL is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. §67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.*

The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing and the County was able to submit material. The County is a local agency subject to the RTKL and required to disclose public records. *See* 65 P.S. §67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree.

See 65 P.S. §67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. §67.708(b). The County asserted Section 708(b) exceptions: personal security at (b)(1)(ii), public safety at (b)(2), the criminal investigative at (b)(16) and noncriminal investigative at (b)(17).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: (1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence. 65 P.S. §67.708(a). 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.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001). In this case, the County did not submit any evidence regarding how the exceptions apply and thus did not meet its burden as none of them apply based on the face of the Request.

The OOR has held police work schedules to be exempt under Section 708(b)(2) when an affidavit substantiates that schedules are routine and show patterns of coverage that would compromise the goal of public protection. *See, e.g., Metzli v. Slippery Rock Borough*, OOR Dkt. AP 2009-1006, 2009 Pa. O.O.R.D. LEXIS 776 (affidavit of police chief regarding pattern and routine nature of shift assignments). Here, there is no affidavit demonstrating the nexus of work schedules sought to the public safety activity performed as is necessary to meet its burden. *See id., Walker v. Macungie Tp.*, OOR Dkt. AP 2009-0509, 2009 Pa. O.O.R.D. LEXIS 229.

Further, the Request seeks hours worked during a pay period without details regarding the start and end time, only hours worked for pay. The OOR has not upheld withholding this type of record based upon its disclosure having a reasonable likelihood of jeopardizing public safety or preparedness or personal security. No facts have been submitted to indicate that the

work schedules of the Park Police Officer are related to any investigation, criminal or noncriminal. The OOR takes seriously matters implicating personal or public safety concerns, but must have evidence to support withholding records. As the County failed to meet its burden of proving any of its asserted exceptions, the OOR is compelled to direct release of the records requested.¹

CONCLUSION

For the foregoing reasons, the Requester's Appeal is **granted** and the County is directed to disclose the work schedules of Officer Miller 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 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: August 20, 2010



**LUCINDA GLINN, ESQ.
APPEALS OFFICER**

Sent to: Lacy Wheeler, III, Esq.; Anne Coogan for County

¹ The OOR has held that an agency must prove sufficient facts of substantial and demonstrable harm to protect police work schedules. *See Boice v. Lehman Tp.*, OOR Dkt. AP 2009-0624, 2009 Pa. O.O.R.D. LEXIS 67 (holding agency failed to meet burden of proof of personal security exception).