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January 23, 2009

Terry Mutchler  
 Executive Director  
 Pennsylvania Office of Open Records  
 400 North Street  
 Harrisburg, PA 17120

Dear Director Mutchler:

Your assistance in the form of an advisory opinion, would be greatly appreciated. As you know, many police departments create and store records electronically. Often, those reports contain both "blotter information", and investigative information. As such, they fall under the definition of "[a] record of an agency relating to or resulting in a criminal investigation", and are an exception to disclosure under the RTKA. The question remains, however, as to whether a requestor would be entitled to that portion of the record that is "blotter information", specifically: date, time, location of occurrence, unit responding, and 9-1-1 response time.

It is my opinion that a Police Department could create a document containing just this blotter information, that is responsive to a RTKA request for a police report. To address the remaining "Required Information" under OOR guidelines:

- This request is relevant as it applies to all Departments, statewide, and is not directly addressed in the Act;
- To the best of my knowledge, there is no litigation pending on this issue;
- Your response may be sent to my attention;
- This request for advisory opinion does not arise from an actual right to know request sent or received prior to the date of this request.

Terry Mutchler  
January 23, 2009  
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Your assistance is greatly appreciated.

Very truly yours,

/s/

Christopher Boyle, Sr., Esq.



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS

February 24, 2009

Christopher Boyle, Sr. Esquire  
Marshall, Dennehey, Warner,  
Coleman & Goggin  
620 Freedom Business Ctr., Ste. 300  
King of Prussia, Pennsylvania 19406

**Re: Advisory Opinion Request on Whether Police Blotter Information Is Public**

Dear Attorney Boyle:

Thank you for writing to the Office of Open Records with your January 26, 2009 request for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.*, (“RTKL”).

You asked the OOR interpret the terms “blotter information” and “investigative information” and advise whether a requester is entitled to those portions of a record that are “blotter information” or whether the criminal investigative exception under the RTKL would preclude the release of that information. You further advised that you believed a newly created document containing only blotter information would be a proper response to a request for a police report.

Please be advised that the OOR has decided not to grant this request for an Advisory Opinion. We are declining to accept this request because the request seeks responses to general questions rather than presenting a factual scenario capable of repetition, necessitating an application of law to specific circumstances. Your request does not specify the contents of requested police reports to indicate the information other than “blotter information” that you assert may be withheld. However, the OOR provides the following guidance with respect to the question you pose.

The RTKL specifically states that the RTKL does not alter the public nature of a document as defined by other law. *See* 65 P.S. §67.306. Pursuant to the Criminal History Record Information Act, (CHRIA), 18 Pa.C.S. §9102, “blotter information” is public. “Blotter information” consists of “the chronological listing of arrests, usually documented contemporaneous to an incident, which may include, but is not limited to the name and address of the individual charged and the alleged offense.” *Id.* Case law has held that the CHRIA definition of police blotters extends to “incident reports” as well so

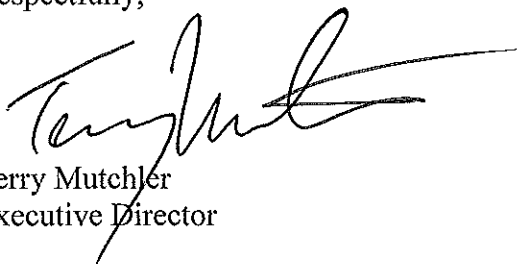
they are subject to mandatory disclosure. *See Commonwealth v. Mines*, 680 A.2d 1227 (Pa. Commw. 1996) *alloc. den.* (Pa. 1997); *see also Tapco v. Township of Neville*, 695 A.2d 460 (Pa. Commw. 1997). These types of documents have been held to *not* be protected as criminal investigative materials, *id.*, and so would not be properly excepted under Section 708(b)(16), 65 P.S. §67.708(b)(16).

The RTKL does not preclude any agency from creating a record in order to respond to a RTK request; however, that does not change the fact that the agency maintains a document that combines public “blotter information” with other information, such that it is at least *in part* a public record subject to mandatory disclosure. The RTKL permits agencies to redact from a record the information that is not public, such as the investigative materials you reference. *See* 65 P.S. §67.706. However, to redact, the material must be protected from disclosure by law or privilege or one or more of the exceptions under Section 708(b), such as 708(b)(16) pertaining to “criminal investigative materials.” The only way the agency is permitted to protect that information from view is by formally asserting the basis for withholding those parts of the existing record, for which the agency bears the burden of proof by applying the law to the specific facts.

“Investigative information” that is protected under CHRIA, which would also fall within the criminal investigative exception at §708(b)(16), is “information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of wrongdoing and may include modus operandi information.” 18 Pa.C.S. §9102.

As Lucinda Glinn advised you in her January 23rd response to this inquiry submitted via electronic mail, to use your alternative of creating a new document, you must confirm it would be acceptable to the requester since you would not be providing the record maintained by the agency to conduct agency business in response to the request.

Respectfully,

A handwritten signature in black ink, appearing to read 'Terry Mutchler', with a long horizontal flourish extending to the right.

Terry Mutchler  
Executive Director