



PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
BOX 3321
HARRISBURG, PENNSYLVANIA 17105-3321



Original: 2019, 2020, 2021
Mizner
cc: Jewett
Tyrell
Sandusky
Legal

June 3, 1999

Honorable Paul W. Semmel
House of Representatives
Room 47, East Wing
House Post Office Box 202020
Harrisburg, PA 17120-2020

and

Honorable Thomas A. Michlovic
House of Representatives
Room 121, South Office Building
House Post Office Box 202020
Harrisburg, PA 17120-2020

Dear Representatives Semmel and Michlovic:

This letter responds to your May 20, 1999 letter which asked some questions about PEMA's proposed 911 regulations #30-51, 30-52 and 30-53. Please see the enclosed memo from Carl C. Kuehn, II, PEMA's Deputy Director, which addresses those questions. Also enclosed is the Pennsylvania Supreme Court's January 22, 1999 decision in the case of North Hills News Record and Robyn Tomlin v. Town of McCandless and Allegheny County which declared that 911 audio tapes are not public records under the provisions of the Pennsylvania Right to Know Act.

Thank you for expressing your interest in these proposed regulations. Should you have any additional questions, please let me know.

Sincerely,

Mark L. Goodwin
Chief Counsel

MLG:rls

CC: Carl C. Kuehn, II


RECEIVED
99 JUN -8 AM 9:07
PENNSYLVANIA
EMERGENCY MANAGEMENT AGENCY

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Emergency Management Agency

DATE: June 2, 1999

SUBJECT: Response to House Veterans Affairs and Emergency Preparedness Committee's Questions Regarding Proposed Regulations #30-51, 30-52 and 30-53

TO: Mark L. Goodwin
Chief Counsel

FROM: Carl C. Kuehn, II 
Deputy Director

Per your request, I am responding to the Committee's May 20 correspondence to this agency. I will answer the questions in the order in which they were posed.

1. The minimum hourly training requirement for dispatchers has been raised from 40 hours to 106 hours. The current requirement of 40 hours classroom and hands-on instruction is intended to be deleted.
2. If it is the Committee's desire to raise the acceptable passing grade to 90%, this agency will proceed accordingly.
3. We do not anticipate a conflict between union contracts and the newly proposed regulations. We intend to work with every PSAP according to their organizational makeup and contract requirements and do not feel that this poses any threat to existing contracts.
4. Phone tape recordings are not considered public information under the Right-To-Know law. In this regard, please find attached a recent letter citing regulation review concerning this matter.
5. At present, there are 13 PSAPs operating in a true E-911 (enhanced) mode. They are maintaining a 95% accuracy on the database. This figure is attainable and necessary. It is an issue that the wire industry feels strongly about. This agency and the industry both feel that anything less than 95% would degrade the system's integrity and increase the liability to the PSAP. Downloading of the LEC customer database into the county on the PSAP MSAG database is plausible and is working on a daily basis.

I hope the above will address the Committee's concerns. However, should you deem it necessary, I will be more than happy to provide additional information or documentation.

CCK:djz
Attachment

[J-168-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

NORTH HILLS NEWS RECORD AND
ROBYN TOMLIN,

Appellees

v.

TOWN OF McCANDLESS AND
ALLEGHENY COUNTY,

Appellants

: No. 25 W.D. Miscellaneous Docket 1998

: Application for Extraordinary Jurisdiction
: pursuant to 42 Pa. C.S. §726 from the Order
: of the Court of Common Pleas of Allegheny
: County Civil - SA26 - 98 dated February 6,
: 1998 (Pauer, P.J.)

ARGUED: September 16, 1998

OPINION

MR. JUSTICE SAYLOR

DECIDED: JANUARY 22, 1999

This Court invoked its extraordinary jurisdiction to determine whether an audio tape recording of a telephone call made to an emergency response center must be made available to citizens asserting a right to disclosure pursuant to the Pennsylvania Right to Know Act.

On January 1, 1998, Michele Walker Keitel and Charles Dunkle were shot and killed in Ohio Township, Allegheny County. A caller reported the shooting by telephone to the Town of McCandless Central Emergency Telephone Center (the "Center"). The Center was operated by the Town of McCandless ("McCandless") through its police department and provided twenty-four-hour emergency telephone response services to residents of

McCandless, Ohio Township and another neighboring municipality. All calls to the Center's emergency number were recorded on a magnetic audio tape.

Upon receipt of this telephone call, the Center notified Ohio Township's police department, which, in turn, dispatched a patrol car, followed by emergency personnel and equipment. Ultimately, Michele Walker Keitel's estranged husband, William Keitel, was arrested in connection with the killings.

Appellées Robyn Tomlin and North Hills News Record submitted requests to McCandless Township's police chief and solicitor, and later to the Allegheny County District Attorney, seeking access to the audio tape recordings of all calls made to the Center on January 1, 1998, relating to the killings. All such requests were denied.

Appellees then filed a statutory appeal in the Court of Common Pleas of Allegheny County pursuant to Section 4 of the Right to Know Act,¹ 65 P.S. §66.4, in which the Commonwealth sought and was granted leave to intervene. After argument, the trial court determined that the tapes were public records pursuant to the Act and should thus be made available to Appellees. In its opinion, the trial court initially acknowledged that the plain language of the Act would not appear to require disclosure of the tapes. Nevertheless, based upon a line of decisions from the Commonwealth Court, it found that the tapes did indeed qualify as public records. The trial court reasoned that:

[the coverage of the Act] is construed so broadly that it requires only that a record reflect some form of action by an agency that has an effect on someone. Here, the [audio tapes] formed the basis for the municipality's decision to investigate the conduct of certain individuals with regard to their personal rights, privileges, duties and obligations.

(citations omitted). Both the Commonwealth and McCandless lodged notices of appeal in the Commonwealth Court, and the Commonwealth filed an emergency petition in this Court

¹ Act of June 21, 1957, P.L. 390, as amended, 65 P.S. §§66.1-66.4 (the "Act").

seeking the exercise of extraordinary jurisdiction pursuant to Section 726 of the Judicial Code, 42 Pa.C.S. §726, and Pennsylvania Rule of Appellate Procedure 3309.

In the Act, the General Assembly codified and clarified the common law right of public access to public records. See Community College of Philadelphia v. Brown, 544 Pa. 31, 33, 874 A.2d 670, 671 (1996)(citing Wiley v. Woods, 393 Pa. 341, 350, 141 A.2d 844, 849 (1958)). Section 2 of the Act provides generally that "[a]ny public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania." 65 P.S. §66.2. Subject to enumerated exceptions, Section 1(2) of the Act provides that "public records" consist of the following two categories: 1) "[a]ny account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property," 65 P.S. §66.1(2); and 2) "any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons." Id.

The first of these categories deals generally with fiscal aspects of governance, providing for public review of accounts, vouchers or contracts "dealing with" receipts of and disbursements by an agency. This Court's recent decision in Sapp Roofing Co. v. Sheet Metal Workers' Int'l Ass'n, Local Union 12, ___ Pa. ___, 713 A.2d 627 (1998), concerned this accounts/vouchers/contracts category of public records. In Sapp Roofing, a plurality of the Court held that a private roofing contractor's payroll records, which had been submitted to the government in connection with the performance of a public project, were public records under the Act. Id. at ___, 713 A.2d at 629.² The Court reasoned that these

² Although Sapp Roofing was a plurality decision, three of the five Justices participating in the decision agreed that the payroll records were public records for purposes of the Act. See id. at ___, 713 A.2d at 630. Justice Nigro concurred in the result, and Justice Cappy, in dissent, expressed his view that the materials should not be deemed public records. Id. at ___, 713 A.2d at 631.

documents qualified as public records "because they are records evidencing a disbursement by the school district." Id.

Implicit in the Court's decision in Sapp Roofing is the conclusion that the accounts/vouchers/contracts category of public records reaches some range of records beyond those which on their face constitute actual accounts, vouchers or contracts. Nevertheless, it is clear from Sapp Roofing that, to constitute a public record, the material at issue must bear a sufficient connection to fiscally related accounts, vouchers or contracts.

The second category of public records, the minutes/orders/decisions category, touches upon the decisional aspects of agency actions. In formulating such category, the legislature selected a somewhat narrower construct than was employed to define the accounts/vouchers/contracts category - the account/voucher/contract category includes qualified records "dealing with" government receipts and expenditures; whereas, the minutes/orders/decisions category addresses qualified records "fixing" rights and duties.

The parties agree that only the minute/order/decision category of public records is implicated in this appeal. It is the burden of a party asserting a right of disclosure of materials pursuant to this category to establish that the requested material: 1) was generated by an agency as defined in the Act; 2) constitutes a minute, order or decision; 3) fixes the personal or property rights of some person or persons; and 4) is not protected by statute, order or decree of court. See generally Tapco, Inc. v. Township of Neville, 695 A.2d 480, 483 (Pa. Cmwlth. 1997) (citing Nittany Printing v. Centre County, 156 Pa. Cmwlth. 404, 409, 627 A.2d 301, 303 (1992)); Frommer v. Commonwealth, Dep't of Labor and Industry, 667 A.2d 35, 36 (Pa. Cmwlth. 1995), appeal denied, 544 Pa. 677, 678 A.2d 367 (1996). There is no dispute that Appellees' request meets the first of these requirements, as the audio tapes at issue were generated by the Center, an instrumentality of local

government and thus an agency within the meaning of the Act. See 65 P.S. §86.1(1) (setting forth the statutory definition of "agency").

The Commonwealth Court has interpreted the second and third requirements to include not only records that contain some actual agency determination fixing rights or duties, but also those materials that form the basis for such a determination, are essential decisional components or otherwise derive from the decision. See, e.g., Arduino v. Borough of Dunmore, ___ A.2d ___, ___, 1998 WL 799137 (Pa. Cmwith. Nov. 19, 1998); Cypress Media, Inc. v. Hazleton Area School Dist., 708 A.2d 866, 868-869 & n.2 (Pa. Cmwith. 1998) (stating that "[t]he document must be either the basis for or a condition precedent of the decision"). Moreover, the Commonwealth Court has also construed the term "fixing" to mean, more generally, "affecting." Hunt v. Pennsylvania Dep't of Corrections, 698 A.2d 147, 150 (Pa. Cmwith. 1997). The Commonwealth Court has also stated generally, and in our view, overbroadly, that, to constitute a public record for purposes of the Act, a record need only reflect some form of action by an agency that has an effect upon someone. See, e.g., Vargo v. Department of Corrections, 715 A.2d 1233, 1236 (Pa. Cmwith. 1998); Philadelphia Newspapers, Inc. v. Haverford Township, 686 A.2d 58 (Pa. Cmwith. 1996), appeal dismissed, 550 Pa. 343, 705 A.2d 1301 (1998); Travaglia v. Department of Corrections, 899 A.2d 1317, 1320 (Pa. Cmwith.), appeal denied, 550 Pa. 713, 705 A.2d 1313 (1997).

These expansive statements notwithstanding, the Commonwealth Court's decisions have recognized the definitional limits of the Act.³ Thus, the Commonwealth Court has

³ See, e.g., Arduino, ___ A.2d at ___ (stating that "the mere allegation that the information may possibly have some impact on the agency's decision is not sufficient to establish that the information is an essential component of the agency's decision"); Barger v. Dep't of Labor and Industry, Unemployment Compensation Bd. of Review, ___ A.2d ___, ___, 1998 WL 784178 (Pa. Cmwith. Nov. 12, 1998) ("[j]ust because a document may have an effect on an agency decision does not make it an 'essential component'"); Sierra Club v. (continued...)

acknowledged a range of documents that bear some connection to an agency determination, but nevertheless lack a sufficient nexus to meet the statutory criteria. See, e.g., Aronson, 693 A.2d 266 (holding that copies of responses to a government-sponsored prevailing wage survey were not public records under the Act); Tapco, 695 A.2d at 464-65 (contract proposals and source audiotapes of public meetings); Aamodt, 502 A.2d at 776 (raw data obtained in connection with a government survey pertaining to the health effects of the 1979 nuclear accident at Three Mile Island). Indeed, the Commonwealth Court has appropriately observed that "[a] decision fixing the rights or duties of a person is just not the same as gathering information, notations and evaluations that may or may not be utilized at some future time to fix rights and duties." Aronson, 693 A.2d at 265. See generally Wiley, 393 Pa. at 347-48, 141 A.2d at 848 (finding that field investigation notes prepared by a staff member of a city planning department for purposes of report to city council members did not fall within the definition of "public records" both on the face of the definition, and because of the express exclusion for reports of investigations).

As this line of decisions makes plain, in order to establish a right of access under the minutes/orders/decisions category of public records under the Act, a citizen must demonstrate a close relationship between requested material and an actual agency minute, order or decision fixing some right or duty. This is a correct interpretation, appropriately confined by the words of Pennsylvania's statute.⁴

(...continued)

Pennsylvania Pub. Util. Comm'n. 702 A.2d 1131, 1135 (Pa. Cmwlth. 1997), appeal granted, ___ Pa. ___, 719 A.2d 748 (May 29, 1998) ("the decision must have been contingent upon the information contained in the document and could not have been made without it").

⁴ The provisions of the Pennsylvania Right to Know Act establish a narrower framework for public disclosure of materials underlying agency decisions than has been established by a number of other state legislatures, see, e.g., Cincinnati Enquirer v. Hamilton County, 662 N.E.2d 334 (Ohio 1996) (finding, under an Ohio public disclosure statute defining public records as "any record that is kept by any public office," that an audio tape recording of a (continued. .)

In the present case, Appellees assert that the telephonic report to the Center formed the basis for the decision of the municipality to dispatch police and emergency personnel and equipment to the scene of the killings. Further, Appellees argue, records related to emergency operations affect emergency response policies and procedures and, therefore, the public as a whole. Appellees also contend that the information on the audio tapes supported the decision by the police to investigate and arrest William Keitel and the district attorney's decision to prosecute. For all these reasons, Appellees argue that the tapes meet the Commonwealth Court's broad construction of public records in that they reflect some form of action by an agency that has an effect on someone.

Contrary to Appellees' arguments, it is clear that the information captured on the audio tapes at issue is not necessary to a complete understanding of the government's decision to dispatch emergency crews on January 1, 1998. Two people were killed -- nothing could be plainer than that the immediate governmental response was justified. Rather, the relationship between specific details from the reporting conversation and agency decisionmaking is speculative and attenuated. Similarly, Appellees failed to establish that the decision to investigate, arrest or prosecute William Keitel was contingent upon the information contained in the audio tapes, or that the information was an essential component of such decisions. More fundamentally, the tapes are not closely related to the

(...continued)

911 call was a public record), as well as by Congress under the federal Freedom of Information Act, 5 U.S.C. §552 ("FOIA"). See generally Forham v. Harris, 445 U.S. 189, 183, 100 S. Ct. 977, 979 (1980) (considering the definition of "agency records" under FOIA by reference to the definition provided under the Records Disposal Act, 44 U.S.C. §3301, to include documentary materials "made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business"). While we acknowledge the policy of broad disclosure under the Act, we are guided, in the first instance, by the words chosen by the General Assembly. Where such words are clear, we are forbidden from diverging from the plain meaning under the mere pretext of pursuing the spirit of the enactment. See 1 Pa.C.S. §1921(b).

[J -168- 98] - 7

fixing of some personal or property right and thus simply are not the type of material contemplated by the General Assembly as constituting a public record pursuant to the Act.

In sum, we hold that the audio tape recordings of the telephone call to the emergency response center are neither minutes, orders or decisions fixing rights or duties, nor bear a sufficient association with such forms of agency determinations to require their disclosure under the provisions of the Act. Accordingly, the decision of the trial court is reversed, and the matter is remanded for entry of judgment in favor of Appellants.

[J-168-98] - 8

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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DESIGNATIONS

DEPARTMENT OF MILITARY AND
VETERANS AFFAIRS
STATE ARMORY BOARD
PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

May 20, 1999

Mark Goodwin, Chief Counsel
Pennsylvania Emergency Management Agency
PO Box 3321
Harrisburg, Pa 17105

Dear Mr. Goodwin:

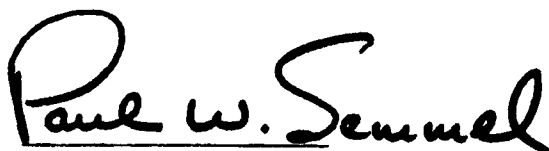
In accordance with the Independent Regulatory Review Commission process, the House Veterans Affairs and Emergency Preparedness Committee has formally reviewed Proposed Regulations #30-51, 30-52 and 30-53. The following points of interest were raised at our committee meeting, and were requested to be forwarded to your office by several committee members.

- 1) Under current Regulation 120b.104(XXVIII), dispatchers are required to have a minimum of 40 hours classroom and hands-on instruction. Will this minimum requirement be raised under this section, or will this section be deleted in view of the fact that Section 120c(proposed) will establish increased training standards? As well, what will this minimum hourly training requirement be?
- 2) In terms of written exams for 911 center personnel (120c), the committee was informed that a 75% correct score would be an acceptable passing grade. Minority Chairman Tom Michlovic, and others, suggested that this minimum passing grade percentage may be too low.
- 3) In terms of the perceived conflict between union contracts and these proposed regulations, as was suggested by the City of Philadelphia, is there any merit to this accusation? How does your agency plan to address this issue?
- 4) In terms of the Right-to-Know Law as applied to 911 center data/information, will the phone tape records of individual dispatchers (section 120c.107) be considered public information under the Right-to-Know law?
- 5) In terms of the accuracy standards for 911 database systems (120b.112), there was some discussion on the ability of county 911 centers to maintain a 95% accuracy rate. Is this 95% accuracy rate attainable? As well, there was some questioning on whether or not the downloading of the LEC customer database

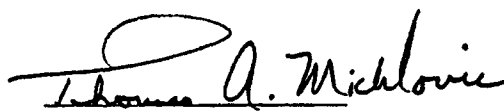
into the county MSAG database was a plausible practice which all county 911 centers could uniformly perform. Are the LECs better equipped to load this data?

The committee would also like to submit two (2) public comment documents which were sent to various legislators on this issue. We would appreciate your office reviewing the merits of these enclosed comments and suggestions.

Sincerely,



Paul W. Semmel
Majority Chairman
House Veterans Affairs and
Emergency Preparedness Committee



Thomas A. Michlovic
Minority Chairman
House Veterans Affairs and
Emergency Preparedness Committee

PWS/prh

Enclosure

Original: 2019

Mizner

Copies: Jewett
Tyrrell
Sandusky
Legal

1 120b.112. Accuracy Standards for Enhanced 9-1-1 database systems.

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The Master Street Address Guide (MSAG) is an information file prepared by a county that contains a list of all street names and address ranges within a county's 9-1-1 service area. Associated with each street are the low/high address ranges as well as a designation for odd, even or all numbers as appropriate; street directionals, such as N, S, E, W; and street types such as ST (street), RD (road), LN (lane). The MSAG may also contain a Public Safety Answering Point (PSAP) designation and the appropriate emergency service providers (police, fire and medical) assigned to each address range. A Local Exchange Carrier (LEC) customer database contains the billed customer's telephone number, listed name and service address. After ~~Once~~ a county creates an initial MSAG, the county and the LEC may ~~shall~~ perform a database validation process every six months by comparing LEC customer data with the MSAG data. When substantive database mismatches are detected during the validation process and are subsequently corrected to the extent that at least 95% of the LEC's customer database matches the MSAG database, then the MSAG database may be loaded into the 9-1-1 Database Management System of the LEC or of a different host LEC if applicable ~~LEC customer database may be loaded into the county's MSAG database.~~ When 100% street addressing has not taken place within a certain geographical area of a county, ~~the use of a partial county MCAC may be used where technically feasible as long as the data load represents an accuracy rate of at least 95%.~~ Thereafter, additional validation processes may ~~shall~~ be implemented by a county and the LEC or LECs to eliminate, insofar as possible, any substantive mismatches between the county's MSAG and LEC's customer database.

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99 MAY 10 PM 4: 15
SANDUSKY COUNTY
REVENUE DEPARTMENT

Post-It® Fax Note	7671	Date	5/11	Page	1
To	C. Hub Trull	From	G. Lewis Mudgett		
Phone	771-783-2664	Fax	771-466-3231		

**PENNSYLVANIA TELEPHONE ASSOCIATION'S SUGGESTED CHANGES TO
PROPOSED PEMA REGULATION AT 4 PA. CODE SEC. 120b.112.
ACCURACY STANDARDS FOR
911 DATABASE SYSTEMS**

The attached document sets forth the PTA's suggested revised wording for the proposed PEMA Regulation at 4 Pa. Code Sec. 120b.112. Accuracy Standards for 911 database systems. Explanations for the suggested changes to the proposed regulation are set forth below:

Line 1 -- The word "Enhanced" should be added because these standards will not apply to Basic 9-1-1 service, which does not involve an MSAG. "911" should also be changed to "9-1-1" for accuracy.

Line 13 -- The word "listed" should be added to differentiate between the customer listed name and bill name because the listed name is the name contained in the local exchange carrier (LEC) 9-1-1 Database Management System. The word "Once" should be changed to "After" for increased clarity.

Line 14 -- The word "Initial" should be added to clarify that it is a county's creation of an initial MSAG that will trigger validation processes to make the MSAG as accurate as possible. The word "shall" should be changed to "may" to make the semiannual validation process called for in the regulation permissive, rather than mandatory, and allow for other validation processes and time frames. Some LECs, for example, perform several MSAG/customer database compares during the validation process. After the initial compare is performed, the LEC and the county correct all errors before moving on to the next compare so that the validation process is efficient as well as timely. Other LECs perform an initial load, daily service order reconciliation and a final load as their validation process.

Lines 18-21 -- This provision should be changed to permit the MSAG database to be loaded into the 9-1-1 Database Management System of the LEC or of a different host LEC if applicable, as opposed to the reverse loading called for in the proposed regulation. The reference to "a different host LEC if applicable" is necessary because not all LECs provide their own 9-1-1 Database Management Systems. Some instead make arrangements with other "host LECs" to provide this system functionality for them using the host LEC's system.

Lines 22-24 -- The words "the use of" should be deleted for clarity and to avoid repetition, and the phrase "where technically feasible" should be added because not all LECs can support a partial MSAG. The word "has" should replace "represents" for increased clarity.

Line 25 -- The word "may" should replace "shall" to make the performance of additional validation processes permissive rather than mandatory. After the

county implements Enhanced 9-1-1, daily service order reconciliation is performed as part of the tariffed service. Additional validation processes over and above this daily service order reconciliation, if any, will be negotiated between the LEC and the county.

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RENEW COMMISSION

REGIONAL EMERGENCY MEDICAL SERVICES COUNCILS
Revised - August 1998

REGIONAL EMS COUNCIL	COUNTIES/CODE	REGION CODE
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REGIONAL EMS COUNCIL	COUNTIES/CODE	REGION CODE
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 Fayette (26) Westmoreland (65)

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13

REGIONAL EMS COUNCIL	COUNTIES/CODE	REGION CODE
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Mifflin (44) **08**

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Blair (7) Huntingdon (31)
Cambria (110) Somerset (56) **09**

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Northumberland (49)
Snyder (55)
Union (60) **15**

Emergency Medical Services Office
State EMS Office -- 8:00 a.m. - 5:00 p.m.

Margaret E. Trimble, Director
Pennsylvania Department of Health
P.O. Box 90 -- Harrisburg, PA 17108
(717) 787-8740
FAX (717) 772-0910

PENNSYLVANIA EHS COUNCIL
State Advisory Council - 8:00 a.m. - 5:00 p.m.

Richard D. Flinn, Jr., Executive Director
Pennsylvania EHS Council
Maple Building, Suite 210 -- 5012 Lenker Street
Mechanicsburg, PA 17055
(717) 730-9000
FAX (717) 730-9200



CITY OF PHILADELPHIA

FIRE DEPARTMENT

Fire Administration Building
240 Spring Garden Street
Philadelphia, PA 19123-2992

HAROLD E. HARRISON
Commissioner

RALPH A. HALPER
Regional Director
Emergency Medical Services
(215) 686-1313
FAX: 686-4321



May 10, 1999

Mark Goodwin
Chief Counsel
Pennsylvania Emergency Management Agency
P.O. Box 3321
Harrisburg, PA 17105

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& 2021

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MAY 10 11:10:37
INDEPENDENT REGULATORY REVIEW COMMISSION

Tel: 717-651-2010
Fax: 717-651-2040

Dear Mr. Goodwin:

Following this cover please find **Comments Regarding Proposed PEMA 911 Changes**, as submitted by Michael Moore, Chief Dispatcher, Fire Communication Center, Philadelphia Fire Department. We are forwarding these comments to you from the Philadelphia Regional EMS Office for your consideration.

Thank you for this opportunity to review and comment on this important component of Emergency Medical Services in Pennsylvania.

Sincerely,

Ralph A. Halper
Regional Director
Emergency Medical Services

RAH/jrs

cc: John H. Jewett, Regulatory Analyst, Independent Regulatory Review Commission

MEMORANDUM

CITY OF PHILADELPHIA
FIRE DEPARTMENT

Date 05/06/99

TO : FPOC Ralph Halper, Regional EMS Director

FROM : Michael Moore, Chief Dispatcher FCC *MM*

SUBJECT: Comments Regarding Proposed PEMA 911 Changes

Sir; I have reviewed the changes in the three chapters of 911 legislation which PEMA has proposed to implement Act 17 of 1998. Two of the chapters, regarding Training and Quality Assurance, will affect the Philadelphia Fire Department's Communications Center, and I would like to direct comment to these chapters specifically.

In regard to the chapter dedicated to training, I feel that the positions identified within a Communications Center, and subsequent needed training mirror the Philadelphia Fire Department's conception of these roles. To insure this training PEMA has mandated that an Agency approved course be given for the positions of Call Taker and Dispatcher. However, PEMA would prescribe testing procedures for certification and recertification. I feel it would be more consistent to have the Communication Centers develop their own testing procedures for certification and recertification of personnel. These testing procedures, along with associated courses, would be subject to PEMA approval. While providing standardized curriculum, this would permit the individual county to tailor their training and testing to meet the needs and resources of individual communities and organizations. I feel this method would also avoid any conflicts in local Civil Service procedures, and municipal workers labor contracts. The point becomes more apparent at the supervisory level, as both course and testing procedures are authored by PEMA.

The section of this chapter addressing instructor status seems vague and inconclusive. PEMA approval to teach any certification course is required. To attain this approval an instructor must have attained some unspecified level of academic and teaching experience. Or, instructor candidate must have successfully completed some unnamed training course.

In this chapter PEMA also established guidelines for certification documentation, reserves its' right to enter a Center and audit these records, as well as inspect all equipment and operational materials within the Center. While notice to audit certification records is required (10 Days), no such notice is mentioned for inspection of premises. It is felt this courtesy should be extended to be able to adequately prepare and detail an extensive, thorough description of the Center.

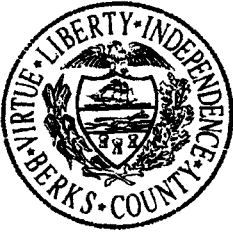
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FIRE DEPARTMENT
COMMUNICATIONS CENTER

MEMORANDUM**CITY OF PHILADELPHIA
FIRE DEPARTMENT**

With regard to the chapter on Quality Assurance I believe the same issues are basically involved. This chapter provides quality assurance definitions, establishes standards and procedures, and lists the type of quality assurance reviews to be performed. Both the types and procedures to be performed are rigidly prescribed by FEMA. Certainly the teaching and learning benefits of a QA program, for the dispatcher and organization on whole are realized and acknowledged by the Philadelphia Fire Department. However, due to the diversity of communities and communications centers existing within the state it is felt that the conception and implementation of a Quality Assurance program should fall to each center. Once again this would allow counties to tailor their QA programs to meet the needs and resources specific to them. However, to retain standardization and provide oversight, FEMA could offer more general guidelines, and the programs subject to FEMA approval.



Berks County Communications Center

Craig S. Brenciser, Director
Eric D. Olena, Assistant Director

Courthouse, Eighteenth Floor
633 Court Street
Reading, PA. 19601

(610) 655-4921
(800) 237-0079

3 May 1999

Mark Goodwin, Chief Counsel
Pennsylvania Emergency Management Agency
P.O. Box 3321
Harrisburg, PA 17105

ORIGINAL: 2019, 2020, 2021
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Dear Mr. Goodwin,

We have reviewed the proposed rulemaking pursuant to Act 17 of 1998 as posted in the Pennsylvania Bulletin, Volume 29, Number 14. We would like to provide the following comments:

Chapter 120d. 911 Performance Review & Quality Assurance Standards

- We are unclear with respect to our responsibility for remote dispatch points associated with our PSAP. As the primary PSAP (and the recipient of surcharge funds provided through Act 78), are we responsible for auditing calls that are transferred to other dispatch points (including the Pennsylvania State Police) and radio traffic that is not under our authority? If so, do the proposed regulations provide us with authority to access tape recordings that do not belong to us?
- Depending upon the Agency's position with respect to the preceding concern, if a remote dispatch point provides emergency medical dispatch using a program other than that used by the PSAP, how can we provide quality assurance audits when we have no affiliation with that program?

Chapter 120c. Training & Certification Standards... Communications Personnel

- A 9-1-1 supervisor is required to have completed both call-taker and emergency dispatcher certifications; however, it is unclear whether those certifications must be *maintained* following receipt of supervisor certification. Must existing supervisors receive call-taker and emergency dispatcher certification, or must they successfully complete a supervisory course and examination?

-more-

- With respect to Agency certification of instructors, is such certification required for anyone who provides instruction, or is it limited to the individual(s) who coordinate and certify course completion? It is common to use individuals with particular expertise to teach a portion of a course without them being formally certified as instructors (e.g.: our computer coordinator would provide general training on the functioning of the computer-assisted dispatch system, but would not assume responsibility for certifying competency). Also, if a trainee is assigned for "on-the-job" training with a senior telecommunicator, must that person be certified to provide OJT?
- What certification requirements are placed on personnel employed by remote dispatch points? What responsibility does the PSAP have with respect to these requirements (or authority to enforce them)?
- We are concerned with the vagueness of the required refresher training. "Sufficient content and duration" leaves a very wide space for interpretation.
- While we do *not* expect the Agency to employ high-handed tactics with respect to its right to enter and inspect a 9-1-1 center, we do note some concern with the potential to conduct an inspection at whim. There needs to be a very high standard of conduct in such cases (akin to that required of law enforcement agencies seeking a search warrant). Does this "enter and inspect" right extend to remote dispatch points, too?

Chapter 120b. Public Safety Emergency Telephone Program

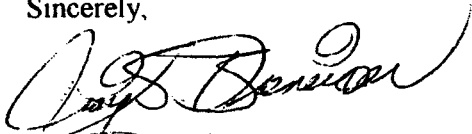
- As drafted, the term "local exchange carrier" (LEC) would seem to include both ALECs and CLECs. However, empirical experience has shown both ALECs and CLECs may attempt to avoid responsibility with respect to maintaining a good MSAG. The same may also be true of wireless carriers (which have historically been resistant to providing a physical address for their tower sites). Therefore, we recommend the language be tightened to include any entity that provides dial tone service.
- The suggestion to validate a database every six months would be wholly unrealistic in our system. While we have received cooperation in performing daily validations, a statutory requirement may result in loss of such cooperation. We prefer to see language that permits the PSAP to set a reasonable validation schedule.
- If we wait until a LEC reaches a 95% accuracy on its database, the MSAG will never receive the required information. In our case, it has been more expedient to take the data provided by a LEC, validate and make corrections. In this fashion, whatever good information the LEC has can be used, rather than having no available data.

Act 17 Rules
Page 3
5-3-99

Generally, we appreciate the programmatic changes contained in Act 17, and believe this will result in an overall improvement in the delivery of 9-1-1 services throughout the Commonwealth. Like anything new, however, there are some potentials for problems and concerns, and the foregoing comments are where we see such instances. The purpose of this letter is intended to be constructive, not critical.

If we can be of further service, please do not hesitate to contact us.

Sincerely,



Craig S. Breneiser, MPA, ENP
Director,
Berks County Communications Center

pc: W. Rehr, 911 Coordinator
Communications Advisory Committee

CHARLES D. LEMMOND, JR.
SENATE POST OFFICE
THE STATE CAPITOL
HARRISBURG, PA 17120-3020
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1-800-722-2251

20TH SENATORIAL DISTRICT OFFICE
22 DALLAS SHOPPING CENTER
MEMORIAL HIGHWAY
DALLAS, PA 18612-1231
717-675-3931



Senate of Pennsylvania

May 24, 1999

Original:
Mizner
cc:

COMMITTEES
STATE GOVERNMENT, CHAIRMAN
MILITARY AND VETERANS AFFAIRS,
VICE CHAIRMAN
FINANCE
JUDICIARY
RULES AND EXECUTIVE NOMINATIONS

2019, 2020, 2021

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Sandusky
Legal
Notebook

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, Pennsylvania 17101


Re: Proposed Rulemaking
Pennsylvania Emergency Management Agency
Regulations #30-51, #30-52, and #30-53

Dear Mr. Nyce:

Members of the Senate State Government Committee have been afforded the opportunity to review and comment upon Proposed Regulations from the Pennsylvania Emergency Management Agency, Public Safety Emergency Telephone Program which would amend 4 Pa. Code, Chapters 120b, 120c, and 120d.

Please be advised that, as of this date, I have received one letter from Mr. L. Guy Napolillo, 9-1-1 Coordinator from Fayette County Emergency Management, in response to these proposed regulations. I enclose a copy of the letter submitted by Mr. Napolillo and would ask that his comments be given all due consideration.

If you have any questions regarding these proposed regulations and the Committee review, please do not hesitate to contact Cynthia Thurston of my staff at 787-7428.

Sincerely,

CHARLES D. LEMMOND JR.
SENATOR

CDL:cdt

cc: Attorney Mark L. Goodwin,
Pennsylvania Emergency Management Agency



FAYETTE COUNTY EMERGENCY MANAGEMENT



Fayette County Public Service Building
24 East Main Street

(724) 430-1277

Uniontown, Pennsylvania 15401

Original: 2019, 2020, 2021

Mizner

cc:

April 28, 1999

Sen. Charles D. Lemmond Jr.
Chairman, State Government Committee
Room 203020
State Capitol
Harrisburg PA 17120

Jewett
Tyrrell
Sandusky
Legal
Commission
MAY 9 1999

Sen. Lemmond:

After reviewing the proposed draft regulations pertaining to Training and Certification Standards for 9-1-1 Emergency Communications Personnel I feel that there may be a need for some minor changes in the language of the proposed regulations. Primarily the paragraphs in 120c.102 Call Taker Certification, 120c.103 Emergency Dispatcher Certification and 120c.104 9-1-1 Center Supervisor Certification. Under Certification in all sections noted, it states that the "Agency" (PEMA) will prescribe both the written examination as well as the practical test to be administered to the call-takers, dispatchers and supervisors.

After much consideration and discussion with PSAP managers in western Pennsylvania as well as PEMA representatives, I believe that the changing of the word **prescribe** to **approve** in the regulations would enable this legislation to be implemented in a more efficient manner. While some basic training issues remain consistent throughout all PSAPs in Pennsylvania, many PSAPs incorporate localized equipment, geographical, and procedural issues into their respective training programs. Simply put, PEMA could develop key elements for training and certification and review the PSAP training outlines and tests to assure these elements were covered.

I am also concerned about the certification process for the instructors discussed in the proposed legislation. Many PSAP instructors are already certified through a number of Federal, national and/or state recognized agencies and this component may be simply redundant. Proof of existing instructor certification could be provided to PEMA.

I would appreciate your consideration of these key issues to the proposed legislation and await your response.

Sincerely,

L. Guy Napolillo
9-1-1 Coordinator



FAYETTE COUNTY EMERGENCY MANAGEMENT

Fayette County Public Service Building
24 East Main Street
Uniontown, Pennsylvania 15401



(724) 430-1277

April 28, 1999

Mr. Mark Goodwin, Chief Counsel
Pennsylvania Emergency Management Agency
PO Box 3321
Harrisburg Pa. 17105

Mr. Goodwin:

After reviewing the proposed draft regulations pertaining to Training and Certification Standards for 9-1-1 Emergency Communications Personnel I feel that there may be a need for some minor changes in the language of the proposed regulations. Primarily the paragraphs in 120c.102 Call Taker Certification, 120c.103 Emergency Dispatcher Certification and 120c.104 9-1-1 Center Supervisor Certification. Under Certification in all sections noted, it states that the "Agency" (PEMA) will prescribe both the written examination as well as the practical test to be administered to the call-takers, dispatchers and supervisors.

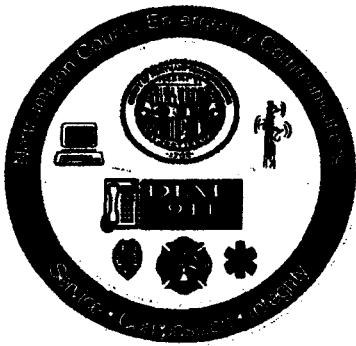
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I am also concerned about the certification process for the instructors discussed in the proposed legislation. Many PSAP instructors are already certified through a number of Federal, national and/or state recognized agencies and this component may be simply redundant. Proof of existing instructor certification could be provided to PEMA.

I would appreciate your consideration of these key issues to the proposed legislation and await your response.

Sincerely,

L. Guy Napoliello
9-1-1 Coordinator



NORTHAMPTON COUNTY
EMERGENCY COMMUNICATIONS AND ENHANCED 911

ADMINISTRATIVE OFFICES
29 MECHANIC STREET
WIND GAP, PENNSYLVANIA 18091 USA

Robert F. Mateff, Deputy Director

Phone: 610 863-0879 Fax: 610 863-0876

Email: nce911@epix.net

April 29, 1999

Mark Goodwin
Chief Counsel
Pennsylvania Emergency Management Agency
P.O. Box 3321
Harrisburg, PA 17105

ORIGINAL: 2021, 2020 & 2019
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Re: Proposed Rulemaking: 4 Pa. Code §§ 120b, 120c, 120d;
Published in Pa. Bulletin, Vol. 29, No. 14, April 3, 1999

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Dear Mr. Goodwin,

As Northampton County Deputy Director of Emergency Communications and Enhanced 911, I wish to formally present the following comments on PEMA's proposed rulemaking as published in the April 3, 1999 Pennsylvania Bulletin. On behalf of the County's Department of Emergency Communications and Enhanced 911, we ask that you take our comments into consideration and make revisions to the proposed rules as set forth below:

(1) General comment to proposed section 120d as a whole: the proposed scheme for quality assurance reviews, including the requirement of call-taking audits, makes recorded calls public records within the meaning of Pennsylvania's Right to Know Act. This is contrary to currently proposed legislation which would make the call recordings not available for public inspection and potentially exposes PSAPs and municipalities to liability in so far as the recordings may contain private, statutorily protected information about an individual's health (e.g. person is HIV positive), or may contain information that may jeopardize or compromise an individual's safety if made public, or may contain information regarded under telephone service provider tariffs as proprietary and by statute [Act 78] not to be used for purposes other than 911.

Suggestion: Include language that specifically exempts the reviews from the Right to Know Act.

(2) Comment to proposed section 120d.103 and 104 [Scope and Standards and Procedures for Performance]: Question-Is PEMA making its standards a part of the job description/duties for County 911 employees? The proposed regulations do not state what is expected if the employees do not meet the PEMA Quality Assurance standards. Does PEMA expect that additional training will be required?

Suggestion: PEMA should explicitly state what it expects if QA standards are not met. Additionally, language should be added addressing situations where a county or local government is constrained by civil service requirements or existing collective bargaining agreements.

(3) Comment to proposed section 120d.105(a) and (b)[Types of quality assurance reviews. Call taking (telephone performance) and Dispatching (radio performance)]: the proposed rulemaking purports to establish an objective method for reviewing call-taker performance, yet the standards set forth are largely subjective. Specifically, the following language in proposed sections creates a heavily subjective list of

standards: in section 120d.105(a)(5), use of the words “quickly and effectively”; section (a)(7), use of the words “calming technique”—an undefined term; section (a)(8) use of the words “professional” and “courteous”; section 120d.105(b)(1) dispatching “usually” within 90 seconds; section (b)(2) provides “pertinent” information—what is considered pertinent?; section (b) (3) use of the word “promptly”; section (b)(4) use of the words “clearly and concisely”; section (b)(5) use of the word “attentively”; section (b)(6) use of the phrase “timely responds to requests from the field”; section (b)(7) use of the word “professional” demeanor

Suggestion: eliminate all subjective terms and set objective standards, e.g. specific time frames within which call handling/dispatching is to take place. If it is not the intent of PEMA to “micromanage” PSAPs, then perhaps many of the proposed standards should be eliminated, and individual PSAPs can establish their own training plans to be approved by PEMA along with the regularly filed amended 911 Plans required by statute.

(4) Comment to proposed section 120d.105(c) [Types of quality assurance reviews. Emergency Medical Dispatch]: Emergency medical dispatch—there are currently pending proposed rulemaking from the Department of Health which turns over to PEMA almost all 911/PSAP emergency medical dispatch related approvals/reviews issues. CHECK CITE See Pa. Bulletin Vol. 29, No. 7, February 13, 1999. It is not consistent with the pending Department of Health proposed rulemaking to interject Department of Health oversight/approval in this process. It is also questionable whether PEMA has the jurisdiction to issue a regulation impacting the Department of Health in such a manner. Furthermore, the Department of Health is not the entity familiar with operation of a PSAP, and thus should not have sole or primary responsibility for such review, since the Department of Health is not familiar with emergency medical dispatch issues.

Suggestion: modify the language to include joint PEMA-Department of Health review, or require the PSAPs emergency medical dispatch programs to be included in the 911 Plans, or eliminate the requirement of Department of Health oversight.

(5) Comment to proposed section 120c.102(b) [Call taker certification. Certification]: section 120c.102(b)(1)(i)—what is the form of application that PEMA proposes to use? section 120c.102(b)(iii)—what is the curriculum of the call taker training course? section 120c.102(b)(iv)—what topics is the written exam intended to address? section 120c.102(b)(v)—what areas is the practical test of call taker skills intended to cover? As a general comment, such requirements from PEMA may impact on pre-existing County rules and regulations concerning civil service job requirements, and may be difficult to implement in a rapid manner.

Suggestion: PEMA should not attempt to “reinvent the wheel”. Where recognized national 911 organizations such as NENA and APCO have already established basic training curriculum and courses, PEMA should rely on those organizations for establishing curriculum content and review.

(6) Comment to proposed section 120c.102(b)(1)(ii): why use the age of 18? it seems an arbitrary choice, especially given the use of the age 20 in section 120c. 104(b)(2);

Suggestion: if there is a specific level of education or life experience that PEMA seeks to use as a guideline, the number of years should be set forth with specificity. and consistency.

(7) Comment to proposed section 120c.102(b)(2) and (c): recertification every three years is duplicative of the continuing education requirements set out in section 120c.106 [refresher training].

Suggestion: one section or the other should be eliminated, or the two should be modified and addressed in one section.

(8) Comment to proposed section 120c.103(b) [Emergency dispatcher certification. Certification]: please see comment No. (5) above, regarding test curriculum and formats. As a general comment, emergency dispatching needs to be specific to the environment of the PSAP in any individual agency.

Suggestion: please see suggestion to comment No. 5, above.

(9) Comment to section 120c.104 [911 center supervisor certification]: please see comment No. 3, above. Again, the application of subjective standards to what appears to be intended as objective criteria creates confusion.

Suggestion: please see suggestion to comment No. 3, above.

(10) Comment to section 120c.105 [Certification curriculum and instructors]: why does PEMA need to approve schedules? Such matters should be specific to the resources of the individual PSAPs. Additionally, the setting of fees for courses is not something in which PEMA should be involved. PSAPs frequently partner with local colleges, universities, junior colleges, community colleges, hospitals, local police departments, state police barracks, local fire departments, and other entities related to delivery of emergency services. The cost of training or courses delivered in conjunction with those entities varies from one organization to another and from one region of the state to another. The section does not clarify what PEMA's standards will consist of or what information will meet PEMA's requirements.

Suggestion: Require proposed training curriculum, schedules, materials etc. to be included as part of a County 911 Plan. Require that Counties provide a narrative explanation as to how the issues are specific to the County.

(11) Comment to section 120c.107 [Retention of Records for Audit]: please see comment No. 1 and suggestion thereto, above.

CONCLUSION

Northampton County Department of Emergency Communications and E911 is not opposed to the proposed rulemaking set forth in the April 3, 199 Pennsylvania Bulletin. The County respectfully requests that PEMA take into consideration the comments and suggestions set forth above, and make changes or modifications to the proposed sections of the Pennsylvania Code as noted. If there are specific comments, questions or any need for clarification, I would be happy to address any items with you.

Thank you for your attention to this.

Sincerely,



Robert F. Mateff
Deputy Director,
County of Northampton Emergency Communications
and E911

C:

William J. Hetherman, Northampton County 911 Coordinator and
Director County of Northampton Emergency Communications and E911



L. Robert Kimball & Associates

Washington Square, Suite F, 21 W. Washington Street, West Chester, PA 19380
Tel: 610-692-2232 Fax: 610-692-8511 E-Mail: wchstrgn@lrkimball.com

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May 3, 1999

By: facsimile transmission and regular mail

Mark Goodwin, Esq.
Chief Counsel
Pennsylvania Emergency Management Agency
P.O. Box 3321
Harrisburg, PA 17105

ORIGINAL: 2020 & 2021 & 2019
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Re: Comments to Proposed Rulemaking 4 Pa. Code, Chapters 120b, c,d,

Dear Mr. Goodwin,

On behalf of the City of Philadelphia, kindly accepted this letter along with the attached City of Philadelphia April 29, 1999 inter-Departmental Memorandum as the Comments of the City in response to PEMA's April 3, 1999 Proposed Rulemaking, published in the Pennsylvania Bulletin Vol. 29 No. 14. L. Robert Kimball & Associates is retained by the City to provide it with 911 consulting services, and thus the use of my letterhead here. In an effort to expeditiously provide the information prepared by the City to PEMA, the City has agreed to the format used here, although not as formal as may have been preferred. We ask that PEMA excuse any oversight as to the formalities of procedure in responding to this proposed rulemaking.

The City of Philadelphia has several main areas of concern regarding the Proposed Rulemaking. Specifically:

(1) Call Taker and Emergency Dispatch Certification (Sections 120c.102, 103)-- The attached April 29, 1999 inter-Departmental Memorandum sets forth a description of the manner in which the City presently handles training and deployment of new call takers/dispatchers. Under the City's pre-existing labor agreements and civil services rules and regulations, implementation of the PEMA proposed rules would create a direct conflict with the City's existing rules and regulations. Absent re-opening of the City's labor agreements, which is not scheduled for the immediate future, the City would not be able to comply with the PEMA proposed rules. The City suggests that the PEMA proposed rulemaking contain a modification permitting a PSAP such as theirs, bound by the terms of the existing labor agreements, to prepare a certification plan specific to their situation to be individually approved by PEMA.

(2) Certification Curriculum and Instructors Refresher Training (Sections 120c.105, 106)-- The attached April 29, 1999 inter-Departmental Memorandum discusses the City's existing Curriculum and Instructor format. The City's present format is based on the specific needs of the City's PSAP and Police Department, and is also based on the specific technical design of the City's PSAP (i.e. vendor involvement). A requirement that the City accept PEMA's curriculum, materials, schedules, exams, fees and other related matters for Certification would interfere with the pre-existing labor agreements, as discussed above, and would create a serious financial burden on the City. The City suggests that a separate approval process, specific to its PSAP be permitted, given the size of the PSAP (based on call volume, employee number, employee turnover rate, and County population.)

(3) Retention of Records for Audit (Section 120c.107)-- The City has set forth in the attached April 29, 1999 inter-Departmental Memorandum its concern that the existing proposed rule would make information not generally available as a public record subject to the provisions of Pennsylvania's Right to Know Law. The City suggests that a specific exception related to 911 tapes be inserted in the proposed rules.

page 2

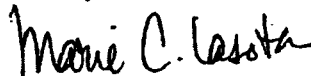
Mark Goodwin, Chief Counsel PEMA

May 3, 1999

(4) Quality Assurance Reviews (Section 120d.105)-- The attached April 29, 1999 inter-Departmental memorandum sets forth the City's concern regarding this section: specifically, the sheer volume of calls into the City of Philadelphia PSAP makes the quality assurance standards set forth in the proposed rule untenable. While the City can easily meet the call answering standards, the dispatch of calls is handled in a manner specific to the resources of the City of Philadelphia Police Department--calls are dispatched based on the priority of the incident and the availability of resources (approximately 2.8 million calls a year; average 8000 calls a day, 11,000-12,000 per day in July and August). The City suggests that the proposed Quality Assurance Review standards be more specific, and permit for adjustment of response time in relationship to call volume.

Thank you for your attention to this matter. If you have any questions or need additional information, I will be happy to discuss the City's comments and concerns with you. I can be reached at the above number.

Sincerely,



Marie C. Lasota
Telecommunications Analyst

mcl/ns

w/encls. : April 29, 1999 City of Philadelphia inter-Departmental Memorandum

c: Joseph James, Deputy Commissioner, City of Philadelphia Department of Public Property
Deputy Commissioner Charles Brennan, Philadelphia Police Department
Vincent Costello, Director of Communications, City of Philadelphia Department of Public Property
Inspector Scott Small, Philadelphia Police Department, Communications Division
Sergeant Greg Masi, Philadelphia Police Department
LRK pf: 98-1750-0514

MEMORANDUM

POLICE
CITY OF PHILADELPHIA
Date: 4-29-99

TO: Deputy Commissioner Joseph James, Public Property

FROM: Commanding Officer, Communications Division

SUBJECT: PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

1. **Call Taker / Emergency Dispatch Certification (Section 1206.102)**
 - A. All civilian personnel assigned to the Radio Room in Philadelphia have the civil service title "Police Communications Dispatcher". Police Communications Dispatchers are assigned to do both, dispatch and answer 9-1-1 calls. There is no civil service title "Call Taker".
 - B. The term "certification" is a vague and general term with no clear cut specific definition relative to the current position of Police Communications Dispatcher in the City of Philadelphia. The term "certification" should be clearly defined, relative to call taker and dispatcher. If an individual is a certified dispatcher, does this mean they are automatically certified as a call taker?

Having separate certifications for call takers and call dispatchers creates a problem for Philadelphia, because if a person does not satisfy proposed PEMA certification for one part, the City would be unable to utilize that employee, but would still have to keep the employee on the payroll under the City's collective bargaining agreements. This would create an unfair drain on already scarce monetary resources.

All civilian, non-supervisory personnel assigned to Police Radio in the PPD have the title, Police Communications Dispatcher. There is no separate title or rank for Call Taker. Police Communications Dispatchers are assigned to answer 9-1-1 calls and dispatch assignments to police personnel. Police Communications Dispatchers assigned to dispatch, or answer 9-1-1 calls receive the same pay and benefits.

All applicants must successfully complete a civil service examination, and they are then hired from an eligibility list. Once hired, each Police Communications Dispatcher "Trainee" must complete an eight week training program. Included in the training is extensive class room study, hand-on application using actual radio room equipment and field training. There are written tests during all aspects of training and each trainee must maintain a passing average in order to graduate.

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

2

After completion of the eight week training, each trainee is assigned to the radio room to work with an experienced Police Communications Dispatcher (PCD). After successfully completing one year as a PCD Trainee, personnel are promoted to PCD. In order to be promoted, a trainee must be able to both handle 9-1-1 calls and dispatch.

Performance evaluations are prepared for PCD Trainees on the 2nd and 5th month, and all PCDs receive a performance evaluation annually.

In addition to the above, PCDs are monitored regularly by their supervisors, wherein supervisors listen to the PCD's interactions with the police and the public. All such monitoring sessions are documented and any deficiencies are noted with the corrective action taken.

The City's/ Philadelphia Police Department's current training program is based on the specific needs and the specific allocation of resources established for optimal operation of the City's PSAP. The PPD's current training program is also based on the past experience of our Philadelphia Police Department with a focus on improving delivery of emergency services.

The City suggests that the proposed rule making sections concerning certification be modified and, that for PSAPs of a large size or serving a large population such as Philadelphia, a certification plan specific to the PSAP be submitted for PEMA approval.

2. Center Supervisor Certification (Section 120C.104)

- A. All supervisors assigned to the Radio Room are sworn personnel holding the rank of Corporal and above. All supervisors assigned had to pass a civil service promotional examination, and all received general supervisor training tailored to their specific rank. There is no initial "police radio" training for supervisors once they are assigned to the unit. Supervisors with the rank of Corporal and Sergeant do attend annual police radio "in-service" training. (Police Radio in-service training will be addressed in detail under the heading "Refresher Training").

Again, the term "certification" must be explained in more detail, and standards must be defined. Additionally, existing collective bargaining agreement terms would conflict with PEMA's proposed regulations. The City would suggest provision for an exemption from the center supervisor certification for PSAPs employing unionized employees/individuals.

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

3

3. Certification Curriculum and Instructors

Presently, all dispatchers receive an eight week (320 hours) training course taught by a sergeant and four veteran dispatchers. The sergeant has been certified by the State under the Municipal Police Officers' Training Act. This certification is conducted and approved by the Pennsylvania State Police. Presently there is no certification for civilian dispatchers who are assigned as instructors.

The present training curriculum was designed by the Philadelphia Police Department and was approved by the Police Commissioner.

If the City PSAP were required to provide the PEMA proposed training curriculum and instructors, the City could not bear the financial burden resulting. The City has a training program specially designed to buy the vendors of the equipment used, the amount of turnover due to civil service structure, and would also create an unfair burden on the City. The Philadelphia Police Department requests that a modification be made to the proposed section allowing for separate written approval of the curriculum and instructors used in a PSAP like Philadelphia's.

4. Refresher Training

Every PCD presently receives sixteen hours of in-service training plus an eight hour ride-along in the field. Sergeants and corporals also attend this training. This training is annual. This training is not certified.

5. Retention Of Records For Audit

The specific type of information to be maintained should be made clear. General Comment to Proposed Section 120D as a Whole: The proposed scheme for quality assurance reviews, including the requirement of call-taking audits, makes recorded call public records within the meaning of Pennsylvania's Right to Know Act. This is contrary to currently proposed legislation which would make the call recordings not available for public inspection and potentially exposes PSAPs and municipalities to liability in so far as the recordings may contain private, statutorily protected information about an individual's health (e.g. person is HIV positive), or may contain information regarded under telephone or compromise an individual's safety if made public, or may contain information regarded under telephone service provider tariffs as proprietary and by statute (Act 78) not to be used for purposes other than 911.

Suggestion: Include language that specifically exempts the reviews from the Right to Know Act.

PHILADELPHIA EMERGENCY MANAGEMENT AGENCY

4

6. **Right To Enter And Inspect.**

There is no disputing this recommendation.

7. **Types of Quality Assurance Reviews (Section 120D.105a, Dispatching)**

Dispatching to the Police within 90 second, 90% of the time, would not be feasible in a city of the first class due to the high volume of calls received during peak times. While 98% of all 9-1-1 calls are answered within 2 seconds, they are dispatched according to priority of incident and availability of emergency resources. It is not possible, given the population and enormous volume of calls coming into the Philadelphia PSAP, to always dispatch within the proposed parameters. Additionally, our PSAP does not dispatch Fire or EMS, so such a requirement would not apply to this PSAP. More specific information, such as nature and type of call should be specified in order to accurately measure response, (example: measure priority assignment responses such as violent crimes in progress) and the response time requirement should be adjusted according to PSAP call volume and county population.



SCOTT SMALL
Inspector
Communications Division

SS:sjh

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Pennsylvania Telephone Association

Communications for the Future



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INDEPENDENT REGULATORY
REVIEW COMMISSION

May 11, 1999

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David E. Freet
President

Mr. Mark Goodwin
Chief Counsel
Pennsylvania Emergency Management Agency
P.O. Box 3321
Harrisburg, PA 17105

Dear Mr. Goodwin:

On behalf of our membership, the Pennsylvania Telephone Association (PTA) respectfully submits comments on PEMA's Notice of Proposed Rulemaking, 4Pa. Code Chapter 120b, Public Safety Emergency Telephone Program.

I apologize for the lateness of this filing and ask that you accept these comments on behalf of the 36 local exchange carriers represented by the PTA.

If you have questions, do not hesitate to contact my office.

Sincerely,

David E. Freet
President

cc: Senate State Government Committee
House Veterans Affairs & Emergency Preparedness Committee
Independent Regulatory Review Commission
PTA 911 Task Force

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**PENNSYLVANIA TELEPHONE ASSOCIATION'S SUGGESTED CHANGES TO
PROPOSED PEMA REGULATION AT 4PA. CODE SEC. 120b. 112. ACCURACY STANDARDS FOR 911 DATABASE SYSTEMS**

The attached document sets forth the PTA's suggested revised wording for the proposed PEMA Regulation at 4 Pa. Code Sec. 120b.112. Accuracy Standards for 911 database systems. Explanations for the suggested changes to the proposed regulation are set forth below:

Line 1 -- The word "Enhanced" should be added because these standards will not apply to Basic 9-1-1 service, which does not involve an MSAG. "911" should also be changed to "9-1-1" for accuracy.

Line 13 -- The word "listed" should be added to differentiate between the customer listed name and bill name because the listed name is the name contained in the local exchange carrier (LEC) 9-1-1 Database Management System. The word "Once" should be changed to "After" for increased clarity.

Line 14 -- The word "initial" should be added to clarify that it is a county's creation of an initial MSAG that will trigger validation processes to make the MSAG as accurate as possible. The word "shall" should be changed to "may" to make the semiannual validation process called for in the regulation permissive, rather than mandatory, and allow for other validation processes and time frames. Some LECs, for example, perform several MSAG/customer database compares during the validation process. After the initial compare is performed, the LEC and the county correct all errors before moving on to the next compare so that the validation process is efficient as well as timely. Other LECs perform an initial load, daily service order reconciliation and a final load as their validation process.

Lines 18-21 -- This provision should be changed to permit the MSAG database to be loaded into the 9-1-1 Database Management System of the LEC or of a different host LEC if applicable, as opposed to the reverse loading called for in the proposed regulation. The reference to "a different host LEC if applicable" is necessary because not all LECs provide their own 9-1-1 Database Management Systems. Some instead make arrangements with other "host LECs" to provide this system functionality for them using the host LEC's system.

Lines 22-24 -- The words "the use of" should be deleted for clarity and to avoid repetition, and the phrase "where technically feasible" should be added because not all LECs can support a partial MSAG. The word "has" should replace "represents" for increased clarity.

Line 25 -- The word "may" should replace "shall" to make the performance of additional validation processes permissive rather than mandatory. After the county implements Enhanced 9-1-1, daily service order reconciliation is performed as part of the tariffed service. Additional validation processes over and above this daily service order reconciliation, if any, will be negotiated between the LEC and the county.

120b.112. Accuracy Standards for Enhanced 9-1-1 database systems.

The Master Street Address Guide (MSAG) is an information file prepared by a county that contains a list of all street names and address ranges within a county's 9-1-1 service area. Associated with each street are the low/high address ranges as well as a designation for odd, even or all numbers as appropriate; street directionals, such as N, S, E, W; and street types such as ST (street), RD (road), LN (lane). The MSAG may also contain a Public Safety Answering Point (PSAP) designation and the appropriate emergency service providers (police, fire and medical) assigned to each address range. A Local Exchange Carrier (LEC) customer database contains the billed customer's telephone number, listed name and service address. After ~~Once~~ a county creates an initial MSAG, the county and the LEC may ~~shall~~ perform a database validation process every six months by comparing LEC customer data with the MSAG data. When substantive database mismatches are detected during the validation process and are subsequently corrected to the extent that at least 95% of the LEC's customer database matches the MSAG database, then the MSAG database may be loaded into the 9-1-1 Database Management System of the LEC or of a different host LEC if applicable LEC customer database may be loaded into the county's MSAG database. When 100% street addressing has not taken place within a certain geographical area of a county, the use of a partial county MSAG may be used where technically feasible as long as the data load has represents an accuracy rate of at least 95%. Thereafter, additional validation processes may ~~shall~~ be implemented by a county and the LEC or LECs to eliminate, insofar as possible, any substantive mismatches between the county's MSAG and LEC's customer database.

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TO: Chuck Tyrrell

FROM: Steve Samara

RE:

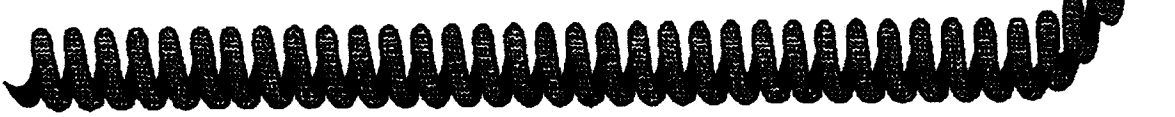
Number of Pages Including Cover Sheet: 4

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DATE: 5-12-99 **TIME:**

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The Pennsylvania Telephone Association is comprised of the local telephone exchange providers serving business and residential customers throughout the Commonwealth. The Association is headquartered in Harrisburg and provides members a clear voice in the future of telecommunications.



712019

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Emergency Management Agency

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2/21/99
ok
cc

DATE: February 17, 1999

INDEPENDENT EMERGENCY
REVIEW COMMISSION

SUBJECT: 911 Audio Tapes as Public Records

Original: 2019
Mizner
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Tyrrell
Sandusky
Legal

TO: Carl C. Kuehn, II
Deputy Director



FROM: Mark L. Goodwin
Chief Counsel
Pennsylvania Emergency Management Agency

On January 22, 1999, the Pennsylvania Supreme Court issued a very important decision concerning the availability of 911 audio tapes to the media and private citizens under the provisions of the Pennsylvania Right to Know Act. The Court held that an audio tape recording of a telephone call made to a 911 center is NOT a public record. Therefore, the 911 audio tape recording does not have to be released by the 911 center to any party (e.g. news media, reporter, private citizen, etc.) who seeks to obtain a copy of the 911 audio tape.

The Court stated in its January 22, 1999 opinion that:

"... the tapes are not closely related to the fixing of some personal or property right and thus simply are not the type of material contemplated by the General Assembly as constituting a public record pursuant to the Act [Right to Know Act, 65 P.S. § 66.1 - 66.4].

In sum, we hold that the audio tape recordings of the telephone call to the emergency response center are neither minutes, orders or decisions fixing rights or duties, nor bear a sufficient association with such forms of agency determinations to require their disclosure under the provisions of the Act."

The full text of the Court's opinion is provided for your review and use. I also recommend that this court decision be fully distributed to all county 911 centers for their information and use.

Enclosure: Pa Supreme Court opinion of January 22, 1999

CC: Charles Wynne
John Bahnweg

[J-168-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

NORTH HILLS NEWS RECORD AND
ROBYN TOMLIN,

Appellees

v.

TOWN OF McCANDLESS AND
ALLEGHENY COUNTY,

Appellants

: No. 25 W.D. Miscellaneous Docket 1998

: Application for Extraordinary Jurisdiction
: pursuant to 42 Pa.C.S. §726 from the Order
: of the Court of Common Pleas of Allegheny
: County Civil - SA26 - 98 dated February 6,
: 1998 (Pauer, P.J.)

ARGUED: September 16, 1998

OPINION

MR. JUSTICE SAYLOR

DECIDED: JANUARY 22, 1999

This Court invoked its extraordinary jurisdiction to determine whether an audio tape recording of a telephone call made to an emergency response center must be made available to citizens asserting a right to disclosure pursuant to the Pennsylvania Right to Know Act.

On January 1, 1998, Michele Walker Keitel and Charles Dunkle were shot and killed in Ohio Township, Allegheny County. A caller reported the shooting by telephone to the Town of McCandless Central Emergency Telephone Center (the "Center"). The Center was operated by the Town of McCandless ("McCandless") through its police department and provided twenty-four-hour emergency telephone response services to residents of

McCandless, Ohio Township and another neighboring municipality. All calls to the Center's emergency number were recorded on a magnetic audio tape.

Upon receipt of this telephone call, the Center notified Ohio Township's police department, which, in turn, dispatched a patrol car, followed by emergency personnel and equipment. Ultimately, Michele Walker Keitel's estranged husband, William Keitel, was arrested in connection with the killings.

Appellees Robyn Tomlin and North Hills News Record submitted requests to McCandless Township's police chief and solicitor, and later to the Allegheny County District Attorney, seeking access to the audio tape recordings of all calls made to the Center on January 1, 1998, relating to the killings. All such requests were denied.

Appellees then filed a statutory appeal in the Court of Common Pleas of Allegheny County pursuant to Section 4 of the Right to Know Act,¹ 65 P.S. §66.4, in which the Commonwealth sought and was granted leave to intervene. After argument, the trial court determined that the tapes were public records pursuant to the Act and should thus be made available to Appellees. In its opinion, the trial court initially acknowledged that the plain language of the Act would not appear to require disclosure of the tapes. Nevertheless, based upon a line of decisions from the Commonwealth Court, it found that the tapes did indeed qualify as public records. The trial court reasoned that:

[the coverage of the Act] is construed so broadly that it requires only that a record reflect some form of action by an agency that has an effect on someone. Here, the [audio tapes] formed the basis for the municipality's decision to investigate the conduct of certain individuals with regard to their personal rights, privileges, duties and obligations.

(citations omitted). Both the Commonwealth and McCandless lodged notices of appeal in the Commonwealth Court, and the Commonwealth filed an emergency petition in this Court

¹ Act of June 21, 1957, P.L. 390, as amended, 65 P.S. §§66.1-66.4 (the "Act").

seeking the exercise of extraordinary jurisdiction pursuant to Section 726 of the Judicial Code, 42 Pa.C.S. §726, and Pennsylvania Rule of Appellate Procedure 3309.

In the Act, the General Assembly codified and clarified the common law right of public access to public records. See Community College of Philadelphia v. Brown, 544 Pa. 31, 33, 674 A.2d 670, 671 (1996)(citing Wiley v. Woods, 393 Pa. 341, 350, 141 A.2d 844, 849 (1958)). Section 2 of the Act provides generally that "[e]very public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania." 65 P.S. §66.2. Subject to enumerated exceptions, Section 1(2) of the Act provides that "public records" consist of the following two categories: 1) "[a]ny account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property." 65 P.S. §66.1(2); and 2) "any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons." Id.

The first of these categories deals generally with fiscal aspects of governance, providing for public review of accounts, vouchers or contracts "dealing with" receipts of and disbursements by an agency. This Court's recent decision in Sapp Roofing Co. v. Sheet Metal Workers' Int'l Ass'n, Local Union 12, ___ Pa. ___, 713 A.2d 627 (1998), concerned this accounts/vouchers/contracts category of public records. In Sapp Roofing, a plurality of the Court held that a private roofing contractor's payroll records, which had been submitted to the government in connection with the performance of a public project, were public records under the Act. Id. at ___, 713 A.2d at 629.² The Court reasoned that these

² Although Sapp Roofing was a plurality decision, three of the five Justices participating in the decision agreed that the payroll records were public records for purposes of the Act. See Id. at ___, 713 A.2d at 630. Justice Nigro concurred in the result, and Justice Cappy, in dissent, expressed his view that the materials should not be deemed public records. Id. at ___, 713 A.2d at 631.

documents qualified as public records "because they are records evidencing a disbursement by the school district." Id.

Implicit in the Court's decision in Sapp Roofing is the conclusion that the accounts/vouchers/contracts category of public records reaches some range of records beyond those which on their face constitute actual accounts, vouchers or contracts. Nevertheless, it is clear from Sapp Roofing that, to constitute a public record, the material at issue must bear a sufficient connection to fiscally related accounts, vouchers or contracts.

The second category of public records, the minutes/orders/decisions category, touches upon the decisional aspects of agency actions. In formulating such category, the legislature selected a somewhat narrower construct than was employed to define the accounts/vouchers/contracts category – the account/voucher/contract category includes qualified records "dealing with" government receipts and expenditures; whereas, the minutes/orders/decisions category addresses qualified records "fixing" rights and duties.

The parties agree that only the minute/order/decision category of public records is implicated in this appeal. It is the burden of a party asserting a right of disclosure of materials pursuant to this category to establish that the requested material: 1) was generated by an agency as defined in the Act; 2) constitutes a minute, order or decision; 3) fixes the personal or property rights of some person or persons; and 4) is not protected by statute, order or decree of court. See generally Tapco, Inc. v. Township of Neville, 695 A.2d 480, 483 (Pa. Cmwlth. 1997)(citing Nittany Printing v. Centre County, 156 Pa. Cmwlth. 404, 409, 627 A.2d 301, 303 (1992)); Frommer v. Commonwealth, Dep't of Labor and Industry, 667 A.2d 35, 36 (Pa. Cmwlth. 1995), appeal denied, 544 Pa. 677, 678 A.2d 367 (1996). There is no dispute that Appellees' request meets the first of these requirements, as the audio tapes at issue were generated by the Center, an instrumentality of local

government and thus an agency within the meaning of the Act. See 65 P.S. §86.1(1) (setting forth the statutory definition of "agency").

The Commonwealth Court has interpreted the second and third requirements to include not only records that contain some actual agency determination fixing rights or duties, but also those materials that form the basis for such a determination, are essential decisional components or otherwise derive from the decision. See, e.g., Arduino v. Borough of Dunmore, ___ A.2d ___, ___, 1998 WL 799137 (Pa. Cmwith. Nov. 19, 1998); Cypress Media, Inc. v. Hazleton Area School Dist., 708 A.2d 866, 868-869 & n.2 (Pa. Cmwith. 1998)(stating that "[t]he document must be either the basis for or a condition precedent of the decision"). Moreover, the Commonwealth Court has also construed the term "fixing" to mean, more generally, "affecting." Hunt v. Pennsylvania Dep't of Corrections, 698 A.2d 147, 150 (Pa. Cmwith. 1997). The Commonwealth Court has also stated generally, and in our view, overbroadly, that, to constitute a public record for purposes of the Act, a record need only reflect some form of action by an agency that has an effect upon someone. See, e.g., Vargo v. Department of Corrections, 715 A.2d 1233, 1236 (Pa. Cmwith. 1998); Philadelphia Newspapers, Inc. v. Haverford Township, 686 A.2d 56 (Pa. Cmwith. 1996), appeal dismissed, 550 Pa. 343, 705 A.2d 1301 (1998); Travaglia v. Department of Corrections, 699 A.2d 1317, 1320 (Pa. Cmwith.), appeal denied, 550 Pa. 713, 705 A.2d 1313 (1997).

These expansive statements notwithstanding, the Commonwealth Court's decisions have recognized the definitional limits of the Act.³ Thus, the Commonwealth Court has

³ See, e.g., Arduino, ___ A.2d at ___ (stating that "the mere allegation that the information may possibly have some impact on the agency's decision is not sufficient to establish that the information is an essential component of the agency's decision"); Barger v. Dep't of Labor and Industry, Unemployment Compensation Bd. of Review, ___ A.2d ___, ___, 1998 WL 784178 (Pa. Cmwith. Nov. 12, 1998)("[j]ust because a document may have an effect on an agency decision does not make it an 'essential component'"); Sierra Club v. (continued..)

acknowledged a range of documents that bear some connection to an agency determination, but nevertheless lack a sufficient nexus to meet the statutory criteria. See, e.g., Aronson, 693 A.2d 266 (holding that copies of responses to a government-sponsored prevailing wage survey were not public records under the Act); Tapco, 695 A.2d at 464-65 (contract proposals and source audiotapes of public meetings); Aamodt, 602 A.2d at 776 (raw data obtained in connection with a government survey pertaining to the health effects of the 1979 nuclear accident at Three Mile Island). Indeed, the Commonwealth Court has appropriately observed that "[a] decision fixing the rights or duties of a person is just not the same as gathering information, notations and evaluations that may or may not be utilized at some future time to fix rights and duties." Aronson, 693 A.2d at 265. See generally Wiley, 393 Pa. at 347-48, 141 A.2d at 848 (finding that field investigation notes prepared by a staff member of a city planning department for purposes of report to city council members did not fall within the definition of "public records" both on the face of the definition, and because of the express exclusion for reports of investigations).

As this line of decisions makes plain, in order to establish a right of access under the minutes/orders/decisions category of public records under the Act, a citizen must demonstrate a close relationship between requested material and an actual agency minute, order or decision fixing some right or duty. This is a correct interpretation, appropriately confined by the words of Pennsylvania's statute.⁴

(...continued)

Pennsylvania Pub. Util. Comm'n, 702 A.2d 1131, 1135 (Pa. Cmwlth. 1997), appeal granted, ___ Pa. ___, 719 A.2d 748 (May 29, 1998) ("the decision must have been contingent upon the information contained in the document and could not have been made without it").

⁴ The provisions of the Pennsylvania Right to Know Act establish a narrower framework for public disclosure of materials underlying agency decisions than has been established by a number of other state legislatures. see, e.g., Cincinnati Enquirer v. Hamilton County, 662 N.E.2d 334 (Ohio 1996) (finding, under an Ohio public disclosure statute defining public records as "any record that is kept by any public office," that an audio tape recording of a
(continued. .)

In the present case, Appellees assert that the telephonic report to the Center formed the basis for the decision of the municipality to dispatch police and emergency personnel and equipment to the scene of the killings. Further, Appellees argue, records related to emergency operations affect emergency response policies and procedures and, therefore, the public as a whole. Appellees also contend that the information on the audio tapes supported the decision by the police to investigate and arrest William Keitel and the district attorney's decision to prosecute. For all these reasons, Appellees argue that the tapes meet the Commonwealth Court's broad construction of public records in that they reflect some form of action by an agency that has an effect on someone.

Contrary to Appellees' arguments, it is clear that the information captured on the audio tapes at issue is not necessary to a complete understanding of the government's decision to dispatch emergency crews on January 1, 1998. Two people were killed -- nothing could be plainer than that the immediate governmental response was justified. Rather, the relationship between specific details from the reporting conversation and agency decisionmaking is speculative and attenuated. Similarly, Appellees failed to establish that the decision to investigate, arrest or prosecute William Keitel was contingent upon the information contained in the audio tapes, or that the information was an essential component of such decisions. More fundamentally, the tapes are not closely related to the

(...continued)

911 call was a public record), as well as by Congress under the federal Freedom of Information Act, 5 U.S.C. §552 ("FOIA"). See generally Forgham v. Harris, 445 U.S. 169, 183, 100 S. Ct. 977, 979 (1980) (considering the definition of "agency records" under FOIA by reference to the definition provided under the Records Disposal Act, 44 U.S.C. §3301, to include documentary materials "made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business"). While we acknowledge the policy of broad disclosure under the Act, we are guided, in the first instance, by the words chosen by the General Assembly. Where such words are clear, we are forbidden from diverging from the plain meaning under the mere pretext of pursuing the spirit of the enactment. See 1 Pa.C.S. §1921(b).

fixing of some personal or property right and thus simply are not the type of material contemplated by the General Assembly as constituting a public record pursuant to the Act.

In sum, we hold that the audio tape recordings of the telephone call to the emergency response center are neither minutes, orders or decisions fixing rights or duties, nor bear a sufficient association with such forms of agency determinations to require their disclosure under the provisions of the Act. Accordingly, the decision of the trial court is reversed, and the matter is remanded for entry of judgment in favor of Appellants.