

OFFICE OF THE ATTORNEY GENERAL

[OFFICIAL OPINION NO. 94-1]

Pennsylvania Game Commission; Public Records; Disclosure of Information; Right-to-Know Act

1. The Pennsylvania Game Commission reports of injury while hunting and the field officer's report of hunting accidents are public records not subject to disclosure under the Right-to-Know-Act.

2. The injury and field officer's reports are all within the exception that excludes investigative reports from the definition of public records under the Right-to-Know-Act.

February 4, 1994

Peter S. Duncan, Executive Director
Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, PA 17110-9797

Dear Mr. Duncan:

You have requested my opinion on whether certain Game Commission reports on hunting accidents must be disclosed under the Pennsylvania Right-to-Know Act, 65 P. S. § 66.1, *et seq.* (the "Act"). It is my opinion and you are hereby advised that the reports are not subject to disclosure under the Act.

The Game and Wildlife Code, 34 Pa.C.S. § 101, *et seq.* (the "Code") provides that every person who causes or is involved in an accident in which a person is injured by firearm or bow and arrow while hunting or taking game shall submit a report to the Commission within seventy-two hours. 34 Pa.C.S. § 2521. The Commission has the following forms which are used to submit the required reports:

1. Report of Injury By Firearm or Bow and Arrow While Hunting (Victim)
2. Report of Injury By Firearm or Bow and Arrow While Hunting (Offender/Self-Inflicted)
3. Field Officer's Report of Hunting Accident

These forms are the reports which the Commission has been asked to disclose under the Act.

Section 2 of the Act provides:

Every 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.

Section 1 defines "public record," in pertinent part as

... 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: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act. 65 P. S. § 66.1(2)

To be a "public record" under the definition, the information or document sought must constitute or form the basis of "some form of action by an agency that has some effect on someone." *Pastore v. Com., Ins. Dept.*, 125 Pa. Commonwealth Ct. 611, at 619, 558 A.2d 909, at 913 (1989); *Patients of Philadelphia State Hospital v. Com., Dept. of Public Welfare*, 53 Pa. Commonwealth Ct. 126, 133, 417 A.2d 805, 808 (1980). The hunting accident reports may form the basis of the Commission's decision to prosecute a person for violations of the Code or may affect a decision about a person's hunting license. They are, therefore, public records under the Act, unless they fall into one or more of the several statutory exceptions.

The first exception under the definition of "public record" is that the term does not include any document the publication of which would disclose the institution, progress or result of any agency investigation. Any one of the three documents at issue may form the basis for a Commission investigation into the incident. These documents become part of the investigative file and are used by Commission officers to institute and complete their investigations, which are part of the Commission's official duty under the Code.

The documents contain information concerning evidence obtained, evidence examinations, the remarks, observations and conclusions of the investigating officer, statements of the persons involved in the incident including witnesses, and details of the incident which may provide leads to investigators. These types of information are distinguished from the factual information contained on a police blotter, which is a "chronological compilation of original records of entry" concerning incidents. *Lebanon News Publishing Co. v. City of Lebanon*, 69 Pa. Commonwealth Ct. 337, at 340, 451 A.2d 266, at 268 (1982); *Scheetz v. Morning Call, Inc.*, 747 F.Supp. 1515 (E. D. Pa 1990).

In my opinion, it is clear that all three categories of reports are within the exception that excludes investigative reports from the definition of public records.

A second exception under the definition of "public record" in the Act is that any record, document, report, or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law is not a public record. 65 P. S. § 66.1(2). Section 325(a) of the Code prohibits the disclosure of Commission records concerning hunting and trapping licenses of any type received under the Code. 34 Pa.C.S. § 325(a). Section 325(c)(1)-(6) provides exceptions to the prohibition where

disclosure of Commission records is required for official governmental purposes such as prosecutions under the Code, federal or state laws, and for administrative proceedings under state law. However, Section 325(c) further provides that when such records and reports are made available by the Commission for the limited purposes set forth in paragraphs (1) through (6), they shall not be published, circulated, or disclosed by the receiving agency for any purposes.

In my opinion, Section 325(c) is sufficiently broad to implicate the exception that excludes from the definition of "public record" any record the publication of which is restricted by statute.

The last exception in the Act removes from the definition of public record any document or record the publication of which would operate to the prejudice or impairment of a person's reputation or personal security. In *Times Publishing Co., Inc. v. Michel*, ___ Pa. Commonwealth Ct. ___, 633 A.2d 1233 (1993) the Commonwealth Court decided that the home address, telephone and social security numbers which appear on applications for firearms licenses filed with local law enforcement authorities are protected from disclosure by this personal security exception to the Act. In that case, the Court introduced a constitutional analysis to bring the home address, telephone, and social security numbers of firearms license applicants within the personal security exemption of the Act. Using this analysis, a court might also preclude the disclosure of similar information in Game Commission records, including the reports which are the subject of this Opinion.

For all these reasons, it is my opinion and you are hereby advised that the two reports of injury and the field officer's report are within exceptions of the Right to Know law and are not subject to disclosure. You are further advised that, in accordance with Section 204(a)(1) of the Commonwealth Attorneys Act, 71 P. S. § 732-204(a)(1), you will not in any way be liable for following the advice set forth in this Opinion.

ERNEST D. PREATE, JR.,
Attorney General

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