



**State of New York
Department of State
Committee on Open Government**

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FOIL AO 19824

February 22, 2022

By E-mail Only

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The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence unless otherwise stated.

Dear Ms. George:

I am writing in response to your February 1, 2022, request for an advisory opinion relating to a Freedom of Information Law (FOIL) request received by the Rockland County Sheriff's Office (the County) from *The New York Times* (the *Times*) for a copy of the "county's database of all 911 calls from 1/1/19 to present." Upon receipt of your request for an advisory opinion, we contacted Mr. Brian Rosenthal of the *Times* and afforded him an opportunity to provide any information he believed may assist the Committee in forming an opinion. We have reviewed the material provided by both the County and the *Times* and offer the following opinion.

As you are all aware, FOIL is based upon a presumption of access. All records of an agency are available, except to the extent that records or portions thereof fall within one or more grounds for denial appearing in §§ 87(2)(a) through (r) of the Law. Section 87(2)(a) of FOIL authorizes an agency to withhold records which "are specifically exempted from disclosure by state or federal statute." Section 308(4) of New York State County Law states:

Records, in whatever form they may be kept, of calls made to a municipality's E911 system shall not be made available to or obtained by any entity or person, other than that municipality's public safety agency, another government agency or body, or a private entity or a person providing medical, ambulance or other emergency services, and shall not be utilized for any commercial purpose other than the provision of emergency services.

Pursuant to FOIL § 87(2)(a), where access to a record is governed by County Law § 308(4), the County must determine rights of access consistent with that statute rather than FOIL. The issue here is whether the record requested by the *Times* is a record "in whatever form they may be kept, of calls made to a

municipality's E911 system." In your February 1, 2022, letter, you note that the "database of all 911 calls" that has been requested contains:

- a. Call ID
- b. Start Date Time
- c. Calling Number
- d. Agent Initial
- e. Trunk Line
- f. Console First
- g. Duration
- h. Call Category
- i. Call Service
- j. Call Origin
- k. Call Type

In our view, a database of this nature falls squarely within the description of the type of records made confidential pursuant to County Law § 308(4) as it is a record "of calls made to a municipality's E911 system."

The *Times* has pointed to previous advisory opinions prepared by the Committee which offered the following guidance:

In our opinion, "records . . . of calls" means either a recording or a transcript of the communication between a person making a 911 emergency call, and the employee who receives the call. We do not believe that § 308(4) can validly be construed to mean records relating to a 911 call. If that were so, innumerable police and fire reports, including arrest reports and police blotter entries, would be exempt from disclosure in their entirety.

FOIL AO 19077. We have reviewed the jurisprudential basis for the first sentence of AO 19077 quoted above and find that it is unsupported by legal precedent and no longer reflects our opinion. Our current opinion is that there is no statutory or judicial precedent for interpreting the language of § 308(4) so narrowly that it only applies to "a recording or a transcript of the communication." Accordingly, while we continue to agree that § 308 (4) should not be interpreted so broadly as to restrict access to any record "relating to a 911 call" (*e.g.*, police blotters, arrest records, law enforcement incident reports, etc.), the language we used in the opinion cited by the *Times* is no longer our view as we believe it is not supported by judicial precedent.

In support of its position, the *Times* also cites a 2014 Nassau County Supreme Court decision that addressed the scope of § 308(4). The court opined:

Initially, the Court rejects respondent's resort to County Law § 308(4). That section shields only those records of calls made to an emergency 911 system, not all 911 records generally. As exemptions are to be narrowly construed . . . , NCPD was not entitled to redact or withhold records except those which were of the calls themselves. Records of a municipality's own dispatches which may have resulted from those calls

therefore would have to be produced, and redaction could be made only to the extent that the logs or other records contained actual call content.

Newsday LLC v. Nassau County Police Department, 42 Misc. 3d 1215(A) (Nassau County Supr. Ct. 2014) (internal citation omitted). The *Times* believes that “*Newsday* is entirely consistent with COOG’s advisory opinions, which extends § 308(4) to *only* recordings and transcripts of calls – not the information The *Times* requests.” However, the record requested by the *Times* – the “database of all 911 calls” – in our opinion neither simply “relate[s] to” 911 calls nor is the record one of “dispatches which may have resulted from those calls.” Rather, based upon the information provided by both the County and the *Times*, it is the understanding of the Committee that the record requested is a database of 911 calls. The database is, in our view, a record “of calls made to a municipality’s E911 system” within the meaning of County Law § 308(4), which both a plain reading of the statute and the court in *Newsday* confirm would be exempt from FOIL disclosure.

I hope this information proves useful. The Committee intends to publish this opinion on its website in an attempt to clarify its views relating to the application of County Law § 308(4).

Sincerely,

/s/ Kristin O’Neill

Kristin O’Neill

cc: Brian Rosenthal, New York Times
Jess Hui, New York Times