DISTRICT ATTORNEY'S OFFICE
NORTHAMPTON COUNTY, PENNSYLVANIA

DEBRA BIRO, **Requester,** **v.** **BETHLEHEM TOWNSHIP POLICE DEPARTMENT,** **Respondent.**	**NO: 1-ORA-2024**

FINAL DETERMINATION

AND NOW, the Northampton County District Attorney's Office respectfully submits its Final Determination as to Debra Biro's ("Requester's") Right to Know Law ("RTKL") request.

Introduction

Upon information and belief, on November 3, 2023, the Bethlehem Township Police Department ("Respondent") received a request (Exhibit "A") from Requester seeking materials summarized as follows:

(1) Flower email dated 6/21/23 . . . criminal prosecution . . .;

(2) Wozniak letter received 6/21/23 . . . criminal activity;

(3) Janny letter received 6/21/23 . . . criminal activity;

(4) Geissenger two page letter . . . request to arrest . . . received 7/4/23; and

(5) Source who provided 3 additional contacts to DA on 9/18/23.

On December 22, 2023, Respondent denied the request as a record of an agency relating to or resulting in a criminal investigation, citing the criminal investigative records exception (Section

708(b)(16) of the RTKL, 65 P.S. § 67.708(b)(16)). *See* Exhibit "B."[1] Despite the RTKL appeals information provided in Exhibit B, Requester instead filed an appeal with the Pennsylvania Office of Open Records ("OOR") on December 27, 2023. *See* Exhibit "C." This appeal was forwarded to the undersigned on or about December 29, 2023, with the OOR's Final Determination (referring the matter to the office of the undersigned). *See* Exhibit "D."

Discussion

In this case, Requester seeks information in relation to a criminal investigation, i.e., relating to #23-04723 of the Bethlehem Township Police Department. *See* FN1. The records Requester seeks relate to a criminal investigation, and thus are exempt from access by the Requester under the RTKL. A public record is "[a] record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record. The presumption shall not apply if (1) the record is exempt under section 708 . . ." 65 P.S. §67.305(a)(1). The burden is on the responding agency to show by a preponderance of the evidence that the record is exempt from public disclosure. 65 P.S. §67.708(a)(1).

The Northampton County District Attorney's Office Appeals Officer retains authority to determine whether a request under the RTKL seeks records related to a criminal investigation. 65 P.S. §67.503(d)(2). Under section 708(b)(16), "[a] record of an agency relating to or resulting in a criminal investigation" is exempt from disclosure. 65 P.S. §67.708(b)(16).

Additionally, CHRIA prohibits the disclosure of the information requested. This

[1] Exhibit B references "criminal investigative report #23-10739." Based on the materials received from the Office of Open Records December 29, 2023, in transferring this appeal, the subject report is #23-04723 of the Bethlehem Township Police Department. This incident report is not included as an exhibit hereto, as it contains sensitive and/or personally identifying materials.

information is "investigative and treatment information" which is defined by CHRIA as: "[I]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include *modus operandi* information." 18 Pa.C.S.A. § 9102. Importantly, 18 Pa.C.S.A. § 9106(c)(4) specifies that: "Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, *modus operandi*, genetic typing, voice print or other identifying characteristic." The Requester is not a "criminal justice agency" as defined by 18 Pa.C.S.A. § 9102. Therefore, the requested information cannot be disseminated to the Requester under CHRIA.

Here, the records at issue are, on their face, related to a criminal investigation, each relating to 'criminal prosecution,' 'criminal activity,' 'arrest', and information provided to the 'DA' (District Attorney); these materials are exempt from disclosure under the RTKL and CHRIA.

Conclusion

For the foregoing reasons, Requester's request is **DENIED**. This Final Determination is binding on the parties. Requester may file a petition for judicial review in the Northampton County Court of Common Pleas within 30 days. 65 P.S. § 67.1302.

Respectfully submitted,

Dated: 1/29/24

By: _____

Robert J. Duminiak, Deputy District Attorney
Appeals Officer
Northampton County District Attorney's Office
669 Washington Street
Easton, PA 18042

(610) 829-6672
rduminiak@norcopa.gov

cc: Debra A. Biro
Gregory J. Gottschall

Exhibit A

RECEIVED
NOV 0 3 2023
BETH. TWP. POLICE

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pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Bethlehem Township Police (Attn: AORO)

Date of Request: 11/3/23 Submitted via: ☐ Email ☐ U.S. Mail ☐ Fax ☑ In Person

PERSON MAKING REQUEST:

Name: Debra A. Bird Company (if applicable): _____

Mailing Address: 63 George Ave

City: Nazareth State: PA Zip: 18064 Email: SUNRay@yahoo.com

Telephone: 484-336-6427 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☐ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Regarding June 8th, 2023 Republican Mtg. I received police report 23-04723. Reading the police report I would like to request the following (please see over) →

DO YOU WANT COPIES? ☑ Yes, printed copies (*default if none are checked*)
☐ Yes, electronic copies preferred if available
☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☐ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☐ $100 (or) ☐ $_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: 11/03/2023 Response Due (5 bus. days): 11/08/2023

30-Day Ext.? ☒ Yes ☐ No (If Yes, Final Due Date: 12/19/2023) Actual Response Date: 12/13/2023

Request was: ☐ Granted ☐ Partially Granted & Denied ☒ Denied Cost to Requester: $ N/A

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

INVESTIGATIVE MATERIALS - EXCLUDED UNDER RTK LAW

NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at https://www.openrecords.pa.gov

Form updated Feb. 3, 2020

1. Flower email dated 6/21/23. Sent to Chief Gottschall, requesting his complaint be pursued through criminal prosecution (2023.06.20 Complaint_NC)

2. Wozniak letter received 6/21/23. Report states letter attached, but there was no letter attached from Wozniak stating she is a victim of criminal activity

3. Janney letter received 7/4/23. claiming to be a victim of criminal activity.

4 Geissinger two page letter of Title 18 and request to arrest all involved also received 7/4/23.

5. Source who provided 3 additional contacts to DA on 9/18/23. contacts were Andres Weller, Barry Weber & Jeff Longenbach

Thank you
Deborah Price
11-3-23

RECEIVED
DEC 13 2023
BETH. TWP. POLICE

Left v/m 11 say denied. NH

Exhibit B

TOWNSHIP OF BETHLEHEM

Police Department

4225 Easton Avenue
Bethlehem, Pennsylvania 18020-1496

Phone: (610) 814-6410
Fax: (610) 814-6417
www.bethlehemtownship.org

Chief of Police
Gregory J. Gottschall

Right-To-Know Law Response - DENIAL

Debra A. Biro
63 George Avenue
Nazareth, PA 18064

December 22, 2023

Dear Ms. Biro:

Thank you for writing to the Bethlehem Township Police Department to request records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*

On November 11, 2023, you submitted a completed Pennsylvania Office of Open Records Standard Right-to-Know Law Request Form. As the agency open records officer for the Bethlehem Township Police Department, I reviewed your RTKL request and you were subsequently notified with a response to your request; response date December 13, 2023.

Your RTKL request was for the following: *"Regarding June 8th, 2023 Republican Mtg. I received police report 23-04723. Reading the police report I would like to request the following 1. Flower email dated 6/21/23. Sent to Chief Gottschall, requesting his complaint be pursued through criminal prosecution (2023.06.20 complaint_NC) 2. Wozniak letter received 6/21/23. Report states letter attached, but there was no letter attached, but there was no letter attached from Wozniak stating she is a victim of criminal activity 3. Janney letter received 7/4/23 claiming to be a victim of criminal activity. 4. Geissinger two page letter of Title 18 and request to arrest all involved also received 7/4/23. 5. Source who provided 3 additional contacts to DA on 9/18/23. Contacts were Andres Weller, Barry Weber, & Jeff Longenbach."*

The requested documents and materials are related to criminal investigative report # 23-10739. Complaints of criminal conduct, related correspondences, notes, videos, related documents, reports and materials are considered investigative records associated with the criminal investigation and are therefore exempt from disclosure under the law.

Your request is **DENIED** as permitted under the ***criminal investigative records exception,*** 65 Pa. C.S. § 67.708(b)(16) of the Right-to-Know Law.

Law Enforcement Related Right-to-Know Law (RTKL) Requests

Generally, RTKL requests which are denied by an agency can be appealed to the Pennsylvania Office of Open Records.

However, in cases involving criminal investigative records possessed by a local law enforcement agency, the appeal should be directed to the county District Attorney. This is governed by Section 503(c)(2) of the RTKL, which states: "The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record."

Appeals of a RTKL Denial

You may appeal a denial within 15 business days of the mailing date of the denial.

Any appeal of a denial issued by a police department or law enforcement agency within Northampton County, that cites the ***criminal investigative records exception,*** 65 Pa. C.S. § 67.708(b)(16), should be directed to:

Northampton County District Attorney
Open Records Appeals Officer
669 Washington Street
Easton, PA 18042

Please note that a copy of your original RTKL request, the agency's extension notice (if applicable), and this denial letter should be included when filing an appeal. More information about how to file an appeal under the RTKL is available at the Office of Open Records website, https://www.openrecords.pa.gov.

If you have additional questions, please contact the Agency Open Records Officer, Police Chief Gregory J. Gottschall. This correspondence will serve to close this record with our office as permitted by law.

Respectfully,

Chief 12-19-22

Gregory J. Gottschall
Chief of Police – Agency Open Records Officer
Bethlehem Township Police Department

Exhibit C

From:	no-reply@openrecordspennsylvania.com
To:	sun7ray@yahoo.com
Subject:	[External] PA Office of Open Records - Appeal Confirmation
Date:	Wednesday, December 27, 2023 4:58:08 PM
Attachments:	oor_logo_email.png

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the Report Phishing button in Outlook.*

pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Debra Biro
Company:	
Address 1:	63 George Ave
Address 2:	
City:	NAZARETH
State:	Pennsylvania
Zip:	18064
Phone:	484-336-6427
Email:	sun7ray@yahoo.com
Email2:	sun7ray@yahoo.com
Agency (typed):	Bethlehem Township Police Department
Agency Address 1:	4225 Easton Ave
Agency Address 2:	
Agency City:	Bethlehem
Agency State:	Pennsylvania

Agency Zip:	18020
Agency Phone:	610-814-6410
Agency Email:	ggottschall@bethlehemtwp.com
Records at Issue in this Appeal:	(1) Matthew Flower email 06 21 2023 (2) Mary Wozniak letter 06 21 2023 (3) Scott Jannery letter 07042023 (4) Glenn Geissinger letter 07042023 See attached file RTKDenialAttachment
Request Submitted to Agency Via:	e-mail
Request Date:	11/03/2023
Response Date:	12/13/2023
Deemed Denied:	No
Agency Open Records Officer:	Chief Gottschall
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	Yes
Attachments:	• RTK Denial attachment.docx • DBiroRTKdenial.pdf • Bethlehem Police Report HL.PDF

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I am filing an appeal to the denied Right to Know response from Bethlehem police department. The case is closed, and no charges were filed. The Right to Know I received on November 2nd (referred to as RTK110223) indicates multiple emails/letters were received by the Bethlehem Township Police department throughout the investigation after Geissinger was told the case would not be pursued as criminal. These emails/letters are referenced in the RTK110223, specifically on page 11, it states that Mary Wozniak's letter is attached to this report (I did not receive it). On November 3rd I completed a second RTK requesting the documents discovered in the RTK11022023. The second RTK was denied.

Here is a brief summary

On June 19th Margie withdraws her complaint and Glenn Geissinger is informed that the matter would not be pursued as criminal and suggested that it be handled internally. June 21st Matthew Flower emails that he wants to pursue as criminal, Mary Wozniak sends letter claiming to be a victim and Charles Baltic, Solicitor leaves a voice message. On July 4th Scott Janney claims to be a victim and Glenn Geissinger sends a two page letter and requests all parties be arrested.

I am requesting the four documents listed below:

(1) Matthew Flower email 06 21 2023, (2) Mary Wozniak letter 06 21 2023, (3) Scott Jannery letter 07042023, (4) Glenn Geissinger letter 07042023

Highlighted in yellow is directly from the RTK110223 report.

June 19th Glenn Geissinger was informed by Officer Spingola of the Bethlehem Township Police. Page 9.

I advised Geissinger that due to the additional information received, which was not disclosed to Geissinger, this would not be pursued as a criminal matter. I suggested that they handle this issue with their members internally and ended my contact.

June 19th Margie withdraws her complaint. See Page 11

On Monday, 06/19/2023, I received the following email from Margie Mandell:

I'd like to withdraw my complaint and my statement and drop the case entirely. I understand Matt Flower would still like to remain involved with this, but I personally do not wish to participate in this any longer.
Please contact me if you have any questions. Thank you.
Margie Mandell

June 21st Matthew Flower email Page 10– **REQUEST TO OBTAIN Matthew Flower EMAIL WAS DENIED**

On this date I received a follow email from the complainant, Matthew Flower, requesting his complaint be pursued through criminal prosecution. He provided an attachment with additional information in support of his complaint.

June 21st Mary Wozniak email Page 11 **REQUEST TO OBTAIN Mary Wozniak EMAIL WAS DENIED**

On 06/21/2023, I received a letter in my mailbox form a Mary Wozniak of 5555 Chenango Dr. ,Bethlehem, PA 18017 (610-533-2268), claiming to be a "victim of criminal activity" related to this incident, and requesting to be a co-complaint. I attached a copy of the letter to this report. I did not attempt to make contact with Wozniak.

June 21st Charles Baltic left a voice message. On Page 12 Charles Baltic is identified as Solicitor for the Republican Party.

I also received a voice-mail from Charles Baltic (646-460-6016), being a solicitor for the Republican Party. I did not attempt to make contact with Baltic.

July 4th Scott Janney sent a letter and Glenn Geissinger send a two page letter Page 16 - **REQUEST TO OBTAIN SCOTT'S LETTER AND GLENN'S TWO PAGE LETTER WAS DENIED**

On 07/04/2023, I received a one-page letter in my mailbox from a Scott Janney of 75 Pine Manor Drive, Hellertown, PA 18055 (484-852-1710) claiming to be a "victim of criminal activity" related to this incident, and requesting to be a co-complaint. I did not attempt to make contact with Janney.

Glenn Geissinger also provided a two-page letter of various Title 18 sections and requested all parties involved to be arrested. I did not attempt to make contact with Geissinger.

Exhibit D

pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DEBRA BIRO,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2023-3133**
	:	
BETHLEHEM TOWNSHIP	:	
POLICE DEPARTMENT,	:	
Respondent	:	

On November 11, 2023, Debra Biro ("Requester") filed a request ("Request") with the Bethlehem Township Police Department ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking documents referenced in a police report. The Department denied the Request on December 22, 2023, stating that the records relate to a criminal investigation. *See* 65 P.S. § 67.708(b)(16). On December 27, 2023, the Requester appealed to the Office of Open Records ("OOR").[1]

The Department is a local law enforcement agency. The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. *See* 65 P.S. § 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated

[1] The appeal lists dates for the RTKL request and agency final response that are different from those on the documents provided; however, based upon a review of the full record of the appeal, the records at issue appear to be the same as those referenced in the RTKL request and final response provided. Therefore, the OOR presumes the dates contained on the appeal form were included in error.

by the local district attorney.[2] *See id.* Accordingly, the appeal is hereby transferred to the Appeals Officer for the Northampton County District Attorney's Office ("District Attorney's Office") to determine whether the records are subject to disclosure.[3] A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the District Attorney's Office.

For the foregoing reasons, the Requester's appeal is **transferred** to the Appeals Officer for the District Attorney's Office to determine whether the report is exempt as a criminal investigative record. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Northampton County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.[4] All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: 29 December 2023

/s/ Joshua T. Young

Senior Deputy Chief Counsel
Joshua T. Young

Sent to: Requester; Bethlehem Township Police Department Open Records Officer; Appeals Officer for the Northampton County District Attorney's Office

[2] The Department's final response directed the Requester to appeal the denial of criminal investigative records to the District Attorney's Office, not the OOR.
[3] The Commonwealth Court has noted that the OOR has the authority to transfer an appeal to "where [a requester] should have initially appealed." *See Phila. Dist. Attorney's Office v. Williams*, 204 A.3d 1062, *4 n.5 (Pa. Commw. Ct. 2019) ("... [A]lthough the onus for appealing from an RTKL denial to the proper appeals officer is on the requester, the OOR did not violate the law or any procedure in redirecting the appeal in this case").
[4] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).