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**DETERMINATION OF APPEAL FROM LOCAL LAW ENFORCEMENT
AGENCY DENIAL OF REQUEST OF ROBERT HAVAY FOR
INFORMATION UNDER THE RIGHT TO KNOW LAW.**

RECEIVED

JAN 16 2018

FINDINGS:

1. The undersigned is responsible to make the determination in this matter pursuant to 65 P.S. 67.503(d)(2).

2. A request was submitted to the Town of Bloomsburg Police Department by Robert Havay on November 30, 2017 seeking "...a copy of the incident report and any update of the progress of your investigation...[of the]...Suspicious Death of Marc Joseph Havay."

3. Following a permitted extension of thirty days, the designated representative of the Town of Bloomsburg Police Department issued a response on January 4, 2018 denying the request "...because records of an agency relating to or resulting in [sic] a criminal investigation, including but not limited to the specific items listed in (i) through (vi) are exempt from disclosure under the RTKL. 65 P.S. 67.708(b)(16)." The response continued "...you are seeking a copy of the initial investigative materials or report prepared by the police department in connection with its review and investigation of the circumstances involving this individual's death [and] such records fall squarely within the exemption in Section 708(b)(16)."

4. The Requester submitted a timely appeal to the Pennsylvania Office of Open Records on January 8, 2018 asserting, in pertinent part, the following:

1. "...the investigating agency has the right to "Redact" portions of a document such as names or crucial evidence while releasing the remainder. This release would demonstrate to the immediate family that there is a sincere effort to solve mystery"

2. "...this matter is of "public interest." The President of the United States declared as 'Opiate Epidemic'. It is in the public's best interest to know if Bloomsburg a college town has a criminal element pushing drugs on our children."

3. "This request is made on behalf of the immediate family. More specifically I would submit the "Intent and Spirit" of the statute RTKL is not to withhold all information from the family. Knowledge is essential to healing and

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closure. I petition the Bloomsburg Police Department and the Columbia District Attorney to have some compassion. Marc was the grandson of a Pennsylvania coal miner. His surname is not Kennedy or Clinton. However I can assure you; he had dreams and a family that loved him.”

5. On January 9, 2018, the Chief Counsel for the Pennsylvania Office of Open Records issued a Final Determination that said office lacked jurisdiction to entertain this appeal and the matter was referred to the undersigned for disposition pursuant to 65 P.S. 67.503(d)(2).

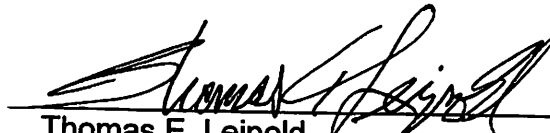
DISCUSSION:

The law is clear that the mere fact a record has some connection to a criminal proceeding does not automatically exempt it from disclosure as investigative material under the Right to Know Law. Pennsylvania State Police v. Grove, 119 A. 3d 1102 (Pa. Cmwith. 2015). It is equally clear, however, that virtually any information contained in a police incident report is considered investigative material and, therefore, covered by the exemption of such material from disclosure under Section 67.708(b)(16). Hunsicker v. Pennsylvania State Police, 93 A. 3d 911 (Pa. Cmwith. 2014). The original request itself identifies the material requested as “...a copy of the incident report and any update of the progress of your investigation...[of the]...Suspicious Death of Marc Joseph Havay.” Thus, the requested information would clearly fall within the purview of the referenced exemption.

The Requester also asserts that his request should be granted because he seeks the information to assist the immediate family of the deceased with healing and closure. Although this motivation is understandable, the law is clear that whether or not the information is accessible is based solely on whether or not it is a ‘public record’ and, if it is, whether or not it falls within an exemption. Hunsicker, Supra. The status of the requester and the reason for the request is irrelevant to whether or not the information sought is accessible under the Right to Know Law. *Id.*

DECISION:

For the reasons set forth above, the appeal is denied and the decision of the Town of Bloomsburg Police Department to deny the request is affirmed.


Thomas E. Leipold
Columbia County District Attorney

Dated: January 11, 2018

Copies distributed to: Robert Havay, Town of Bloomsburg, and Pennsylvania Office of Open Records