

JAMES B. MARTIN
District Attorney



OFFICE OF THE DISTRICT ATTORNEY
LEHIGH COUNTY COURTHOUSE

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PHONE (610) 782-3100 FAX (610) 820-3323

November 29, 2017

Charles Rees Brown
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

RECEIVED

DEC 04 2017

OFFICE OF OPEN RECORDS

RE: Transferred Appeal – George Lopez v. Lehigh County District Attorney’s Office
OOR Docket No.: AP 2017-1937
RTKL Appeal No.: 10-ORA-2017

Dear Attorney Brown,

A final order was issued by an Appeal Officer of the Office of Open Records (“OOR”) transferring the above RTKL appeal, in part, to our office.

At the time this appeal was filed in the Office of Open Records, the Requester simultaneously filed an appeal addressing the same issues in our office docketed at 10-ORA-2017. A final determination was issued on November 15, 2017, denying the Requester’s RTKL appeal in this matter. Enclosed is a copy of this final order.

Should you have any questions regarding this final disposition, you may call me at (610) 782-3100.

Very truly yours,

/s/ Heather F. Gallagher
Chief Deputy District Attorney

cc: George Lopez, Inmate
Christine Murphy, RTKL Officer
Blake Eilers, OOR Appeals Officer
James B. Martin, District Attorney of Lehigh County

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November 15, 2017

VIA First-Class Mail

George Ivan Lopez, Inmate
#CZ-3198
175 Progress Drive
Waynesburg, PA 15370

RE: RIGHT-TO-KNOW APPEAL NO. 10-ORA-2017

Dear Mr. Lopez,

Enclosed please find a copy of the Final Determination dated today, in the above subject matter.

Very truly yours,

/s/ Heather F. Gallagher
Right to Know Appeals Officer

HFG/mcr

cc: Christine F. Murphy
Deputy District Attorney
Right to Know Officer
Lehigh County District Attorney's Office
455 West Hamilton Street
Allentown, PA 18101-1614

FINAL DETERMINATION

| | | |
|------------------------------------|---|------------------------|
| IN THE MATTER OF | : | |
| | : | |
| GEORGE IVAN LOPEZ | : | |
| Complainant | : | |
| | : | No. 10-ORA-2017 |
| v. | : | |
| | : | |
| LEHIGH COUNTY OFFICE OF THE | : | |
| DISTRICT ATTORNEY | : | |
| Respondent | : | |

BACKGROUND

On September 17, 2017, George Ivan Lopez (hereafter “Complainant”) requested various documents from the Lehigh County Office of the District Attorney (hereafter “Respondent”). Specifically, with regard to this appeal: “arrest police reports” “pertaining to criminal docket: CP-39-CR-1286-1995, under the name of Commonwealth v. Timoteo AKA-Daniel Lopez.”¹ This specific request was denied. One of the reasons cited in support of the decision to withhold items was Section 708(b)(16)(ii) of the RTKL. Complainant appealed this decision to the Right to Know Appeals Officer, Lehigh County Office of the District Attorney, which was received on October 18, 2017. The appeals officer requested any additional information that the parties wished to submit to supplement their respective positions be submitted by October 30, 2017.² In response, Complainant submitted “Additional Facts and Supporting Legal Arguments Pursuant to Supremacy Clause of the United States.”

¹ Pursuant to 65 P.S. § 67.503(d)(2), the appeals officer for Respondent only has authority to hear appeals relating to access to criminal investigative records in possession of local agencies within the county.

LEGAL ANALYSIS

Under Section 102 of the RTKL, a public record is defined as:

A record, including a financial record, of a Commonwealth or local agency that:
(1) is not exempt under 708; (2) is not exempt from being disclosed under any other Federal or State laws or regulation or judicial order or decree; or (3) is not protected by a privilege.

The burden of proving that the record is exempt rests with the public body by a preponderance of the evidence. Preponderance of the evidence requires proof “by a greater weight of the evidence.” *Commonwealth v. Williams*, 732 A.2d 1167, 1187 (Pa. 1999). In *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. 2002), the Court explained that “preponderance of the evidence is tantamount to a ‘more likely than not standard.’”

Respondent contended that the requested record is exempt from disclosure under 65 P.S. § 67.708(b)(16)(ii). In that section, records of an agency relating to or resulting in a criminal investigation, “including...investigative materials, notes, correspondence, videos and reports,” are exempt from disclosure. An “arrest police report” is plainly related to or directly the result of a criminal investigation and, thus, clearly exempt from disclosure. *See Coley v. Philadelphia Dist. Attorney's Office*, 77 A.3d 694, 697 (Pa.Cmwlth.2013) (witness and or defendant statement are “investigative material” exempt from disclosure under Section 708(b)(16)(ii) of the RTKL). That the investigation has been completed, does not alter this conclusion. *Id.*, citing *Sullivan v. City of Pittsburgh, Dep't of Pub. Safety*, 561 A.2d 863, 865 (Pa.Cmwlth. 1989).

Further, as noted by Respondent, the Criminal History Record Information Act (CHRIA) prohibits the disclosure of the information requested by Complainant. This information is “investigative 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

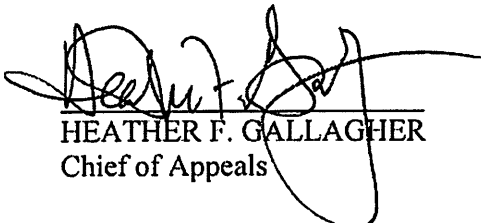
² Although pursuant to 65 P.S. § 1102(a) (2), a hearing may be held on the appeal, no hearing was

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.” Here, it is undisputed that the Complainant is not a “criminal justice agency” as defined by 18 Pa.C.S.A. § 9102. Therefore, the requested information cannot be disseminated to Complainant under this Act.

CONCLUSION

Respondent met its burden of proof by a preponderance of the evidence in showing that the requested record is exempt from disclosure. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Determination, pursuant to 65 P.S. §67.1302, either party may appeal to the Lehigh County Court of Common Pleas.

Respectfully submitted,



HEATHER F. GALLAGHER
Chief of Appeals

conducted in this matter.