

IN THE MATTER OF

**OFFICE OF THE DISTRICT ATTORNEY
COLUMBIA COUNTY, PENNSYLVANIA**

**JOSH MACIEJEWSKI,
Requester**

V.

**SOUTHERN COLUMBIA SCHOOL
DISTRICT,
Respondent**

RTK APPEAL NO. 1-2019

FINAL DETERMINATION

PROCEDURAL HISTORY:

This appeal was transferred by the Pennsylvania Office of Open Records as part of a Final Determination entered on September 16, 2019 at Docket No. AP 2019-1094. In Section 2 thereof, the Appeals Officer determined that OOR lacked jurisdiction over six email items claimed by Respondent as exempt pursuant to 65 P.S. 67.708(b)(16) as related to a criminal investigation. Jurisdiction over the appeal of said items is vested in the undersigned, or his designee, pursuant to 65 P.S. 503(d)(2).

FINDINGS:

1. The procedural history relating to the Request, the Response, and the initiation and disposition of the remainder of the Appeal, as set forth in the Final Determination by OOR, is incorporated herein by reference.

2. The sworn Attestation of Elizabeth A. Benjamin, Esquire, Counsel for Respondent, dated August 12, 2019, describes the six emails at issue in paragraph 17, items a) through f), as follows:

a) January 11, 2019 email from Police Chief Laidacker [Catawissa Borough Police Department] to Superintendent Caputo [of Respondent] notifying him of

the criminal investigation and resulting citation filed against the [School District] employee who is identified by name in said email.

b) January 11, 2019 email from Superintendent Caputo to Police Chief Laidacker referencing the update provided with respect to the criminal investigation of the employee.

c) January 13, 2019 email from Superintendent Caputo to Police Chief Laidacker with questions regarding the criminal investigation and charges filed against the employee, in relation to the School District's non-criminal investigation of potential misconduct by said employee.

d) January 14, 2019 email from Police Chief [Laidacker] responding to Superintendent Caputo's inquiry about the criminal investigation and about the identification of the victim relevant to the criminal investigation and charges.

e) January 14, 2019 email from Superintendent Caputo to Police Chief Laidacker asking for additional information to be provided relative to the potential filing of additional criminal charges against said employee.

f) January 14, 2019 follow-up email from Superintendent Caputo to Police Chief Laidacker confirming that charges have been filed with respect to the employee and further referencing said employee within the body of the email threads included with his email.

DISCUSSION:

Records in the possession of a local agency, such as Respondent, are presumed to be accessible to the public under the Right-to Know-Law unless exempt from disclosure under provisions of the RTKL or other applicable law. 65 P.S. 67.305(a).

A public agency claiming an exemption from disclosure bears the burden of proving the applicability of a recognized basis for exemption by a preponderance of the evidence. 65 P.S. 67.708(a)(1). An agency may present affidavits and/or other relevant evidence to support its claim for exemption from public disclosure. United Healthcare of Pennsylvania, Inc. v. Pennsylvania Dept. of Human Services, 187 A. 3d 1046 (Pa. Cmwlth. 2018).

The Commonwealth Court of Pennsylvania has repeatedly addressed the scope and applicability of the "criminal investigation" exemption set forth in Section 708(b)(16) of the RTKL. In Mitchell v. Office of Open Records, 997 A. 2d 1262 (Pa. Cmwlth. 2010), the Court held that where a record, on its face, relates to a criminal investigation, it is exempt from disclosure under Section 708(b)(16)(ii) of the RTKL. Additionally, criminal investigative records remain exempt from disclosure even after the investigation is completed. Sullivan v. City of Pittsburgh, Dept. of Public Welfare, 561 A. 2d 863 (Pa. Cmwlth. 1989).

Here, the Respondent provided a sworn Attestation by its counsel, based on a personal review of the six emails in question, which identified the dates and parties to the respective communications and summarized the content and, in some cases, the context of each one. It is apparent from the descriptions of the emails that they directly related to the initiation, status and conclusion of the criminal investigation of one of Respondent's employees and included the identity of the victim and confirmation of the criminal charges filed against the employee. Accordingly, the six emails at issue in this appeal are exempt from disclosure pursuant to 65 P.S. 67.708(b)(16) as relating to a criminal investigation.

CONCLUSION:

Based on the foregoing, the appeal is **denied** and this Final Determination is binding on all parties. Any party aggrieved by this decision may, within thirty days from the mailing date hereof, file an appeal to the Court of Common Pleas of Columbia County pursuant to 65 P.S. 67-1302(a). All parties and the Office of the District Attorney of Columbia County must be served with copies of any Notice of Appeal pursuant to 65 P.S. 67.1303.

FINAL DETERMINATION ISSUED AND MAILED: September 24, 2019

s/ Thomas E. Leipold
Columbia County District Attorney

Sent to: Josh Maciejewski via email only: josh.majew@gmail.com
Elizabeth Benjamin, Esquire via email only: ebenjamin@beardlegalgroup.com
Paul Caputo via email only: pcaputo@scasd.us
Blake Eilers, Esquire via email only: beilers@pa.gov