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R. SETH WILLIAMS  
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***By electronic mail***

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**Re: Appeal from City's Partial Denial of Request from Christopher Peak**

Dear Mr. Peak and Mr. Crotts:

This letter constitutes the final determination of the Appeals Officer for the Philadelphia District Attorney's Office concerning Mr. Peak's appeal of the partial denial by the City of Philadelphia of his request for public records under Pennsylvania's Right-to-Know Law. For the reasons set forth below, the appeal is denied.

**BACKGROUND**

On or about October 11, 2016, the Philadelphia Police Department (PPD) received from Christopher Peak (the Requester) a request under the Right-to-Know Law (the RTKL), 65 P.S. §§ 67.101 *et seq.* Specifically, the Requester sought the following, as described by the City in its appellate submissions:

Case-by-case arrest data [not the full written report] for prostitution-related offenses from January 2014 through the date you begin processing this request[, including the offenses:]

- Item 1:** Engaging in prostitution
- Item 2:** Promoting prostitution
- Item 3:** Living off prostitution
- Item 4:** Patronizing a prostitute
- Item 5:** Promoting prostitution of a child

- Item 6:** Infecting someone with HIV/AIDS
- Item 7:** Involuntary servitude
- Item 8:** Patronizing a victim of sexual servitude

“For each data point in the spreadsheet, please include[:]

- Item 9:** The case number
- Item 10:** The incident date and location
- Item 11:** The culprit’s name, age, race, sex and current city of residence
- Item 12:** Whether the culprit was repeat offender
- Item 13:** Any victims name, age, race, sex and current address, where releasable
- Item 14:** The arresting officer’s name and precinct
- Item 15:** Charges filed
- Item 16:** The case’s final disposition

12/5/16 City Appellate Submission, 1-2; 10/11/16 City Denial Letter, 1.<sup>1</sup>

On or about October 11, 2016, the PPD’s Open Records Officer sent a final response partially granting and partially denying the request. In partially granting the request, the PPD provided “as a courtesy” a spreadsheet setting forth the following information concerning prostitution-related arrests from January 1, 2014, through August 18, 2016: DC number, sector, location, and the arrestee’s age, sex, and race. Among the bases for the partial denial, the PPD asserted the criminal investigative records exemption found in Section 708(b)(16) of the RTKL.

On October 26, 2016, the Appeals Officer for the Philadelphia District Attorney’s Office received a complete submission from the Requester in which he appealed the PPD’s partial denial of his request.<sup>2</sup> The City provided its appellate position statement on December 5, 2016, which included an affidavit from the PPD’s Open Records Officer. On December 28, 2016, the Requester provided a reply (in the form of an electronic message) to the City’s appellate submission, and, on January 5, 2017, the City submitted a sur-reply that included a supplement to the spreadsheet that the PPD originally had provided with new information about the dates of the listed arrests.<sup>3</sup>

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<sup>1</sup> The Appeals Officer uses the City’s description of the request, rather than the original language of the request, due to the arguments of the parties on appeal, which refer to the City’s description.

<sup>2</sup> The Appeals Officer initially received the Requester’s appellate submission on October 25, 2016. After determining that the submission was deficient due to missing documentation, the Appeals Officer offered the Requester the opportunity to supplement his submission within 15 business days, which he did on October 26, 2016.

<sup>3</sup> The parties consented to the extension of the timeframe for filing this final determination until the instant date.

## LEGAL ANALYSIS

The RTKL grants the Appeals Officer of the Office of the District Attorney for Philadelphia (the Appeals Officer) jurisdiction to hear and decide this appeal. 65 P.S. §§ 503(d)(2), 1101(a)(1). Under 65 P.S. § 67.503(d)(2), the Appeals Officer is authorized to “determine if the record requested is a criminal investigative record” of a local agency in Philadelphia County.

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. As such, records in its possession are presumed public, and thus subject to disclosure, unless exempt under the RTKL or other law or protected by a privilege, judicial order, or decree. 65 P.S. § 67.305. The City bears the burden of proving the applicability of any exemptions it claims. 65 P.S. § 67.708(a).

Given the supplemented information and statements from the parties on appeal, the sole remaining issue to be determined is whether the City is obligated to disclose the names of the arrestee and arresting officer for each arrest listed in the City’s updated spreadsheet.<sup>4</sup>

The Requester contends that the requested records should be produced because, relying on the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101 *et seq.*, he believes the information constitutes disclosable criminal history record information, akin to that found in police blotters, rather than protected investigative or intelligence information as defined by CHRIA. 10/26/16 Requester Appellate Submission, 2; 12/28/16 Reply of Requester (by electronic mail).

In its appellate submissions, the City expands on its original assertion of the RTKL’s criminal investigative records exception.<sup>5</sup> To support its invocation of Section 708(b)(16), the City provides an affidavit from the PPD’s Open Records Officer. *See* 12/5/16 City Appellate Submission, Affidavit of the Open Records Officer for the PPD. In the affidavit, the Open Records Officer attests that “[t]he incident date and location, the arrestee’s (or culprit’s) name, age, race

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<sup>4</sup> In his initial appellate submission, the Requester challenged only the City’s failure to disclose the incidents’ dates and times, and the names of the arrestees and arresting officers. 10/26/16 Requester Appellate Submission, 1. In his reply submission, he acknowledged that Items 2, 3, 5, 6, 7, and 8 in the City’s description of his request did not exist; agreed that Items 9 and 15 had received a sufficient response; and conceded that Items 12, 13, and 16 were exempt criminal investigative records. 12/28/16 Reply of Requester (by electronic mail). He, however, maintained that the PPD “should not have withheld the incident date (Item 10), the culprit’s name (Item 11), the arresting officer’s name (Item 14).” *Id.*

The City, “as a courtesy,” subsequently supplemented its original spreadsheet with new information about the incidents’ dates but maintained its arguments with respect to the arrestees’ and arresting officers’ names. 1/5/17 Sur-reply of City.

<sup>5</sup> The Appeals Officer lacks jurisdiction to review the PPD’s partial denial of the request on any ground other than the criminal investigative records exception. 65 P.S. §§ 503(d)(2), 1101(a)(1).

sex, and current city of residence, whether the arrestee or culprit was a repeat offender, the victim's name, age, race, sex and current address, the arresting officer's names and precinct, the charges filed, and the case's final disposition for all prostitution related offenses that PPD responded to from January 1, 2014 through and including August 18, 2016 are records created and maintained by PPD employees because of investigations into criminal conduct." 12/5/16 City Appellate Submission, Aff. at ¶ 10. He also attests that "[t]he only reason PPD would have the information listed above would be because of criminal investigations conducted by PPD employees." *Id.* at ¶ 10(a). The City also argues that the Requester's interpretation of CHRIA is incorrect and that the requested records constitute protected investigative information under that law. 1/5/17 Sur-reply of City, 2-3. The City further contends that the "access requirements [Requester] cites under the Criminal History Record Information Act ("CHRIA") are inapplicable to the instant matter because CHRIA does not serve as a means to access records under the RTKL, but rather sets up a separate process for records access. A requester may not request criminal history record information through the RTKL, but must instead comply with the CHRIA and associated regulations." *Id.* at 4.

The City's appellate submissions correctly set forth and apply the relevant law concerning the City's assertion of the RTKL's criminal investigative records exception, and properly support that assertion of the exception with its Open Records Officer's affidavit. For these reasons, this appeal is denied.<sup>6</sup> *See also Hunsicker v. Pa. State Police*, 93 A.3d 911 (Pa. Commw. Ct. 2014) (affirming denial of request for criminal investigative materials concerning state trooper's involvement in death of requestor's brother); *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011) (an attestation made under the penalty of perjury may serve as sufficient evidentiary support).

For the foregoing reasons, this appeal is denied. This final determination is binding on all parties. Within thirty days of the date of this letter, any party may appeal to the Philadelphia County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served notice of the appeal. The Appeals Officer also shall be served notice and have an opportunity to respond in accordance with applicable court rules. 65 P.S. § 67.1303.

Sincerely,  
/s/ Priya Travassos  
Priya Travassos  
Appeals Officer  
Office of the District Attorney of Philadelphia

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<sup>6</sup> Because the City's invocation of the RTKL's criminal investigative records exemption has been deemed proper and its partial denial of the instant request upheld, it is not necessary to reach the question of the applicability of the Criminal History Record Information Act, other than to note that CHRIA does not provide a basis for gaining access to public records under the RTKL.