

# YORK COUNTY DISTRICT ATTORNEY'S OFFICE

**TOM KEARNEY**  
DISTRICT ATTORNEY



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April 25, 2017

Ms. Holly Weir  
245 Tri Hill Road  
York, PA 17403  
Silverimage2819@gmail.com  
*Via e-mail only*



**Re: Open Records Appeal No.: AP 2017-0396**

Dear Ms. Weir,

On March 27, 2017 the District Attorney of York County, Pennsylvania received your appeal of the denial of your February 19, 2017 Right to Know Law (hereinafter "RTKL") Request. Having reviewed your appeal of the determination of Spring Garden Township's (hereinafter "the Township") denial of your RTKL Request, as the Township's basis for denying access to records was appropriate under the Pennsylvania RTKL, your appeal is DENIED.

## BACKGROUND

In your February 19, 2017 Request, you sought the following information from the Township via a Right to Know Request:

The Incident Report #, names and badge numbers of officers involved in detaining me at approximately 2pm on Sunday in Tri Hill Park parking lot, copy of IR and reason for detaining me. Officer Lusk required me to stay and answer his questions but yet stated I was not charged with anything. The other officer who did not identify himself stated he would check with complainant on charges. What were those charges?

*See* Right to Know Request, February 19, 2017. On February 22, 2017 the Township denied your Request by letter, stating that a portion of the Request is exempt pursuant to 65 P.S. §67.708(b)(16) as it relates to a criminal investigation, and the remaining portion of the Request does not seek a record as it only asks a question.

On February 27, 2017 your official notice of appeal was filed with the Pennsylvania Office of Open Records (hereinafter "the OOR"), in which you challenged the denial of your original Request and stated grounds upon which you believe disclosure was warranted. On

February 28, 2017 the OOR provided an Official Notice of Appeal under docket number AP-2017-0396 to both parties, invited the parties to supplement the record, and directed the Township to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. §67.1101(c).

On March 1, 2017 the Township submitted a position statement and response to your Request. In support thereof, the Township submitted a sworn affidavit of Linda Keller, the Spring Garden Township Open Records Officer. You, as requester, did not submit any additional information on appeal.

The OOR made its Final Determination on March 23, 2017, DISMISSING your appeal in part, and TRANSFERRING your appeal in part to the Appeals Officer for the York County District Attorney's Office. More specifically, your appeal was transferred to this office for this Officer to determine whether the information requested is exempt from disclosure. Pursuant to 65 P.S. §67.503(d)(2), 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 by the local district attorney.

This Officer's Opinion now follows:

#### DISCUSSION AND FINDINGS

Per 65 P.S. §67.1102(a)(2), this Officer reviewed all filed relating to your request and determined that this appeal may be decided, based on the documents as filed, without any further hearing.

Upon initial review, the Open Records Officer cited to 65 P.S. §67.708(b)(16) regarding records relating to or resulting in a criminal investigation. More specifically, section 708(b)(16) of the RTKL makes exempt from access by a requester under the RTKL, in relevant part, the following records:

- (i) Complaints of potential criminal conduct other than a private criminal complaint.
- (ii) Investigative materials, notes, correspondence, videos and reports.
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- (iv) A record that includes information made confidential by law or court order.

65 P.S. §67.708(b)(16)(i), (ii), and (iv). Thus, in accordance with section 708(b)(16), a criminal investigative report is not a public document. Moreover, in line with *Hunsicker v. Pa. State Police*, 93 A.3d 911 (Pa. Commw. 2014), the requested information is covered by the exemption set forth in section 708(b)(16) of the RTKL.

## CONCLUSION

As the information being sought is indeed information relating to a criminal investigation pursuant to 65 P.S. §67.708(b)(16) the information is thus exempt under the RTKL. As such, Spring Garden Township's denial of your Open Records Request was consistent with the law. Therefore, the information in question does not constitute public records subject to release under the Pennsylvania Right to Know Law and this appeal is hereby DENIED.

If you choose to file an appeal of this Right to Know Appeal Decision with the Court of Common Pleas for York County, you must do so within thirty (30) business days of the mailing date of the agency's response pursuant to 65 P.S. §67.1302. If you have further questions, please call the Open Records Compliance Officer at the above phone listing during normal business hours. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,



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CC: *Spring Garden Township*  
*Pennsylvania Office of Open Records*