

**NORTHAMPTON COUNTY, PENNSYLVANIA  
DISTRICT ATTORNEY'S OFFICE**

**FINAL DETERMINATION**

<b>RENE FIGUEROA,</b>	:	<b>No.: 1-ORA-2022</b>
<b>Requester,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>CITY OF BETHLEHEM POLICE</b>	:	
<b>DEPARTMENT,</b>	:	
<b>Respondent.</b>	:	

**BACKGROUND**

On December 18, 2021, Rene Figueroa (“Requester”) submitted a written request to the City of Bethlehem Police Department (“Respondent”) pursuant to the Right to Know Law (“RTKL”), seeking the “[p]olice report generated after interview of Javier Rivera-Alvarado by lead Detective Fabian Martinez on 12-3-12 at St. Luke’s Hospital (ICU).” Attachment “A.” The Respondent denied the request on January 3, 2022, stating that the requested police report is related to a criminal investigation and is exempt from disclosure under both the RTKL and the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S.A. § 9101, *et seq.* *See* Attachment “B.”

The Requester appealed to the Northampton County District Attorney’s Office in a document dated January 18, 2022, and mailed January 20, 2022, challenging the denial and stated grounds for disclosure. *See* Attachment “C.” This appeal was received by the Northampton County District Attorney’s Office on January 25, 2022. *Id.* This matter is now before the Appeals Officer for the Northampton County District Attorney’s Office for disposition.<sup>1</sup>

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<sup>1</sup> Although a hearing may be held on appeal, no hearing was conducted. 65 P.S. § 1102(a)(2).

## LEGAL ANALYSIS

Under Section 102, 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.

65 P.S. § 67.102. 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. Commw. 2002), the Commonwealth Court explained that “preponderance of the evidence is tantamount to a ‘more likely than not’ standard.”

The Respondent contends that the requested record is a criminal investigative report that 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 . . . [i]nvestigative materials, notes, correspondence, videos and reports,” are exempt from disclosure. *Id.* The request is for a police report generated after an interview of a witness. *See* Attachment “A.” This Officer finds that the Respondent has proven that the requested record relates to a criminal investigation and is exempt.

In *Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473, 479 (Pa. Commw. 2010), the Commonwealth Court held that incident reports which contain investigative materials are exempt from the definition of a public record and are not subject to disclosure or redaction. Further, Section 708 exempts release of “[a] record of an agency relating to or resulting in a criminal investigation.” 65 P.S. § 67.708(b)(16). The record at issue include a police report related to criminal investigation that resulted in a criminal prosecution against the Requester, as is admitted by the Requester within his request. *See* Attachment “A.” Accordingly, it is clear that the requested material falls within the definition of items that are exempt from disclosure.

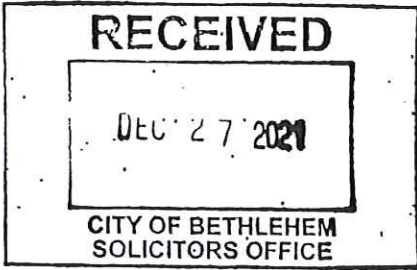
Additionally, CHRIA prohibits the disclosure of the information requested. This information is “investigative information” which is defined by CHRIA as: “[I]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing 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.” The Requester is not a “criminal justice agency” as defined by 18 Pa.C.S.A. § 9102. Therefore, the requested information cannot be disseminated to the Requester under CHRIA.

Finally, in *Barros v. Martin*, 92 A.3d 1243 (Pa. Commw. 2014), a prisoner who requested documents relating to a homicide investigation was denied access because the documents were exempt under both the RTKL and CHRIA. The Commonwealth Court cited to *Sullivan v. City of Pittsburgh, Dept. of Public Safety*, 561 A.2d 863, 864-65 (Pa. Commw. 1989), and found that criminal investigative records remain exempt from disclosure even if the investigation is completed and even if the requester is the subject of the investigation. *Barros*, 92 A.3d at 1250. The court held: “Thus, if a record, *on its face*, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii).” *Id.* (emphasis added) (citing *Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 697 (Pa. Commw. 2013); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1264 (Pa. Commw. 2010)). Here, the record at issue is, on its face, related to a police investigation and is exempt from disclosure under the RTKL and CHRIA.





2021 JAN 25 PM 3:21



Pennsylvania OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 12-18-21

REQUEST SUBMITTED BY:  E-MAIL  U.S. MAIL  FAX  IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): City of Bethlehem Police Department 10 E. Church St. Bethlehem, PA 18018

NAME OF REQUESTER: RENE FIGUEROA ID# LX-3588

STREET ADDRESS: SCI FOREST - PO Box 307

CITY/STATE/COUNTY/ZIP (Required): Marienville, PA 16239

TELEPHONE (Optional): EMAIL (optional):

RECORDS REQUESTED: \*Provide as much specific detail as possible so the agency can identify the information. Please use additional sheets if necessary. Police report generated after interview of Javier Rivera. "Please send me a copy of the following" Alvarado by lead Detective Fabian Martinez on 12-3-12 at St. Lukes Hospital (ICU) / statement made by Javier pertaining to Docket No (CP-48-CR-620-2013 / CP-48-CR-619-2013)

- DO YOU WANT COPIES?  YES  NO
DO YOU WANT TO INSPECT THE RECORDS?  YES  NO
DO YOU WANT CERTIFIED COPIES OF RECORDS?  YES  NO
DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100?  YES  NO

\*\* PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES \*\*
\*\* IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL \*\*

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:
I have provided notice to appropriate third parties, and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:
AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

\*\*Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)





# CITY OF BETHLEHEM

OFFICE OF OPEN RECORDS

10 East Church Street, Bethlehem, Pennsylvania 18018-6025

Phone: 610-865-7011  
Fax: 610-865-7205  
TDD: 610-865-7015  
www.bethlehem-pa.gov

January 3, 2022

Mr. Rene Figueroa  
ID No. LX-3588  
Sci Forest- P.O. Box 945  
Marienville, PA 16239

RE: Pennsylvania Right to Know Law ("RTKL") Request

Dear Mr. Figueroa:

Your December 18, 2021 request under the Pennsylvania Right-to-Know Law was received by me on December 27. You seek a copy of the statement of Javier Rivera-Alvarado taken during a December 3, 2021 interview by Detective Moses Miller at St. Luke's Hospital's Intensive Care Unit. You further and more broadly request the "police report" generated after said interview.

The City's response to this request is the same as our response to your November 8, 2021 request wherein you requested police report number 2012-00052129. In accordance with the Pennsylvania Right-to-Know Law, specifically 65 P.S. § 67.708(b) (16)(ii), we cannot provide that information because it falls into the following category:

- (16) A record of an agency relating to or resulting in a criminal investigation, including:  
(ii) Investigative materials, notes, correspondence, videos and reports.

Nondisclosure is mandatory under the Criminal History Record Information Act ("CHRIA"), 18 Pa. C.S. §9101 et seq. CHRIA states 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 . . . See *Opitz v. Bowman* 42 Pa D.&C. 4th 405, 407 (CCP-Pike 1999) ("CHRIA not only establishes and amplifies the government's privilege against disclosure of investigatory information, it also mandates its assertion"). In this respect, CHRIA defines investigative information as "[i]nformation assembled as a result of the performance of an inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information." 18 Pa. C.S.A. § 9102. You seek information falling into the category of "investigative information" which is not accessible under CHRIA.

This exception is further supported by *Sullivan v. City of Pittsburgh*, 127 Pa.Cmwlt. 339, 561 A.2d 863 (1989) which states that "This exclusion not only applies to active investigations, but it also applies, as here, to records related to completed investigations."

The City believes it has addressed your request; however, if you wish to appeal this decision, you must file a written appeal, within fifteen (15) business days of the date of this denial. The written appeal should be sent to District Attorney Terence Houck, District Attorney's Office, 669 Washington Street, Easton, PA 18042. In your written appeal you must:

- Include a copy of the RTK request
- Include a copy of the Agency's response
- State the grounds on which the you assert the item is a public record; and
- Address all grounds stated in this notice of denial.

Attachment "B"

Rene Figueroa  
January 3, 2022  
Page 2

If you have any questions, please feel free to contact my office at (610) 865-7011.

Very truly yours,



Tad J. Miller  
Open Records Officer



pennsylvania  
OFFICE OF OPEN RECORDS

2012 JUN 25 PM 3:03  
RIGHT-TO-KNOW LAW ("RTKL")  
APPEAL OF DENIAL, PARTIAL DENIAL, OR DEEMED DENIAL

Office of Open Records ("OOR")

Email: [openrecords@pa.gov](mailto:openrecords@pa.gov)

Fax: (717) 425-5343

Commonwealth Keystone Building

400 North St., 4th Floor

Harrisburg, PA 17120-0225

Today's Date: 1-18-22

Requester Name(s): RENE FIGUEROA ID # LX-3588

Address/City/State/Zip: SCI FOREST - PO BOX 307 - Marienville, PA 16239-0307

Email: \_\_\_\_\_ Phone/Fax: 1

Request Submitted to Agency Via:  Email  Mail  Fax  In-Person (check only one)

Date of Request: 12-18-21 Date of Response: 1-3-22  Check if no response

Name of Agency: District Attorney's Office "ATTN": D.A. Terence Houck

Address/City/State/Zip: 669 Washington Street - Easton, PA 18042

Email: \_\_\_\_\_ Phone/Fax: 1

Name & Title of Person Who Denied Request (if any): City of Bethlehem Solicitor's office - "RTKL"

I was denied access to the following records (REQUIRED. Use additional pages if necessary): Police Report generated after interview/statement of Javier Rivera-Alvarado taken on December 3, 2012, interviewed by Det. Fabian Martinez/Moses Miller at St. Luke's Hospital (ICU).

I requested the listed records from the Agency named above. By signing below, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I am also appealing for the following reasons (Optional. Use additional pages if necessary): 65 P.S. § 67.708 (b), (ii)  
does not apply... Said Police Report/statement generated after interview pertains to my closed case... See: letter/  
Exhibit (5)  
ATTACHE

- I have attached a copy of my request for records. (REQUIRED)
- I have attached a copy of all responses from the Agency regarding my request. (REQUIRED)
- I have attached any letters or notices extending the Agency's time to respond to my request.
- I hereby agree to permit the OOR an additional 30 days to issue a final order.
- I am interested in resolving this issue through OOR mediation. *This stays the initial OOR deadline for the issuance of a final determination. If mediation is unsuccessful, the OOR has 30 days from the conclusion of the mediation process to issue a final determination.*

Respectfully submitted, Rene Figueroa (SIGNATURE REQUIRED)

You should provide the Agency with a copy of this form and any documents you submit to the OOR.



# LETTER / EXHIBITS

RE: CP-48-CR-620-2013 / RTKL APPEAL

1-10-22

ATTACHED is a copy of: ① Docket sheet of Docket # CP-48-CR-620-2013 showing "Case status closed"

- ② Motion filed on June 21, 21 for Police report generated after interview of Javier Rivera-Alvarado (marked as Ex. CS-4. during Pre trial Motion on November 23, 2013, Pre-liminary Hearing transcripts held on Feb. 18, 2013
- ③ Letter seeking said documents filed on 1-3-22, forwarded to D.A. Terence Houck

Good day! The City's response to said request cites R.T.K.L 65 P.S. § 67.708(b)(16)(ii) as its reasoning of denial to fulfill request.

For the following but not limited to: the reason(s) the City's failure to fulfill said request is in error; There is no criminal investigation (see Ex. Docket sheet "Case closed"), said document "Javier Rivera-Alvarado statement / Police Report Generated is part of transcripts / marked for identification and admitted into evidence EX. # ~~CS~~-4 - Commonwealth evidences; and therefore is not Investigative materials, note, correspondence, videos and reports, and therefore does not fall into Pennsylvania Right-to-Know Law, specifically 65 P.S. § 67.708(b)(16)(ii)...

For the following reason(s) and said documents attached to further verify this argument I respectfully request a copy of said information / documents mentioned above..

Yours Truly, Rene Figueroa

P.S. RTKL Response is dated 1-3-22, however it was sent to St. Petersburg, screened, processed and then forwarded to SCI-Forest and received approx. 1-10-22 - 1-14-22.

# COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY

## DOCKET

Docket Number: CP-48-CR-0000620-2013  
**CRIMINAL DOCKET**

Court Case



Commonwealth of Pennsylvania

v.

Rene Figueroa

Page 1 of 41

### CASE INFORMATION

Cross Court Docket Nos: 421 EDA 2015, 1355 EDA 2017, 511 MAL 2018

Judge Assigned: Beltrami, Anthony S.

Date Filed: 02/18/2013

Initiation Date: 12/07/2012

OTN: T 266322-0

LOTN:

Originating Docket No: MJ-03210-CR-0000566-2012

Initial Issuing Authority: Nancy Matos-Gonzalez

Final Issuing Authority: Nancy Matos-Gonzalez

Arresting Agency: Bethlehem Cty Police Dept

Arresting Officer: Martinez, Fabian

Complaint/Incident #: BC1252129

Case Local Number Type(s)

Case Local Number(s)

### STATUS INFORMATION

<u>Case Status:</u>	<u>Status Date</u>	<u>Processing Status</u>	<u>Complaint Date:</u>
Closed	02/19/2019	Appeal Decided	12/07/2012
	02/09/2015	Awaiting Appellate Court Decision	
	01/23/2015	Sentenced/Penalty Imposed	
	11/17/2014	Awaiting PSI	
	11/17/2014	Awaiting Sentencing	
	10/31/2014	Awaiting Sentencing	
	10/31/2014	Awaiting Trial	
	02/17/2014	Awaiting Pre-Trial Conference	
	04/04/2013	Awaiting Appellate Court Decision	
	04/04/2013	Awaiting Trial	
	02/27/2013	Awaiting Formal Arraignment	
	02/18/2013	Awaiting Filing of Information	



IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,  
PENNSYLVANIA CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : NORTHAMPTON COUNTY  
VS.  
RENE FIGUEROA : DOCKET NO. CP-48-CR-0000620-2013

MOTION FOR TRANSCRIPTS AND COURT EXHIBITS (CS-1, CS-4)

To the Honorable Jurist, Beltrami S. Anthony :

And now, comes petitioner, Rene Figueroa, Pro Se, this 8th day of June year 2021, and files this motion in support thereof and avers the following :

1. The defendant was convicted via jury, for the charge(s) of Aggravated Assault, Involuntary Manslaughter, Carrying a firearm without a license and receiving Stolen property.
2. The defendant through counsel, Talia R. Mazza filed letter brief in lieu of a more formal brief in support of Defendants' Post Conviction Relief Act claims, dated January 8, 2021.
3. On June 8th 2021 defendant was told via secretary of the Law office that Counsel, Talia R. Mazza will no longer represent defendant due to personal reasoning and that new counsel will be appointed in the near future.
4. The defendant has meritorious grounds for Amendment of Post Conviction Collateral Relief Act Petition 9545 (P.C.R.A), to which he intends to file in the allotted time deemed applicable. The petitioner has indicated reason(s) enumerated for the P.C.R.A, and also deems to make adequate and or appropriate review of the record to further effectuate said Post Conviction Relief Act. Claims.



5. On February 1, 2019 defendant filed motion for transcripts, in which was granted in part ("The clerk of court - Criminal Division shall send Defendant copies of any transcripts of testimony filed of record in this case") on February 19, 2019.
  6. Defendant has yet to receive transcripts of testimony of Preliminary Hearing held on February 18, 2013; filed by Matos-Gonzalez, Nancy in which was marked as Exhibit CS-1 during Pre-Trial motions held on November 23, 2013.
  7. Defendant has yet to receive Police Report marked as Exhibit CS-4 during Pre-Trial motions held on November 23, 2013.
- (A) The defendant contends, that Trial Counsel was Ineffective for failing to object to the use of Co-Defendant alleged Statement (marked as Exhibit CS-4).
- (B) Trial Counsel failed to ask the Sentencing Court to specify the conditions pertaining to the fines, court cost required to be paid by defendant.
8. In order for the petitioner to adequately prepare and address the issue(s) (not limited to said issue(s) A, B) that he intends to raise on Amended Post Conviction Collateral Relief Act Petition, the Petitioner will need the following documents and Notes of Testimony to be transcribed and produced / forward to him:  
The defendant will need a certified copy of the Preliminary Notes of Testimony, Police Report, Exhibit(s), CS-4, statements from any and all witnesses, pertaining to the case at bar, CP-48-CR-0000620-2013/any and all criteria relevant.

Where fore, for the reasons enumerated and contained herein, it is beeeched that this Honorable Court GRANT/ORDER said motion for transcription of the Notes of Testimony and Police Report(s) / Exhibit(s) CS-1, CS-4 and foward to Petitioner at the address indicated below.

Dated: June 8, 2021

Respectfully Submitted,  
Isi Rene Figueroa  
RENE FIGUEROA  
Inst. # LX-3588  
S.C.I FOREST  
P.O BOX 307  
286 Woodland Drive  
Marienville, PA 16239

VERIFICATION

I, Rene Figueroa, do hereby verify, that all informations contained and enumerated herein is true and correct to the best of my knowledge information and beliefs. And that I am subject to penalties for unsworn falsifications to Authorities under title 18 C.S.A 4904.

Date: June 8, 2021

151 Rene Figueroa

Rene Figueroa

CLERK OF JUDICIAL  
CRIMINAL DIVISION  
NORTHAMPTON COUNTY, PA

2021 JUN 21 P 2:35

FILED

PROOF OF SERVICE

I, Rene Figuera, do hereby aver, that the enclosed motion for Transcripts and Discovery has been serviced upon the following individuals via First Class \_\_\_/United States Mail  :

1. The Honorable Jurist  
Beltrami S. Anthony  
Northampton County Courthouse  
669 Washington Street  
Easton Pennsylvania 18042
2. Clerk of Court/Northampton County  
Northampton County Courthouse  
669 Washington Street  
Easton Pennsylvania 18042



District Attorney Terence Houck,

12-28-21

RE: Docket No: 2013-CR-620 / 2013-CR-619

Preliminary Hearing Transcripts, Statement by Javier Rivera-Alvarado

Good day Sir. I write to you in regards of obtaining the following document(s): Preliminary Hearing Transcripts held on February 18th 2013 (marked as Exhibit CS-1); Police report generated by Fabian Martinez (Lead detective) after his interview of co-defendant Javier Rivera-Alvarado (marked as Ex. CS-4 ~~CS-4~~ + RA-3)

during the suppression hearing held on November 22, 2013...

P.S. I've tried to obtain said documents per "RTKL" / clerk of courts to no avail...

Very truly yours,

*Rene Figueroa*

RENE FIGUEROA

ID NO. LX-3588

Sci-Forest - Po Box 945

Macienville, PA 16239

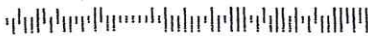
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FILED

C.C Clerk of Courts

D.A. Terence Houck



INMATE  
MAIL

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US POSTAGE

FIRST-CLASS MAIL

\$001.56<sup>2</sup>



ZIP 16239  
041L12206275

2022 JAN 25 PM 3:23  
2022 JAN 25 PM 3:23

Smart Communications / PA DOC

Inmate Name RENE FIGUEROA DC# LX-3588

SCI Forest

PO Box 33028

St Petersburg, FL 33733

District Attorney's Office  
ATTN: D.A. TERENCE HOUCK  
669 Washington St.  
Easton, PA 18042

Inmate Mail Dept. of Corrections