

NORTHAMPTON COUNTY, PENNSYLVANIA
DISTRICT ATTORNEY'S OFFICE

FINAL DETERMINATION

ROBERT V. FODERA, :
Requester, : No. 3-ORA-2022
 :
v. :
 :
CITY OF BETHLEHEM POLICE :
DEPARTMENT, :
Respondent. :

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DISTRICT ATTORNEY'S
OFFICE

BACKGROUND

On March 2, 2022, Robert V. Fodera (“Requester”) submitted a written request to the City of Bethlehem Police Department (“Respondent”) pursuant to the Right to Know Law (“RTKL”), seeking the police incident report number 2022-8169. *See* Attachment “A.” The Respondent granted the request, but indicated that it was required to redact certain information within the report “because it contains personal identifiable information and investigative information,” and cited to exemptions under the RTKL, 65 P.S. §§ 67.708(b)(6), (17). Attachment “B.”

On March 17, 2022, the Requester filed a counseled written appeal to Northampton County District Attorney’s Office. *See* Exhibit “C.” The Requester is seeking an un-redacted police report, stating that he is entitled to discovery in advance of the summary trial related to the summary charge of disorderly conduct that is scheduled before MDJ Englesson for April 27, 2022. *Id.* The Requester indicates within his appeal: “To my knowledge[,] there are no specific rules dealing with discovery in summary cases.” *Id.*

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 records that could be identified are exempt from disclosure under 65 P.S. §§ 67.708(b)(6), (17), related to non-criminal investigations. However, the Requester acknowledges in his appeal that he is seeking the requested report in preparation for a pending criminal prosecution, and provides this Appeals Officer with the following caption: Commonwealth v. Robert V. Fodera, OTN R-3169644-2. *See* Attachment “C.” The Requester also references a request for discovery in advance of a summary trial before MDJ Englesson for the offense of disorderly conduct. *Id.*

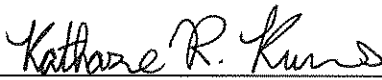
Based upon that admission, this Officer finds that the requested record is related to a criminal investigation. *See* 65 P.S. § 67.503(d)(2) (“The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record”). This record is exempt from disclosure as a criminal investigative record. *See* 65 P.S. § 67.708(b)(16)(ii) (providing that records of agency relating to or resulting in criminal investigation “including . . . [i]nvestigative materials, notes, correspondence, videos and reports” are exempt from disclosure). Thus, the redaction of the exempted material was proper, as the record, on its face, relates to a criminal investigation. *See Barros v. Martin*, 92 A.3d 1243, 1250 (Pa. Commw. 2014) (providing that record is exempt from disclosure when facially related to criminal investigation).

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, as the requested police report is related to prosecution for a summary offense, the Requester is not entitled to pretrial discovery. Under Rule 103 of the Rules of Criminal Procedure, a “court case” is defined as “a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.” Pa.R.Crim.P. Rule 103. Rule 573, which governs pretrial discovery and inspection, applies solely to “court cases.” Pa.R.Crim.P. Rule 573(B). Moreover, the Pennsylvania Superior Court has held that defendants are not entitled to receive discovery in summary cases, as “pretrial discovery [for summary cases] is not authorized under Rule 573.” *Commonwealth v. Lutes*, 793 A.2d 949, 960 (Pa. Super. 2002). As the Requester is not entitled to receive pretrial discovery for a summary offense, the Requester is not entitled to receive a copy of the un-redacted police report. The Respondent has met its burden of showing that the requested record is exempt from disclosure.

CONCLUSION

For the foregoing reasons, and because the Respondent has met its burden of proof in showing that the requested record is exempt from disclosure, the Requester's appeal is denied. This Final Determination is binding on the parties. Within thirty (30) days of the mailing of this determination, any party may appeal to the Northampton County Court of Common Pleas under 65 P.S. § 67.1302(a). All parties must be served with the notice of the appeal.



KATHARINE R. KURNAS, ESQUIRE
Appeals Officer for Northampton County
District Attorney's Office

Date: April 5, 2022