NORTHAMPTON COUNTY, PENNSYLVANIA
DISTRICT ATTORNEY'S OFFICE

FINAL DETERMINATION

RACHEL HADDAD,	:	
Requester,	:	**No. 2-ORA-2021**
	:	
v.	:	
	:	
FORKS TOWNSHIP,	:	
Respondent.	:	

BACKGROUND

On April 13, 2021, Rachel Haddad ("Requester") submitted a written request to Forks Township ("Respondent") pursuant to the Right to Know Law ("RTKL"), seeking a police incident report related to the following: "Neighbors pit bull dog, residence, Blossom Hill Road attacked my puppy a 6 pound Japanese Chen and put his head in his mouth and broke his jaw. Medical records are attached. Owner of pit bull admits her pit bull attacked my dog. Police were called and wrote up incident." ***See*** Exhibit "A." The Requester attached medical records to her written request. The Respondent denied this request on April 15, 2021, stating that the requested record is exempt from access under the RTKL because it is related to a criminal and/or non-criminal police investigation. ***See*** Exhibit "B."

The Requester appealed to the Northampton County District Attorney's Office, and the appeal was received on April 28, 2021. Upon receipt, this Appeals Officer invited both parties to supplement the record by May 10, 2021. On April 30, 2021, the Respondent submitted a timely responsive letter, in which the Respondent asserts that the police reports remains exempt from disclosure because there is "still an open and ongoing investigation being conducted by the Forks Township Police Department." ***See*** Exhibit "C."

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.*** 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 records at issue is a police incident report related to a criminal investigation by the Forks Township Police Department, as is admitted by the Requester. ***See*** Exhibit "A." The Respondent indicated that there is an open and ongoing police investigation into the incident. ***See*** Exhibits "B," "C." 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 the homicide investigation for which he was incarcerated 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. ***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 requested police incident report at issue is, on its face, related to an open and ongoing police investigation and is therefore exempt from disclosure.

CONCLUSION

For the foregoing reasons, and because the Respondent has met its burden of proof by the preponderance in showing that the requested records are 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

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

Date: May 24, 2021

Dana Acquire
Forks Twp

pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: _____ (Attn: AORO)

Date of Request: 4/13/21 Submitted via: ☐ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Rachel Haddad Company (if applicable): _____

Mailing Address: 1760 Clearview Dr

City: Easton State: PA Zip: 18040 Email: Haddadproperties@ya

Telephone: 6107308180 Fax: 6104381171

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☐ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Neighbors pit bull dog, residence, Blossom Hill Road attacked my puppy a 6 pound Japanese chen and put his head in his mouth and broke his jaw. medical records are attached. Owner of pit bull admits her pit bull attacked my dog. Police were called and wrote up incident

DO YOU WANT COPIES? ☐ Yes, printed copies (*default if none are checked*)
☐ Yes, electronic copies preferred if available
☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☐ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☐ $100 (or) ☐ $_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: 4.14.21 Response Due (5 bus. days): 4.20.21

30-Day Ext.? ☐ Yes ☒ No (If Yes, Final Due Date: _____) Actual Response Date: 4.15.21

Request was: ☐ Granted ☐ Partially Granted & Denied ☒ Denied Cost to Requester: $_____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at https://www.openrecords.pa.gov

Form updated Feb. 3, 2020

Would like police report

Exhibit "A"

APPEAL

SUPERVISORS OF FORKS TOWNSHIP

NORTHAMPTON COUNTY, PENNSYLVANIA
MUNICIPAL BUILDING
1606 SULLIVAN TRAIL • EASTON, PA 18040-8398
PHONE: 610-252-0785 • FAX: 610-252-2081

Court House
~~Fork~~

Patty
669 Washington
18042

April 15, 2021

Rachel Haddad
1760 Clarendon Drive
Easton, PA 18040

RE: Right to Know request dated 04/13/2021

Ms. Haddad -

Thank you for writing the Forks Township Office of Open Records.

We received your request for the following information on April 14, 2021 –
- Police reports concerning incident involving dogs on Blossom Hill Road

Your request is denied for the following reasons, as permitted by Section 708 "Exceptions for Public Records" subsection (b); (16) (ii) and (17)(ii)- which provides:

(b) Exceptions.—Except as provided in subsections (c) and (d), the following are exempt from access by a requestor under this act:

***

(16) A record of an agency relating to or resulting in a criminal investigation, including:

***

(ii) Investigative materials, notes, correspondence, videos and reports.

***

(17) A record of an agency relating to a non-criminal investigation, including:

***

(ii) Investigative materials, notes, correspondence, videos and reports.

You have the right to appeal this decision, Under Section 503 – Appeals Officer, Section (d) Law enforcement records and Statewide Officials –

(2) The District Attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response. More information about how to file an appeal under the Right-to Know Law is available at the Office of Open Records website, https://www.openrecords.pa.gov.

If you have any questions, please feel free to contact me. This correspondence will serve to close this record with our office as permitted by law.

Donna M. Asure
Right-to-Know Officer

Rachel E. Haddad
1760 Clarendon Drive
Easton, Pa. 18040
6107308180

Exhibit "B"

SUPERVISORS OF FORKS TOWNSHIP

NORTHAMPTON COUNTY, PENNSYLVANIA
MUNICIPAL BUILDING
1606 SULLIVAN TRAIL • EASTON, PA 18040-8398
PHONE: 610-252-0785 • FAX: 610-252-2081

April 30, 2021

Katharine R. Kurnas
Right to Know Appeals Officer
Office of the District Attorney
Northampton County Government Center
669 Washington Street
Easton, PA 18042

RE: Haddad RTK Appeal No 2-ORA-2021

Ms. Kurnas –

This letter is in response to your notice of a Right to Know appeal filed by Rachel Haddad.

The incident which she is seeking police reports for is still an open and ongoing investigation being conducted by the Forks Township Police Department.

Should you have any additional questions please contact me or Chief Greg Dorney.

Thank-you.

Donna M. Asure
Forks Township Right to Know Officer

Exhibit "C"