

IN THE MATTER OF:	)	
	)	
RALPH MOERSCHBACHER,	)	
Requester,	)	Docket: AP 2021-2790
	)	
v.	)	
	)	
CITY OF LOCK HAVEN,	)	
Respondent.	)	

FINAL DETERMINATION OF APPEAL FROM  
RECONSIDERATION BY CITY AGENCY

The initial request occurred on or about November 19, 2021. The City’s only response/objection at that time was the file format was not one they were willing to accept. Consequently, the Office of Open Records (OOR) granted the request and ordered disclosure of the records requested by Moerschbacher. Next, the City filed for reconsideration based on the nature of the material requested. The City submitted with the request for reconsideration the affidavit of Kristin Smith, Chief of Police, Lock Haven Police. She described the material possessed by the City as a ten-page report containing the following:

- a. The name of the individual who called the Police Department with the complaint concerning Mr. (Ralph) Moerschbacher’s potential illegal activity;
- b. Narratives of witness interviews;
- c. Appended to the ten-page report are nine pages of screenshots of Mr. Moerschbacher’s public Facebook posts about his

juvenile granddaughter, regarding sensitive and private information.

Requester-Moerschbacher did not respond to the City's reconsideration petition.

Sufficient evidence exists to move forward with a determination.

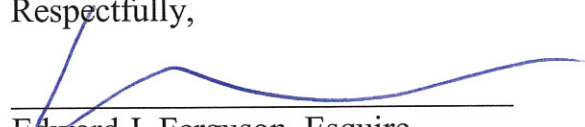
## DISCUSSION

Under the RTK Law, records in the possession of an agency are presumed to be public unless the records are exempt from disclosure. *See Pa. State Police v. Kim*, 150 A.3d 155 (Pa. Commw. Ct. 2016). Ultimately, the burden is on the agency claiming the exemptions to prove the exemptions by a preponderance of the evidence. *See* 65 Pa.C.S. § 67.708(a); *See Also Pa. OIG v. Brown*, 152 A.3d 369 (Pa. Commw. Ct. 2016). A sworn affidavit under penalty of perjury is generally competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520 (Pa. Commw. Ct. 2011). The exemptions that apply to the records possess by the City are in sections 65 Pa.C.S. § 708(b)(16)(i) and (ii) of the RTK law referring to criminal investigation records of "...potential criminal conduct..." and "Investigative materials, notes, correspondence, videos and reports." The most relevant definition of a criminal investigation for this information type is contained in CHRIA at 18 Pa.C.S. § 9102, "information assembled as a result of the performance of any inquiry, form or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information." Alternatively, an additional basis for denial is that disclosing the requested material is a violation of the Criminal History Record Information Act (CHRIA) at 18 Pa.C.S. § 9106(C)(4).

The City met its burden of production in this matter clearly outlining a scenario where every record gathered related directly in response to a complaint by an effected individual (complainant) that then progressed to a criminal investigation. Whether the matter is charged or not is irrelevant for this analysis. These materials/records sought are clearly “Investigative materials, notes, correspondence, videos, and reports” and are exempt from disclosure under the RTK Law and CHRIA. See 65 Pa.C.S. § 708(b)(16)(i) and (ii) and 18 Pa.C.S. § 9106(C)(4) respectively. Based on the foregoing, the City’s petition for reconsideration is granted. The Moerschbacher’s request should be, and is, DENIED.

Dated this 24<sup>th</sup> day of March, 2022.

Respectfully,



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Edward J. Ferguson, Esquire  
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RTK Law Appeals Officer  
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**Final Determination emailed/mailed: March 24, 2022.**

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