

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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No. \_\_\_\_\_ MAP 2015

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Pennsylvania State Police,

Petitioner

v.

Michelle Grove,

Respondent

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**Petition for Allowance of Appeal, Pennsylvania State Police**

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Appeal from the Commonwealth Court's Opinion of July 7, 2015 at Docket No. 1146 CD 2014 affirming in part, reversing in part and remanding in part the Final Determination of the Office of Open Records Docket No. AP 2014-0828 dated June 17, 2014.

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DATE: August 6, 2015

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B. Is a video, created as a result of a Pennsylvania State Trooper initiating a criminal investigation, exempt from disclosure under the Criminal History Records Information Act?

C. Is a video depicting troopers at a crash scene in which citations were issued “speaking with the operators of the vehicles,” “observing the crash scene and the damage to the vehicles,” and “directing the operator of the truck involved in the accident to move his vehicle to a safer area,” considered investigative materials pursuant to Section 708(b)(16) of the Right-To-Know Law?

D. Is a video depicting troopers at a crash scene in which citations were issued “speaking with the operators of the vehicles,” “observing the crash scene and the damage to the vehicles,” and “directing the operator of the truck involved in the accident to move his vehicle to a safer area,” considered investigative information pursuant to the Criminal History Records Information Act?

E. Do provisions of the Wiretapping and Electronic Surveillance Act apply to the audio component of mobile vehicle recordings?

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## **REFERENCE TO REPORT OF OPINIONS BELOW**

The Commonwealth Court issued its panel Opinion of July 7, 2015, affirming in part and reversing in part the Final Determination of the Office of Open Records, dated June 17, 2014. The Commonwealth Court's Opinion is attached hereto as Appendix A.

The Office of Open Records issued its Final Determination in the matter of *Michelle Grove v. Pennsylvania State Police*, AP 2014-0828, granting the appeal and requiring the Pennsylvania State Police to provide records responsive to her Right-To-Know Law Request. The Office of Open Records' Final Determination is attached hereto as Appendix B.

**TEXT OF THE ORDER IN QUESTION**

Order

AND NOW, this 7<sup>th</sup> day of July, 2015, the Application of Petitioner Pennsylvania State Police (PSP) to Supplement the Record is GRANTED. The final determination of the Office of Open Records (OOR) is AFFIRMED insofar as it held that the requested video and audio recordings at issue are public records and insofar as it ordered PSP to provide an unredacted copy to Respondent of the requested video recording made by Trooper Vanorden. The final determination of the OOR is REVERSED insofar as it ordered PSP to provide an unredacted copy to Respondent of the requested video and audio recording made by Trooper Thomas. This matter is REMANDED to OOR with instructions to permit PSP to redact the portions of the audio component of the Thomas recording that contain witness interviews and utterances from private citizens who had no notice of the recording prior to providing that recording to Respondent.

Jurisdiction relinquished.

/s/  
JAMES GARDNER COLINS, Senior Judge

## QUESTIONS FOR REVIEW

- A. Is a video, created as a result of a Pennsylvania State Trooper initiating a criminal investigation, exempt from disclosure under Section 708(b)(16) of the Right-to-Know Law?

*Suggested Answer: Yes*

- B. Is a video, created as a result of a Pennsylvania State Trooper initiating a criminal investigation, exempt from disclosure under the Criminal History Records Information Act?

*Suggested Answer: Yes*

- C. Is a video depicting troopers at a crash scene in which citations were issued “speaking with the operators of the vehicles,” “observing the crash scene and the damage to the vehicles,” and “directing the operator of the truck involved in the accident to move his vehicle to a safer area,” considered investigative materials pursuant to Section 708(b)(16) of the Right-To-Know Law?

*Suggested Answer: Yes*

- D. Is a video depicting troopers at a crash scene in which citations were issued “speaking with the operators of the vehicles,” “observing the crash scene and the damage to the vehicles,” and “directing the operator of the truck involved in the accident to move his vehicle to a safer area,” considered investigative information pursuant to the Criminal History Records Information Act?

*Suggested Answer: Yes*

E. Do provisions of the Wiretapping and Electronic Surveillance Act apply to the audio component of mobile vehicle recordings?

*Suggested Answer: Yes*

F. Should this case be remanded for further factual findings to determine whether modifying a mobile vehicle recording, as required by the Commonwealth Court, essentially creates a record in violation of Section 705 of the Right-To-Know Law?

*Suggested Answer: Yes*

## STATEMENT OF THE CASE

Petitioner, the Pennsylvania State Police (PSP), has law enforcement jurisdiction in all political subdivisions in the Commonwealth. PSP Troopers devote their time to traffic enforcement, criminal investigations, and other public safety activities. To assist troopers in carrying out their duties, PSP has installed mobile vehicle recording (MVR) equipment in every PSP patrol vehicle. *See*, Rozier Affidavit ¶¶ 14-16.<sup>1</sup> The MVR equipment is typically started when a patrol vehicle's lights and siren are activated; however, a trooper may also manually start the equipment. Rozier Affidavit ¶ 14. PSP has promulgated field regulations governing the use of the MVRs. Rozier Affidavit ¶ 15. PSP Field Regulation 6-12 explains that MVRs are to be used in the following situations: traffic and criminal enforcement stops; in-progress vehicle and crimes code violations; police pursuits; field interviews, interrogations, and intoxication testing; patrol vehicle travel and movements when emergency lights and/or siren are activated; fatal crash or major crime scenes, as necessary, to document the scene; traffic safety and sobriety checkpoints, at the discretion of the checkpoint supervisor; prisoner transports; searches of vehicles and/or persons and any other incident the member deems

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<sup>1</sup> Pursuant to Pa.R.A.P. 121, PSP requested that the Commonwealth Court consider additional evidence into the record in the form of an Affidavit from PSP's Agency Open Records Officer, William A. Rozier. The court accepted this additional evidence. Appendix A, Slip Op. at 3-4. Mr. Rozier's Affidavit is attached hereto as Appendix C.

appropriate while acting in the performance of their official duties. Rozier Affidavit ¶ 16.

**A. The Initial RTKL Request and PSP's Final Response**

On March 25, 2014, Michelle Grove, a bystander at the scene of the underlying automobile crash in this case, submitted a RTKL request to PSP seeking “a copy of the police report and any video/audio taken by the officers at Crash Sr 144 Potters Mills Incident #G07-1359421...” (R.R. at 1a). After invoking the statutorily permitted thirty (30)-day extension, PSP provided a public version of the police report. (R.R. at 4a-9a). However, additional responsive records, namely the police crash report (designated G04-1359421) and any of its attachments, were withheld from Grove under the criminal investigation exception of the RTKL and Criminal History Records Information Act. (R.R. at 4a – 7a). Additionally, the MVRs requested by Grove relating to the crash report also appeared to involve the call made to 911 in which the crash was reported. Therefore, PSP advised that it withheld disclosure based on Section 708(b)(18)(i) as a record or part of a record, “pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.” 65 P.S. § 67.708(b)(18)(i).

## **B. The Appeal to the Office of Open Records**

Grove appealed PSP's final response to the Office of Open Records (OOR), limiting the issue to the disclosure of the MVRs. On appeal to the OOR, PSP argued that pursuant to prior OOR precedent on the issue, the MVRs were exempt from disclosure under Section 708(b)(16) of the RTKL. However, despite its prior precedent, the OOR concluded that PSP did not meet its burden in proving that the MVRs are exempt from disclosure under 708(b)(18)(i) or 708(b)(16) of the RTKL. The OOR granted Grove's appeal and ordered PSP to provide Grove the responsive MVRs.

## **C. The Appeal to the Commonwealth Court**

On July 10, 2014, PSP filed a Petition for Review in the Commonwealth Court arguing that the responsive MVRs are exempt from disclosure pursuant to the criminal investigation exception in the RTKL and CHRIA. PSP also argued that the audio portions of the MVR cannot be disclosed pursuant to the Wiretapping and Electronic Surveillance Control Act, 18 Pa. C.S. §§ 5701-5782 (Wiretap Act). In addition to its brief, PSP filed a concurrent Application for Special Relief requesting that the court expand the record to include an Affidavit from PSP's Agency Open Records Officer, which explained the relationship of the records to a criminal investigation and their exemption from public disclosure.

The Affidavit explained that one MVR depicted a Trooper "speaking with

the operators of the vehicles,” “observing the crash scene and the damage to the vehicles,” and “directing the operator of the truck involved in the accident to move his vehicle to a safer area.” Rozier Affidavit ¶ 10. The Affidavit also explained that the second MVR depicted a second Trooper interviewing the operators of the vehicles and obtaining license, registration, and insurance information from them. Rozier Affidavit ¶ 11.

On July 7, 2015, in an opinion authored by Senior Judge Colins, the Commonwealth Court granted the Application for Special Relief and made the Affidavit a part of the record. The court then affirmed the OOR’s order requiring PSP to release the MVRs, observing that “MVRs themselves are [ ] not investigative material or videos, investigative information, or records relating or resulting in a criminal investigation exempt from disclosure under Section 708(b)(16) of the RTKL or CHRIA.” *See* Appendix A, Slip Op. at 9. However, the Commonwealth Court reversed and remanded, in part, with respect to the audio component of one of the MVRs, permitting PSP to “redact the portions of MVRs that contain actual investigative information, such as witness interviews, but may not withhold an entire MVR on the basis that part of it is investigative.” *See* Appendix A, Slip Op. at 11.

## REASONS FOR ALLOWANCE OF APPEAL

This is a case of first impression and of substantial public importance as to require a definitive resolution by this Court related to the application of the RTKL to MVRs. *See* Pa. R.A.P. 1114. This case raises important questions of what constitutes a record “related” to a criminal investigation under section 708(b)(16) of the RTKL; what constitutes “investigative information” under the Criminal History Records and Information Act (CHRIA); the applicability of the Wiretapping and Electronic Surveillance Control Act (Wiretap Act), 18 Pa. C.S. §§ 5701-5782, to the disclosure of the audio component of MVRs; and whether modifying the MVRs to remove investigative information calls for PSP to create a record in violation of Section 705 of the RTKL.

Due to their investigative function and how they are used by law enforcement agencies, dissemination of MVRs through the RTKL present legal and practical issues beyond those of other records a public agency may retain. The Commonwealth Court’s decision below has highlighted these issues, compelling this Court’s review. As stated below, there are several independent grounds on which this Court should review and reverse the decision of the Commonwealth Court.

**I. THE COMMONWEALTH COURT MISINTERPRETED THE CRIMINAL INVESTIGATION EXCEPTION IN THE RTKL AS APPLIED TO MVRs.**

A primary issue here is one of statutory interpretation. In analyzing the RTKL and its various exceptions, the Statutory Construction Act of 1972 guides the analysis. *Dept. of Health v. Office of Open Records*, 4 A.3d 803, 810 (Pa. Commw. Ct. 2010). The Act makes clear that “[w]hen the words of a statute are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S. § 1921(b). Here, the applicable exemption from disclosure is the criminal investigation exception found in Section 708(b)(16) of the RTKL. The exception reads in relevant part that “[a] record of an agency *relating to or resulting in a criminal investigation*” is exempt from disclosure. 65 P.S. § 67.708(b)(16) (emphasis added). Here, the MVRs were only created because the troopers initiated and conducted a criminal investigation; therefore, the MVRs at issue clearly relate to that investigation. Rozier Affidavit ¶ 9.

In its opinion, the Commonwealth Court found that a criminal investigation took place; however, a video depicting the crash scene and a trooper speaking with the operators of the vehicles, observing the crash scene, and directing the operator of the truck involved in the accident to move his vehicle to a safer area were not “investigative” actions, and therefore, were not exempt from disclosure. Appendix

A, Slip Op. at 11. This finding by the Commonwealth Court is wholly contrary to the words of the statute. Certainly a video depicting the scene of a crime, who the accused are, and who the witnesses are, is a record of actions performed during a criminal investigation, if not essentially the investigation itself, and exempt from disclosure under Section 708(b)(16) of the RTKL.

Furthermore, the language used in this case by the Commonwealth Court effectively re-writes the criminal investigation exception. The Commonwealth Court stated that “[t]he mere fact that a record has some connection to a *criminal proceeding* does not automatically exempt it under Section 708(b)(16) of the RTKL or CHRIA.” Appendix A, Slip Op. at 8 (emphasis added). This is not the proper standard to analyze whether a record is exempt from disclosure under Section 708(b)(16). Section 708(b)(16) requires only that a record be “relat[ed] to or result[ed] in a *criminal investigation*” to be exempt. 65 P.S. § 67.708(b)(16) (emphasis added). The MVRs here depict a criminal investigation. The Commonwealth Court’s language here allows for any person who files a Right-To-Know request to sift through the investigative records of law enforcement agencies and argue that a particular record only appears to have a “mere connection,” and is thus available to the public.

Furthermore, this language also has the effect of permitting the OOR to make determinations of whether a particular record or portions of a record within

an investigative file is “investigatory.” In order to meet their burden, law enforcement agencies would be forced to provide detailed explanations of the records, which could undercut the criminal investigation. Lastly, whether or not there is a “criminal proceeding” as the court stated is irrelevant under the criminal investigation exception. The Commonwealth Court’s attempt to forecast the future and analyze whether the exception applies based on a record’s potential use in a future criminal proceeding is improper. The correct inquiry is the narrow question of whether the MVRs are related to a criminal investigation.

## **II. PSP IS PROHIBITED FROM PROVIDING THE MVRs TO REQUESTER UNDER THE CRIMINAL HISTORY RECORDS INFORMATION ACT.**

The MVRs at issue in this case are investigative material under CHRIA. While the Commonwealth Court combined its analysis for disclosure of MVRs under Section 708(b)(16) of the RTKL and CHRIA, CHRIA provides a separate, independent statutory ground for the proposition that the MVRs are not public records. An agency does not have to disclose a record if the record is exempt under state law. 65 P.S. § 305(a)(3). Here, CHRIA not only exempts the MVRs from disclosure but mandates that PSP not disclose them to the Requester.

CHRIA prohibits the disclosure of criminal investigative information to departments, agencies, or individuals that are not classified as criminal justice agencies. 18 Pa. C.S § 9106(c)(4). CHRIA defines investigative information 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.” *Id.* at § 9102. In this case, the troopers responded to the scene of an automobile accident where citations were issued, which is a criminal incident. (R.R. 8a-9a). The MVRs were created as a direct result of PSP’s response to this criminal accident scene and they depict a formal inquiry into a criminal incident.(*See*, R.R. 8a-9a). Therefore, the MVRs meet the definition of “investigative information” under CHRIA. Because the MVRs fall squarely within the definition of “investigative information” under CHRIA, they are exempt from disclosure in their entirety. *See* 65 P.S. § 305(a)(3). Furthermore, video depictions of a Trooper “speaking with the operators of the vehicles,” “observing the crash scene and the damage to the vehicles,” and “directing the operator of the truck involved in the accident to move his vehicle to a safer area” Rozier Affidavit ¶ 10, are clearly investigative materials and exempt from disclosure.

### **III. THE COMMONWEALTH COURT MISAPPLIED PROVISIONS OF THE WIRETAP ACT WHEN IT HELD THAT AUDIO INTERCEPTIONS OF MVRs ARE NOT GOVERNED BY THE ACT.**

In reviewing this case de novo, the Commonwealth Court used its review power to consider additional arguments against disclosure. *Levy v. Senate of Pa,*

65 A.3d 361, 383 (Pa. 2013) (holding that an agency does not waive reasons for non-disclosure not raised in its initial 903 response). The Court held that the Wiretap Act does not apply to persons who had notice that they are being recorded by the MVR. The Pennsylvania Legislature crafted the provisions of the Wiretapping and Electronic Surveillance Act with a conservative and narrow view to protect the privacy interests of its citizens. 18 Pa.C.S. § 5703 reads:

Except as otherwise provided in this chapter, a person is guilty of a felony of the third degree if he:

(2) Intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication.

The Act defines an “oral communication” as:

Any oral communication uttered by a person possessing an expectation of privacy that such communication is not subject to interception under circumstances justifying such expectation.

18 Pa. C.S. § 5702.

It is apparent that the definition of “oral communication” does not prohibit the interception of all oral communications. Instead, an oral communication is protected when it is uttered by a person exhibiting an expectation of privacy under circumstances justifying such an expectation. *See, Agnew v. Depler*, 717 A.2d 519, 522-523 (Pa. 1988).

While the Commonwealth Court may have properly concluded that a police officer and a citizen may not have a reasonable expectation of non-interception since both parties know that their conversation is being recorded, the inquiry to determine if these conversations fall within the definition of “oral communications” does not end there.

Although a person may have notice that their conversation recorded, they do not necessarily consent to public dissemination of the conversation through a RTKL request by any interested member of the public. It is clear that the Legislature considered and recognized that there is a legitimate privacy interest involved in the MVRs which capture police and citizen interaction, since it fashioned the MVR exception (18 Pa. C.S. § 5704(16)) to the general prohibitions of interception and limited their ability to be disclosed in 18 Pa. C.S. § 5703.

Moreover, this Court recognized that a privacy interest exists in conversations in *Agnew*, which held that “it is not possible to have an expectation of non-interception absent an expectation of privacy. *Id.*, 717 A.2d 519, 523 (Pa. 1988). Here, the Commonwealth Court has allowed the apparent expectation of non-interception to outweigh the overriding expectation of privacy. This privacy interest is again illustrated by the consideration that the Pennsylvania Legislature took to restrict access to this type of interception under the Act. In dealing with interceptions made under the MVR provision, there are three applicable sections of

the Act that address possible disclosure of the content of an MVR. All three are very narrowly tailored and do not consider that a MVR would ever be contemplated as a public record under the RTKL. *See*, 18 Pa. C.S. §§ 5717, 5721.1, 5749.

**IV. THE COMMONWEALTH COURT'S DECISION REQUIRES PSP TO CREATE A RECORD IN VIOLATION OF SECTION 705 OF THE RTKL.**

The Commonwealth Court found that MVRs themselves are public records subject to redaction under Section 706 of the RTKL. Appendix A, Slip Op. at 9-10. However, redaction of a MVR calls for PSP to create a record in violation of Section 705 of the RTKL. Section 705 states:

When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.

65 P.S. § 67.705.

Redaction of an MVR, an electronic record, is different than blacking out information on paper. In order to comply with the Commonwealth Court's decision, PSP must modify the actual content of the video and create a video different from the original in both length and content by cutting away the investigatory material. Thus the video component of the MVR will be reformatted and reorganized to exclude the investigatory material. Additionally, in some

circumstances, the MVR must be further modified to separate investigatory material found in the audio component from the video. Therefore, in future requests for MVRs, PSP must make a subjective determination of what content on the MVR is investigatory and then undertake the technical duties of completely modifying the MVR to comply with RTKL request. This process is creating a record as PSP will have constructed a second MVR that is entirely different from the original, which is prohibited by Section 705 of the RTKL.

In *Fort Cherry Sch. Dist. v. Acton*, 2012 Pa. Commw. Unpub. LEXIS 104 (Pa. Commw. Ct. 2012), the Commonwealth Court acknowledged that there is tension between Sections 705 and 706 of the RTKL. The Court stated:

This case illustrates the tension between § 705 of the RTKL, 65 P.S. § 67.705, which provides that an agency shall not be required to "compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record," and § 706, 65 P.S. § 67.706, which mandates that if, "information which is not subject to access is an integral part of [a public record] . . . and cannot be separated, the agency shall redact from the record the information which is not subject to access," but grant access to the remainder. Our court has not had occasion to attempt to define the parameters of the terms "compile, format, maintain or organize," but if they are read in their broadest senses, § 705 would conflict with § 706, as redaction necessarily implicates a change in the records. Therefore, it would appear that reconciling the need to redact electronically stored information with the proviso that it need not be "recompiled, reformatted or reorganized" requires a highly fact-sensitive balancing in each case.

In this case and future cases "redaction" would require PSP to recompile, reformat, and reorganize the MVR. Therefore, this case should be remanded for

further factual findings to determine whether the Commonwealth Court's decision is consistent with Section 705 of the RTKL.

**CONCLUSION**

The Commonwealth Court's decision directly impacts the ability of law enforcement agencies to effectively conduct criminal investigations. Furthermore, as outlined above, the Commonwealth Court's decision raises issues of fundamental statewide importance as well as important questions of first impression. For all of the reasons cited herein, the Pennsylvania State Police respectfully requests that this Honorable Court grant an allowance of appeal.

Respectfully submitted:

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# APPENDIX A

Appendix A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pennsylvania State Police,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1146 C.D. 2014
	:	Submitted: January 23, 2015
Michelle Grove,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JAMES GARDNER COLINS, Senior Judge

**OPINION BY  
SENIOR JUDGE COLINS**

**FILED: July 7, 2015**

This matter is a petition for review filed by the Pennsylvania State Police (PSP) appealing a final determination of the Office of Open Records (OOR), which ordered PSP to provide to Michelle Grove (Requester) copies of two recordings of PSP troopers at the scene of a traffic accident made by video recording equipment in PSP vehicles. The primary issue presented by this appeal is whether such video recordings of interaction between law enforcement officers and members of the public in a public place are exempt from disclosure as criminal investigative records under the Right-to-Know Law (RTKL)<sup>1</sup> and the Criminal History Record Information Act (CHRIA).<sup>2</sup> We conclude that such recordings are not exempt from disclosure. We therefore affirm the OOR’s order requiring PSP

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<sup>1</sup> Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101–67.3104.

<sup>2</sup> 18 Pa. C.S. §§ 9101–9183.

to provide a copy of one of the video recordings, which contains no audio component, but reverse and remand with respect to the second recording to permit PSP to make limited redactions of exempt information from the audio component of that recording.

On March 24, 2014, Requester submitted to PSP a request under the RTKL seeking “a copy of the police report and any video/audio taken by the officers” at the site of a two-vehicle accident on State Route 144 in Potter Township. (Record Item (R. Item) 1, RTKL Appeal, Reproduced Record (R.R.) at 1a, 8a; R. Item 5, OOR Final Determination at 1.) On May 1, 2014, after extending its deadline to respond pursuant to Section 902 of the RTKL, 65 P.S. § 67.902, PSP partially denied the Request, providing the Public Information Release Report of the accident, but withholding other records on the ground that they were exempt from disclosure as criminal investigative records under Section 708(b)(16) of the RTKL, 65 P.S. § 67.708(b)(16), and CHRIA. (R. Item 1, RTKL Appeal, R.R. at 4a-9a.) In this response, PSP also asserted that video and audio recordings were exempt as records “pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings,” under Section 708(b)(18)(i) of the RTKL, 65 P.S. § 67.708(b)(18)(i). (*Id.*, R.R. at 6a.) With its response, PSP provided a verification of its Deputy Agency Open Records Officer that gave no description of the responsive video and audio recordings or the nature or purpose of such recordings and merely stated the conclusion that such recordings qualified for exemption under Section 708(b)(18)(i). (*Id.*, R.R. at 6a-7a; R. Item 3, PSP Submission to OOR, R.R. at 10a-11a.)

Requester timely appealed to OOR PSP's denial of her request for audio and video recordings, including recordings made by "dash cams and body recorders." (R. Item 1, RTKL Appeal, R.R. at 16a-17a.) PSP submitted a letter memorandum of counsel to OOR in response to this appeal, in which it argued that under past OOR decisions, recordings made by video recorders in PSP vehicles are criminal investigative records exempt under Section 708(b)(16) of the RTKL. (R. Item 3, PSP Submission to OOR, R.R. at 18a-19a.) In this memorandum, PSP also relied on the verification of its Deputy Agency Open Records Officer that it had provided in its response to Requester, but submitted no other affidavit, verification or other evidence. (*Id.*) On June 17, 2014, OOR issued a final determination requiring PSP to provide copies of all responsive recordings to Requester, concluding that the verification submitted by PSP was insufficient to show that the recordings were of transmissions received by emergency dispatch personnel and that PSP had not submitted any evidence that the recordings were investigative records. (R. Item 5, OOR Final Determination at 4-5.)

On appeal to this Court, PSP does not contend that the recordings at issue are transmissions or recordings received by emergency dispatch personnel and does not claim any exemption from disclosure under Section 708(b)(18)(i) of the RTKL. Rather, PSP argues that its vehicle video recordings are exempt under Section 708(b)(16) of the RTKL and Section 9106(c)(4) of CHRIA as criminal investigative records. PSP has also filed an application to supplement the record, seeking to submit an affidavit of its Open Records Officer William Rozier (the Rozier Affidavit) as additional evidence for this Court's consideration.

We must first consider whether PSP's supplementation of the record should be allowed. Under the RTKL, this Court exercises plenary, *de novo* review

of OOR determinations involving Commonwealth agencies such as PSP. *Bowling v. Office of Open Records*, 75 A.3d 453, 477 (Pa. 2013); *Hunsicker v. Pennsylvania State Police*, 93 A.3d 911, 913 n.7 (Pa. Cmwlth. 2014). Where the record before OOR is inadequate to determine whether requested material is exempt from disclosure, this Court has discretion to permit a party to enlarge the record on appeal and to consider additional evidence. *Bowling*, 75 A.3d at 476; *Carey v. Pennsylvania Department of Corrections*, 61 A.3d 367, 371 n.3, 377 (Pa. Cmwlth. 2013); *Department of Environmental Protection v. Cole*, 52 A.3d 541, 546 n.6, 549-50 & n.14, 552 (Pa. Cmwlth. 2012). Consideration of additional evidence is particularly appropriate where the requested items involve law enforcement or public security issues and the OOR record contains no information on their nature and content. *Carey*, 61 A.3d at 377.

Here, the OOR record is devoid of any information as to what video or audio recordings are at issue here, what they contain, or the reasons such recordings are made. The Rozier Affidavit that PSP seeks to submit addresses these matters and supplies information concerning the responsive recordings and PSP's policies concerning and reasons for making such recordings. (Rozier Affidavit ¶¶9-19, attached to PSP Application to Supplement Record as Ex. 1.) An agency is not entitled to ignore its burden to show exemption from disclosure before OOR and rely on supplementation of the record in this Court to avoid the consequences of that conduct. *See Pennsylvania Turnpike Commission v. Murphy*, 25 A.3d 1294, 1297-98 (Pa. Cmwlth. 2011) (denying supplementation of record on appeal as an attempt to obtain "a proverbial second bite of the apple" where there was no apparent reason for the failure to submit the additional affidavits to OOR). That, however, is not the case here. Based on prior OOR decisions that OOR had

not yet overruled, *Otto v. Pennsylvania State Police*, (Pa. Off. Open Rec. Docket No. AP 2013-2323, filed Jan. 3, 2014), and *Keller v. Pennsylvania State Police*, (Pa. Off. Open Rec. Docket No. AP 2014-0241, filed Mar. 13, 2014), PSP had reason to believe that evidence concerning the nature and contents of its police vehicle recordings was unnecessary to OOR's evaluation of the appeal. Because the Rozier Affidavit provides facts necessary to a proper evaluation of whether the recordings at issue are investigative records and the absence of this evidence from the OOR record does not appear to be a result of agency disregard of its obligation to submit evidence to OOR, consideration of this additional evidence is appropriate. *Carey*, 61 A.3d at 377; *Cole*, 52 A.3d at 552. We therefore grant PSP's application to supplement the record, and we consider the Rozier Affidavit in addressing the merits of this appeal.

The Rozier Affidavit establishes that there are two PSP video recordings responsive to Requester's RTKL request. (Rozier Affidavit ¶9.) These videos, referred to by PSP as "mobile vehicle recordings" (MVRs), were recorded by video recording equipment in the vehicles of the two PSP troopers who responded to the accident scene. (*Id.* ¶¶10-11.) Trooper Vanorden was the first officer to arrive at the scene, and the MVR from his vehicle (the Vanorden MVR) contains no audio component. (*Id.* ¶10.) According to the Rozier Affidavit, the Vanorden MVR shows the trooper speaking with the two drivers involved in the accident and directing one of the drivers to move his vehicle. (*Id.* ¶10.) The second officer to arrive at the scene, Trooper Thomas, is the author of the incident report, and the MVR from his vehicle (the Thomas MVR) contains both video and audio. (*Id.* ¶11; R. Item 1, RTKL Appeal, R.R. at 8a.) According to the Rozier

Affidavit, the Thomas MVR includes interviews of the two drivers and bystanders concerning the accident. (Rozier Affidavit ¶¶11, 19.)

The Rozier Affidavit also sets forth how the recording system is operated and PSP's guidelines for its use. The MVR equipment is activated and begins recording when a trooper turns on his emergency lights or siren. (Rozier Affidavit ¶14.) PSP's internal field regulations provide that MVR equipment is to be used both to document investigative work and also to record "[t]raffic and criminal enforcement stops," "[i]n-progress Vehicle and Crimes Code violations," "[p]olice pursuits," "[p]atrol vehicle travel and movements when emergency lights and/or siren are activated," "[p]risoner transports," and "[a]ny other incident the member deems appropriate while acting in the performance of their official duties." (*Id.* ¶¶15-16.)

Under the RTKL, information documenting the actions of a Commonwealth or local agency that is in the agency's possession is presumed to be a public record unless it is (1) exempt under Section 708 of the RTKL; (2) protected by a privilege; or (3) exempt from disclosure under another federal or state law or regulation or judicial order. Sections 102 and 305 of the RTKL, 65 P.S. §§ 67.102, 67.305; *Pennsylvania State Police v. McGill*, 83 A.3d 476, 479 (Pa. Cmwlth. 2014) (*en banc*); *Carey*, 61 A.3d at 371-72. Where a government agency claims that a requested record is exempt from public access, the agency has the burden of proving by a preponderance of evidence that the exemption asserted applies. 65 P.S. § 67.708(a)(1); *Bowling*, 75 A.3d at 457, 468-69; *Levy v. Senate of Pennsylvania*, 65 A.3d 361, 374, 381 (Pa. 2013); *McGill*, 83 A.3d at 479; *Carey*, 61 A.3d at 372-73. The RTKL is designed to promote access to government information in order to prohibit secrets, permit scrutiny of the actions of public

officials, and make public officials accountable for their actions. *Levy*, 65 A.3d at 381; *McGill*, 83 A.3d at 479; *Cole*, 52 A.3d at 547. Exemptions from disclosure must therefore be narrowly construed. *McGill*, 83 A.3d at 479; *Carey*, 61 A.3d at 373.

As noted above, PSP argues that both MVRs are exempt from disclosure under Section 708(b)(16) of the RTKL and Section 9106(c)(4) of CHRIA. Section 708(b)(16) of the RTKL exempts from disclosure:

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

\* \* \*

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

65 P.S. § 67.708(b)(16).<sup>3</sup> Section 9106(c)(4) of CHRIA provides:

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<sup>3</sup> Section 708(b)(16) provides that “the following are exempt from access” under the RTKL:

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

(i) Complaints of potential criminal conduct other than a private criminal complaint.

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

(iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.

(iv) A record that includes information made confidential by law or court order.

(v) Victim information, including any information that would jeopardize the safety of the victim.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

(B) Deprive a person of the right to a fair trial or an impartial adjudication.

(C) Impair the ability to locate a defendant or codefendant.

(D) Hinder an agency’s ability to secure an arrest, prosecution or conviction.

(E) Endanger the life or physical safety of an individual.

**(Footnote continued on next page...)**

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.

18 Pa. C.S. § 9106(c)(4) (emphasis added). CHRIA defines “[i]nvestigative information” 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. § 9102. The RTKL does not define what constitutes “investigative” videos and materials.

PSP argues that both MVRs are criminal investigative records because the motor vehicle accident to which they relate resulted in traffic citations, which are summary criminal offenses, and because one of the troopers investigated the accident before issuing the citations. We do not agree that these facts make the recordings investigative or exempt them as records “relating to or resulting in a criminal investigation.” The mere fact that a record has some connection to a criminal proceeding does not automatically exempt it under Section 708(b)(16) of the RTKL or CHRIA. *Coley v. Philadelphia District Attorney’s Office*, 77 A.3d 694, 697-98 (Pa. Cmwlth. 2013) (while witness statements were exempt as investigative under Section 708(b)(16) and CHRIA, immunity agreement with

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(continued...)

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa. C.S. § 9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa. C.S. § 3754(b) (relating to accident prevention investigations).

65 P.S. § 67.708(b)(16).

witness was not exempt unless its contents were shown to be investigative information). The types of records that we have held protected from RTKL disclosure under Section 708(b)(16) and CHRIA as investigative are records created to report on a criminal investigation or set forth or document evidence in a criminal investigation or steps carried out in a criminal investigation. See *Hunsicker*, 93 A.3d at 912 (report of death investigation); *Barros v. Martin*, 92 A.3d 1243, 1245-46, 1249-50 (Pa. Cmwlth. 2014) (criminal complaint file, confession, polygraph test, forensic lab reports, internal police review documents and witness statements); *Coley*, 77 A.3d at 697 (witness statements); *Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473, 479 (Pa. Cmwlth. 2010) (police incident report setting forth notes of witness interviews and reporting whether investigative tasks had been carried out); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1263, 1266 (Pa. Cmwlth. 2010) (memorandum setting forth facts concerning execution of search warrant).

In contrast, PSP's evidence demonstrates that the MVRs are created to document troopers' performance of their duties in responding to emergencies and in their interactions with members of the public, not merely or primarily to document, assemble or report on evidence of a crime or possible crime. The MVR equipment is activated when an officer's siren or emergency lights are turned on, a non-investigative event. (Rozier Affidavit ¶14.) Moreover, PSP uses MVRs to document the entire interaction and actions of the trooper, including actions which have no investigative content, such as directions to motorists in a traffic stop or at an accident scene, police pursuits, and prisoner transports. (*Id.* ¶¶10, 16.) MVRs themselves are therefore not investigative material or videos, investigative information, or records relating or resulting in a criminal investigation exempt

from disclosure under Section 708(b)(16) of the RTKL or CHRIA. Indeed, as documentation of law enforcement officers' conduct in carrying out their duties, MVRs are records at the core to the RTKL's purpose of enabling the public to "scrutinize the actions of public officials, and make public officials accountable for their actions." *McGill*, 83 A.3d at 479.<sup>4</sup>

PSP has shown that MVRs can contain witness interviews, interrogations, intoxication testing and other investigative work, and that a portion of one of the two MVRs here, the Thomas MVR, includes witness interviews. (Rozier Affidavit ¶¶11, 16.) We agree that such portions of an MVR are investigative information exempt from disclosure by Section 708(b)(16) of the RTKL and CHRIA. The fact that parts of a public record contain exempt information does not, however, immunize the non-exempt portions from disclosure; rather, in such circumstances, the agency must produce the record with the exempt information redacted. Section 706 of the RTKL, 65 P.S. § 67.706; *Advancement Project v. Pennsylvania Department of Transportation*, 60 A.3d 891, 894 (Pa. Cmwlth. 2013). Section 706 of the RTKL provides:

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which

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<sup>4</sup> The fact that OOR held that MVRs are investigative records in its *Otto* and *Keller* decisions, which it has since overruled, is not a basis for finding MVRs exempt from disclosure. OOR decisions have no precedential value in this Court, *Scott v. Delaware Valley Regional Planning Commission*, 56 A.3d 40, 44 (Pa. Cmwlth. 2012), and we do not find those decisions persuasive.

is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.

65 P.S. § 67.706. *See also Advancement Project*, 60 A.3d at 894 (“an agency cannot deny access to a record that contains non-disclosable information if that information can be redacted”). Therefore, PSP is entitled to redact the portions of MVRs that contain actual investigative information, such as witness interviews, but may not withhold an entire MVR on the basis that part of it is investigative.

Applying these principles to the two MVRs at issue here, we conclude that PSP has not shown that the Vanorden MVR has any investigative content. This MVR has only a video component and the Rozier Affidavit describes it as depicting the trooper “speaking with the operators of the vehicles,” “observing the crash scene and the damage to the vehicles,” and “directing the operator of the truck involved in the accident to move his vehicle to a safer area.” (Rozier Affidavit ¶10.) PSP does not contend that this MVR shows any measurements, collection of evidence, physical inspection or analysis of what the accident scene showed. PSP has therefore not shown that this MVR contains any investigative information that it could be entitled to redact. Accordingly, OOR did not err in ordering PSP to provide a copy of this MVR in its entirety to Requester.

PSP has shown that some portions of the Thomas MVR contain investigative records and information. Unlike the Vanorden MVR, this MVR contains an audio recording that the Rozier Affidavit describes as including the trooper “interviewing the operators of the vehicles” and having “an extensive conversation with the operator of the truck concerning the status of his truck classification, with assistance from Trooper Vanorden via the telephone.” (Rozier

Affidavit ¶11.) PSP has not provided any evidence that the video depiction of these conversations contains any information as to their contents or that the video component of this MVR contains any other information that is investigative in nature. The audio of those conversations, however, are recordings of witness interviews. (*Id.*). Because those recorded interviews are part of an investigation of the accident that included possible criminal charges, they are records “relating to or resulting in a criminal investigation” and “investigative materials” exempt from disclosure under Section 708(b)(16) of the RTKL and “investigative information” under CHRIA. Accordingly, PSP must be permitted to redact the witness interviews from the audio component of the Thomas MVR prior to providing that MVR to Requester.

PSP also argues that disclosure of MVRs under the RTKL could violate the Wiretapping and Electronic Surveillance Control Act (Wiretap Act).<sup>5</sup> PSP did not raise this argument before OOR. Ordinarily, failure to raise a ground for non-disclosure before OOR constitutes a waiver of that issue. *Levy v. Senate of Pennsylvania*, 94 A.3d 436, 441-42 (Pa. Cmwlth. 2014) (although agency failure to raise an exemption in its denial of a request does not waive its right to argue that ground, grounds for nondisclosure not raised before the fact-finder in the appeal from its denial are waived). An agency, however, cannot waive third parties’ privacy rights. *Cole*, 52 A.3d at 551. We therefore address this belatedly raised issue.

As PSP concedes, the Wiretap Act restricts audio and other recordings of the contents of oral communications and electronic and wire communications, not video recordings that do not capture the content of any oral communication. 18

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<sup>5</sup> 18 Pa. C.S. §§ 5701-5782.

Pa. C.S. §§ 5702, 5703. The Wiretap Act is thus inapplicable to both the Vanorden MVR and the video portion of the Thomas MVR and cannot constitute grounds denying access to those video recordings. In addition, because these MVRs are recordings of events in a public place, disclosure of their video components does not raise issues of infringement of individuals' reasonable expectations of privacy. *Tagouma v. Investigative Consultant Services, Inc.*, 4 A.3d 170, 177-78 (Pa. Super. 2010).

While the audio portion of the Thomas MVR does include the contents of conversations, that fact by itself does not make it subject to the Wiretap Act. The Wiretap Act does not apply to non-wire oral communications where the speaker has notice that the conversation may be recorded. 18 Pa. C.S. § 5702 (defining “[o]ral communication” as “[A]ny oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation”); *Commonwealth v. Henlen*, 564 A.2d 905, 906-07 (Pa. 1989); *Gunderman v. Unemployment Compensation Board of Review*, 505 A.2d 1112, 1115 (Pa. Cmwlth. 1986). Because the troopers clearly had reason to believe that they were being recorded by their MVR equipment, audio recordings capturing their communications are not protected from disclosure by the Wiretap Act. None of the troopers' communications therefore can be redacted from the Thomas MVR audio based on the Wiretap Act.

With respect to the drivers and any other private citizens whose communications may have been recorded by the audio portion of the Thomas MVR, the record is unclear as to whether they had notice of the recording or any expectation that the interview was not subject to recording. We therefore do not

rule on whether the audio portions of the Thomas MVR recording their utterances are subject to the Wiretap Act. On remand, if PSP concludes that the drivers or any other private citizens who were recorded had no notice of the recording or reason to believe they were being recorded, it may redact their utterances from the audio portion of the Thomas MVR prior to providing it to Requester. If PSP makes such redactions and Requester believes that the communications are not protected by the Wiretap Act, she may appeal those redactions to OOR.

For the foregoing reasons, we affirm OOR's final determination to the extent that it concluded that the video and audio recordings at issue are public records subject to disclosure under the RTKL and ordered PSP to provide Requester with unredacted copies of the Vanorden MVR and video component of the Thomas MVR. We reverse OOR's decision to the extent that it required PSP to provide the audio component of the Thomas MVR without redaction and remand this matter to permit PSP, before providing that MVR to Requester, to redact from its audio component witness interviews and utterances of private citizens who had no notice of the recording.

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JAMES GARDNER COLINS, Senior Judge



# APPENDIX B

Appendix B



**pennsylvania**  
OFFICE OF OPEN RECORDS  
FINAL DETERMINATION

IN THE MATTER OF :  
MICHELLE GROVE, :  
Complainant :  
v. : **Docket No.: AP 2014-0828**  
PENNSYLVANIA STATE POLICE, :  
Respondent :

**INTRODUCTION**

Michelle Grove (the “Requester”) submitted a request (“Request”) to the Pennsylvania State Police (the “PSP”) pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”), seeking the police report and audio/video recordings taken by officers at the scene of an incident in Potters Mills, Pennsylvania. The PSP partially denied the Request, arguing that 911 recordings are not subject to disclosure. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted** and the PSP is required to take further action as directed herein.

**FACTUAL BACKGROUND**

On March 24, 2014, the Request was filed, seeking “[a] copy of the police report and any video/audio taken by the officers at Crash Sr 144 Potters Mill Incident #G07-1359421 (might be Go7-1359421).” On May 1, 2014, after extending its deadline to respond pursuant to 65 P.S. § 67.902, the PSP partially denied the Request, arguing that the audio/video recordings are exempt

from public disclosure under Section 708(b)(18)(i) of the RTKL. The PSP included a verification signed under penalty of perjury from its Deputy Agency Open Records Officer, who affirms that, with respect to the audio/video recordings:

the responsive *audio/video recordings* are exempt from public disclosure under RTKL section 67.708(b)(18)(i) as a record of part of a record, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.

On May 22, 2014, the Requester appealed to the OOR, challenging the partial denial of the Request as it related to the audio/video recordings and stating grounds for disclosure. The OOR invited the parties to supplement the record, and directed the PSP to notify any third parties of their ability to participate in the appeal pursuant to 65 P.S. § 67.1101(c).

On May 30, 2014, the PSP submitted a position statement, which, by reference, incorporated the statement made under penalty of perjury of Lissa Ferguson, PSP's Deputy Open Records Officer.<sup>1</sup> The PSP also alleged in an unsworn statement that the recordings are exempt as criminal investigative records under 65 P.S. 67.708(b)(16).<sup>2</sup> On the same day, the Requester submitted materials in support of her Request, including a position statement and two photographs of the incident scene.

### LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets,

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<sup>1</sup> Ms. Ferguson's affidavit was provided to the Requester simultaneously with the PSP's final response to the Request.

<sup>2</sup> Although the PSP raised this additional reason for denying access for the first time on appeal to the OOR, it is permitted to do so in light of *Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The PSP is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such

proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

On appeal, the PSP asserts that the requested records are protected under Section 708(b)(18)(i) of the RTKL, which exempts from public disclosure “[r]ecords or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.” 65 P.S. § 67.708(b)(18)(i).

In support of its position, the PSP submitted the statement made under penalty of perjury of Lissa Ferguson, Deputy Agency Open Records Officer, which provides that:

[T]he responsive *audio/video recordings* are exempt from public disclosure under RTKL section 67.708(b)(18)(i) as a record of part of a record, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.

However, the OOR has held that conclusory affidavits or statements made under penalty of perjury are insufficient to meet an agency’s burden of proof. *See Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa Commw. Ct. 2013) (“[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records”); *Marshall v. Neshaminy School District*, OOR Dkt. AP 2010-0015, 2010 PA O.O.R.D. LEXIS 67 (finding that an agency’s conclusory affidavit was insufficient). Here, the PSP’s conclusory statement fails to prove that the requested recordings were “received by emergency dispatch personnel” as required by Section 708(b)(18)(i).

To the extent the PSP argues in its unsworn position statement that the audio/video recordings are exempt from disclosure pursuant to 65 P.S. § 67.708(b)(16), the OOR notes that

an unsworn statement may not be relied upon as competent evidence to withhold records under the RTKL. See *Housing Authority of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209 (Pa. Commw. Ct. 2012) (holding that statements of counsel are not competent evidence); *City of Philadelphia v. Juzang*, July Term 2010, No. 2048 (Phila. Com. Pl. June 28, 2011) (“Because the letter written by City’s counsel is a legal brief, it cannot be ... evidence at all”). Based upon the evidence provided, the PSP has not met its burden of proving that the requested records are exempt from disclosure under 65 P.S. § 67.708(b)(16) or 65 P.S. § 67.708(b)(18)(i). See 65 P.S. § 67.708(a)(1).

### CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted** and the PSP is required to provide copies of all responsive records within thirty (30) days. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court of Pennsylvania. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: June 17, 2014**



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APPEALS OFFICER  
JOSHUA T. YOUNG, ESQ.

Sent to: Michelle Grove (via e-mail only);  
William Rozier (via e-mail only);  
Jordan Spahr, Esq. (via e-mail only)

# APPENDIX C

Appendix C

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
RTKL OFFICE

AFFIDAVIT OF WILLIAM A. ROZIER  
AGENCY OPEN RECORDS OFFICER

Commonwealth of Pennsylvania :

:  
:  
:  
:  
:

County of Dauphin :

BEFORE ME, the undersigned notary public, appeared the affiant, WILLIAM ROZIER, on this 27th day of October, 2014, who being duly sworn by me according to law, stated the following:

1. My name is William Rozier. Being over eighteen years of age, I am fully competent to execute this affidavit, which avers as true and correct only the facts known to me personally and only such opinions as I am qualified to express.

2. I am an Administrative Officer 2 of the Pennsylvania State Police ("PSP" or "Department"), presently serving as the Agency Open Records Officer. In this capacity, I am authorized to make this statement on behalf of the Department and its Commissioner, Frank Noonan, in the interests of the Commonwealth of Pennsylvania and its citizens.

3. I assumed the duties of my present position on November 15, 2011. My duties encompass the responsibilities specified in the Right-to-Know Law (RTKL) for Agency Open Records Officers.

4. As an Agency Open Records Officer, I am respectful of the objectives embodied by the RTKL and personally committed to their realization. Although I am very familiar with most aspects of RTKL, I consult regularly with PSP legal counsel regarding those RTKL provisions that impact significantly upon my duties and responsibilities.

PSP Exhibit 1

5. I have prepared this affidavit in response to a RTKL appeal filed by Michelle Grove with the Office of Open Records ("OOR"), that has been docketed by OOR as N° AP 2014-0828, and is now on appeal with the Commonwealth Court. I do so in order to clarify factual assertions regarding records that are responsive to Ms. Grove's request.

6. PSP received Ms. Grove's request, recorded by the PSP as RTK 2014-0178, on March 25, 2014. Under the provisions of RTKL section 67.902(b)(2), I determined that the PSP needed additional time to respond to Ms. Grove's request. I prepared and sent out a letter indicating that the PSP was electing to exercise its statutory extension in this matter. The letter was timely mailed to Ms. Grove on April 1, 2014.

7. Utilizing the information contained in the request, PSP searched all Department databases to which we have access for evidence of any PSP records that may respond to the request.

8. PSP's RTKL Office contacted PSP's Troop G, Rockview, for any records responsive to this request.

9. PSP's Troop Rockview advised the PSP's RTKL Office that there were two MVRs available which memorialize a two vehicle motor vehicle crash investigation conducted by Trooper Thomas that occurred on March 22, 2014, at 1342 hours.

10. One MVR was from the unmarked vehicle of Trooper Vanorden, the first officer to arrive on scene. The MVR depicts Trooper Vanorden speaking with the operators of the vehicles. Trooper Vanorden can be seen observing the crash scene and the damage to the vehicles. Also, Trooper Vanorden can be seen directing the operator of the truck involved in the accident to move his vehicle to a safer area. Trooper Vanorden then relayed the investigative information that he obtained to Trooper Thomas, who investigated this crash. There was no audio component to this MVR.

11. The second MVR was from the marked vehicle of Trooper Thomas, the investigator of this crash. The MVR depicts Trooper Thomas interviewing the operators of the vehicles. Trooper Thomas obtained the operator's license, registration and insurance information. Additionally, Trooper Thomas had an extensive conversation with the

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operator of the truck concerning the status of his truck classification, with assistance from Trooper Vanorden via the telephone. There is an audio recording with this MVR.

12. The two MVRs were preserved at the request of the PSP's RTKL Office.

13. Trooper Thomas determined that citations were warranted in this crash investigation. Accordingly, citations were issued to both drivers, as indicated in the Public Information Release Report (which was provided to Ms. Grove) pertaining to Incident Report No. G07-1359421.

14. MVRs are typically activated when a trooper activates his or her emergency lights or siren. The files containing the recorded segments from each trooper's shift are transmitted from the computer located within the patrol vehicle to the station's computer server.

15. PSP has an internal regulation that governs the operation of MVRs, known as Field Regulation 6-12 ("FR 6-12"). It also disseminates protocols for uploading the data and for persons who maintain custody of the files.

16. FR 6-12 explains that MVRs are to be used in the following situations:

A. Utilization: Members operating MVR-equipped vehicles shall endeavor to record the following types of incidents:

1. Traffic and criminal enforcement stops.
2. In-progress Vehicle and Crimes Code violations.
3. Police pursuits.
4. Field interviews, interrogations, and intoxication testing.

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5. Patrol vehicle travel and movements when emergency lights and/or siren are activated.
6. Fatal crash or major crime scenes, as necessary, to document the scene.
7. Traffic safety and sobriety checkpoints, at the discretion of the checkpoint supervisor.
8. Prisoner transports.

NOTE: Transports of individuals other than prisoners may be recorded at the discretion of the transporting member.

9. Searches of vehicles and/or persons.
10. Any other incident the member deems appropriate while acting in the performance of their official duties.

NOTE: Members shall utilize both the video and audio recording functions of the MVR equipment whenever it is employed, except where/when exempted by this regulation.

#### PSP Administrative Regulation 6-12.

17. Also, the MVR files are supposed to be retained beyond a normal 45-day purge schedule when they are anticipated to be used:

- in civil, criminal, quasi-criminal, forfeiture, administrative enforcement, or disciplinary proceedings (this would include investigations conducted by PSP's Internal Affairs Division (IAD));
- for a criminal defendant who was recorded and who reasonably believes that the recording may be useful as

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evidence in a criminal proceeding, and notifies PSP within the 45 day window, that he or she wants the recording preserved;

- if a recorded individual believes the recording may be useful in a civil proceeding, and notifies PSP, within 45 days of the recording, that he or she wants the recording preserved; or
- if PSP intends to use the recording for training purposes.

18. I have personally read PSP Crash Report No. G07-1359421 and viewed the related MVR, both of which relate to an accident involving a truck and automobile that were involved in a non-injury accident on March 22, 2014. The accident appears to have occurred when the automobile pulled out in front of the truck from a driveway onto the roadway and was hit by the truck.

19. The MVRs at issue do not depict the accident itself, but do contain investigative information obtained by the Troopers in the course of their investigation of the vehicle accident. Specifically, Trooper Thomas spoke to both operators involved, as well as bystanders, during the course of his investigation of the accident and obtained statements as to what occurred.

20. At the conclusion of his investigation, Trooper Thomas issued the following citations:

- One operator, the operator of the truck, was cited with 75 Pa. Cons. Stat. § 4581 (Restraint Systems) based upon his statement to Trooper Thomas during the investigation.
- One operator, the operator of the automobile, was cited with 75 Pa. Cons. Stat. § 3324 (Vehicle Entering or Crossing Roadway) based upon statements and accounts of the accident obtained by Trooper Thomas during his investigation.

21. PSP denied the request for the MVRs, in accordance with RTKL section 67.708(b)(16), and in reliance on prior holdings of the Office of Open Records related to MVRs which are related to investigations resulting in

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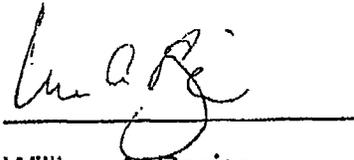
the issuance of traffic citations.

22. Petitioner filed a timely appeal with the Office of Open Records on May 22, 2014.

23. PSP filed a timely response to the appeal on June 2, 2014 with the OOR.

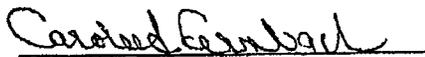
24. PSP received an OOR Final Determination dated June 17, 2014, authored by Joshua Young, Esquire, which required PSP to provide the MVRs.

FURTHER AFFIANT SAYETH NOT, UNDER PENALTY OF PERJURY.



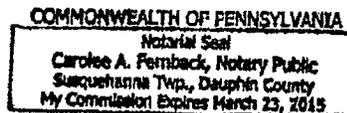
William A. Rozier  
Pennsylvania State Police  
Agency Open Records Officer

SUBSCRIBED AND SWORN TO BEFORE ME on this 27<sup>th</sup> day of October, 2014, to certify which witness my hand and seal.



Notary Public in and for the  
Commonwealth of Pennsylvania

My Commission expires:



PSP Exhibit 1

# APPENDIX D

Appendix D

**Wiretapping and Electronic Surveillance Act, 18 Pa.C.S. §§ 5701-5782**

**§ 5702. Definitions.**

As used in this chapter, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Oral communication."** Any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation. The term does not include any electronic communication.

**§ 5703. Interception, disclosure or use of wire, electronic or oral communications.**

Except as otherwise provided in this chapter, a person is guilty of a felony of the third degree if he:

- (1) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication;
- (2) intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or
- (3) intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication.

**§ 5704. Exceptions to prohibition of interception and disclosure of communications.**

It shall not be unlawful and no prior court approval shall be required under this chapter for:

- (16) A law enforcement officer, whether or not certified under section 5724 (relating to training), acting in the performance of his official duties to intercept and record an oral communication between individuals in accordance with the following:
  - (i) At the time of the interception, the oral communication does not occur inside the residence of any of the individuals.
  - (ii) At the time of the interception, the law enforcement officer:
    - (A) is in uniform or otherwise clearly identifiable as a law enforcement officer;
    - (B) is in close proximity to the individuals' oral communication;
    - (C) is using an electronic, mechanical or other device which has been approved under section 5706(b)(4) (relating to exceptions to prohibitions in possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices) to intercept the oral communication; and
    - (D) informs, as soon as reasonably practicable, the individuals identifiably present that he has intercepted and recorded the oral communication.
  - (iii) As used in this paragraph, the term "law enforcement officer" means a member of the Pennsylvania State Police or an individual employed as a police officer who holds a current certificate under 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training).

**§ 5717. Investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence. (a) Law enforcement personnel.--**Any investigative or law enforcement officer who, under subsection (a.1), (b), (b.1) or (c), has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose such contents or evidence to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

**(a.1) Use of information.--**Any investigative or law enforcement officer who, by any means authorized by this subchapter, has obtained knowledge of the contents of any wire, electronic or oral communication or evidence derived therefrom may use such contents or evidence to the extent such use is appropriate to the proper performance of his official duties.

**(b) Evidence.--**Any person who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose such contents or evidence to an investigative or law enforcement officer and may disclose such contents or evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this Commonwealth or of another state or of the United States or before any state or Federal grand jury or investigating grand jury.

**(b.1) Criminal cases.--**Any person who by means authorized by section 5704(17) (relating to exceptions to prohibition of interception and disclosure of communications) has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may in addition to disclosures made under subsection (b) disclose such contents or evidence, on the condition that such disclosure is made for the purpose of providing exculpatory evidence in an open or closed criminal case.

**(c) Otherwise authorized personnel.--**

(1) Except as provided under paragraph (2), any person who, by any means authorized by the laws of another state or the Federal Government, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived from any wire, electronic or oral communication, may disclose the contents or evidence to an investigative or law enforcement officer and may disclose the contents or evidence where otherwise admissible while giving testimony under oath or affirmation in any proceeding in any court of this Commonwealth.

(2) The contents of a nonconsensual interception authorized by the laws of the Federal Government or another state shall not be admissible unless the interception was authorized by a court upon a finding of probable cause that the target of the surveillance is engaged or will engage in a violation of the criminal laws of the Federal Government or any state.

**§ 5721.1. Evidentiary disclosure of contents of intercepted communication or derivative evidence.**

**(a) Disclosure in evidence generally.--**

(1) Except as provided in paragraph (2), no person shall disclose the contents of any wire, electronic or oral communication, or evidence derived therefrom, in any proceeding in any court, board or agency of this Commonwealth.

(2) Any person who has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, which is properly subject to disclosure

under section 5717 (relating to investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence) may also disclose such contents or evidence in any matter relating to any criminal, quasi-criminal, forfeiture, administrative enforcement or professional disciplinary proceedings in any court, board or agency of this Commonwealth or of another state or of the United States or before any state or Federal grand jury or investigating grand jury. Once such disclosure has been made, then any person may disclose the contents or evidence in any such proceeding.

(3) Notwithstanding the provisions of paragraph (2), no disclosure in any such proceeding shall be made so long as any order excluding such contents or evidence pursuant to the provisions of subsection (b) is in effect.

**(b) Motion to exclude.--**Any aggrieved person who is a party to any proceeding in any court, board or agency of this Commonwealth may move to exclude the contents of any wire, electronic or oral communication, or evidence derived therefrom, on any of the following grounds:

(1) Unless intercepted pursuant to an exception set forth in section 5704 (relating to exceptions to prohibition of interception and disclosure of communications), the interception was made without prior procurement of an order of authorization under section 5712 (relating to issuance of order and effect) or an order of approval under section 5713(a) (relating to emergency situations) or 5713.1(b) (relating to emergency hostage and barricade situations).

(2) The order of authorization issued under section 5712 or the order of approval issued under section 5713(a) or 5713.1(b) was not supported by probable cause with respect to the matters set forth in section 5710(a)(1) and (2) (relating to grounds for entry of order).

(3) The order of authorization issued under section 5712 is materially insufficient on its face.

(4) The interception materially deviated from the requirements of the order of authorization.

(5) With respect to interceptions pursuant to section 5704(2), the consent to the interception was coerced by the Commonwealth.

(6) Where required pursuant to section 5704(2)(iv), the interception was made without prior procurement of a court order or without probable cause.

**(c) Procedure.--**

(1) The motion shall be made in accordance with the applicable rules of procedure governing such proceedings. The court, board or agency, upon the filing of such motion, shall make available to the movant or his counsel the intercepted communication and evidence derived therefrom.

(2) In considering a motion to exclude under subsection (b)(2), both the written application under section 5710(a) and all matters that were presented to the judge under section 5710(b) shall be admissible.

(3) The movant shall bear the burden of proving by a preponderance of the evidence the grounds for exclusion asserted under subsection (b)(3) and (4).

(4) With respect to exclusion claims under subsection (b)(1), (2) and (5), the respondent shall bear the burden of proof by a preponderance of the evidence.

(5) With respect to exclusion claims under subsection (b)(6), the movant shall have the initial burden of demonstrating by a preponderance of the evidence that the interception took place in his home. Once he meets this burden, the burden shall shift to the respondent to

demonstrate by a preponderance of the evidence that the interception was in accordance with section 5704(2)(iv).

(6) Evidence shall not be deemed to have been derived from communications excludable under subsection (b) if the respondent can demonstrate by a preponderance of the evidence that the Commonwealth or the respondent had a basis independent of the excluded communication for discovering such evidence or that such evidence would have been inevitably discovered by the Commonwealth or the respondent absent the excluded communication.

**(d) Appeal.**--In addition to any other right of appeal, the Commonwealth shall have the right to appeal from an order granting a motion to exclude if the official to whom the order authorizing the intercept was granted shall certify to the court that the appeal is not taken for purposes of delay. The appeal shall be taken in accordance with the provisions of Title 42 (relating to judiciary and judicial procedure).

**(e) Exclusiveness of remedies and sanctions.**--The remedies and sanctions described in this subchapter with respect to the interception of wire, electronic or oral communications are the only judicial remedies and sanctions for nonconstitutional violations of this subchapter involving such communications.

#### **§ 5749. Retention of certain records.**

**(a) Retention.**--The commander shall maintain all recordings of oral communications intercepted under section 5704(16) (relating to exceptions to prohibition of interception and disclosure of communications) for a minimum of 31 days after the date of the interception. All recordings made under section 5704(16) shall be recorded over or otherwise destroyed no later than 90 days after the date of the recording unless any of the following apply:

(1) The contents of the recording result in the issuance of a citation. Except as otherwise authorized under this subsection, any recording maintained under this paragraph shall be recorded over or destroyed no later than 90 days after the conclusion of the proceedings related to the citation. All recordings under this paragraph shall be maintained in accordance with section 5714(a) (relating to recording of intercepted communications), except that monitors need not be certified under section 5724 (relating to training).

(2) The commander or a law enforcement officer on the recording believes that the contents of the recording or evidence derived from the recording may be necessary in a proceeding for which disclosure is authorized under section 5717 (relating to investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence) or 5721.1 (relating to evidentiary disclosure of contents of intercepted communication or derivative evidence) or in a civil proceeding. All recordings under this paragraph shall be maintained in accordance with section 5714(a), except that monitors need not be certified under section 5724.

(3) A criminal defendant who is a participant on the recording reasonably believes that the recording may be useful for its evidentiary value at some later time in a specific criminal proceeding and, no later than 30 days following the filing of criminal charges, provides written notice to the commander indicating a desire that the recording be maintained. The written notice must specify the date, time and location of the recording; the names of the parties involved; and, if known, the case docket number.

(4) An individual who is a participant on the recording intends to pursue a civil action or has already initiated a civil action and, no later than 30 days after the date of the recording, gives written notice to the commander indicating a desire that the recording be maintained. The written

notice must specify the date, time and location of the recording; the names of the parties involved; and, if a civil action has been initiated, the case caption and docket number.

(5) The commander intends to use the recording for training purposes.

**(b) Disclosure.**--In addition to any disclosure authorized under sections 5717 and 5721.1, any recording maintained:

(1) Under subsection (a)(4) shall be disclosed pursuant to an order of court or as required by the Pennsylvania Rules of Civil Procedure or the Pennsylvania Rules of Evidence; and

(2) Under subsection (a)(5) shall be disclosed consistent with written consent obtained from the law enforcement officer and all participants.

**(c) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Commander." The: (1) commissioner or a designee, if the recording at issue was made by a member of the Pennsylvania State Police; or (2) chief or a designee of the law enforcement agency which made the recording at issue.

"Law enforcement officer." A member of the Pennsylvania State Police or an individual employed as a police officer who is required to be trained under 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training).

# APPENDIX E

Appendix E

**Right-To-Know Law, 65 P.S. §§ 67.101-67.3104**

**§705. Creation of record.**

When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.

**§ 706. Redaction.**

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.

**§708. Exceptions for public records.**

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

- (16) A record of an agency relating to or resulting in a criminal investigation, including:
  - (i) Complaints of potential criminal conduct other than a private criminal complaint.
  - (ii) Investigative materials, notes, correspondence, videos and reports.
  - (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
  - (iv) A record that includes information made confidential by law or court order.
  - (v) Victim information, including any information that would jeopardize the safety of the victim.
  - (vi) A record that, if disclosed, would do any of the following:
    - (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
    - (B) Deprive a person of the right to a fair trial or an impartial adjudication.
    - (C) Impair the ability to locate a defendant or codefendant.
    - (D) Hinder an agency's ability to secure an arrest, prosecution or conviction.
    - (E) Endanger the life or physical safety of an individual.

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. § 9102(relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa.C.S. § 3754(b) (relating to accident prevention investigations).

# APPENDIX F

Appendix F

**Criminal History Records Information Act, 18 Pa.C.S. §§ 9101-9183**

**§9102 Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Investigative information."** Information 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.

**§ 9106. Information in central repository or automated systems.**

(a) **General rule.**--Intelligence information, investigative information and treatment information shall not be collected in the central repository. This prohibition shall not preclude the collection in the central repository of names, words, numbers, phrases or other similar index keys to serve as indices to investigative reports.

...

(c) **Dissemination of protected information.**--

(4) 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.

**PROOF OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

**U.S. First Class Mail**

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Spring Mills, PA 16875  
Respondent, *Pro Se*

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Executive Director  
Office of Open Records  
Commonwealth Keystone Building  
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Attorney General  
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DATE: August 6, 2015



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