



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**NOELLE SARTAIN,
Requester**

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:

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v.

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Docket No.: AP 2016-1111

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**PENNSYLVANIA STATE POLICE,
Respondent**

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INTRODUCTION

Noelle Sartain (“Requester”) submitted a request (“Request”) to the Pennsylvania State Police (“PSP”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the criminal history records of an identified individual. PSP denied the Request pursuant to the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101 *et seq.* The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and PSP is required to take further action as directed.

FACTUAL BACKGROUND

On April 27, 2016, the Request was filed, seeking “[a] ‘Chronological listing of Arrest’ record of Frank Swan Martin pursuant to 18 Pa.C.S. § 9104.” The Request further states that it was “based on the fact that ‘police blotters’ are considered ‘public records’ and are not subject to the protection of section 9106 of CHRIA.” On May 4, 2016, PSP invoked a thirty-day extension

of time to respond to the Request. *See* 65 P.S. § 67.902. PSP failed to respond by June 3, 2016, and the Request was deemed denied. *See* 65 P.S. § 67.902(b)(2).

On June 6, 2016, PSP sent correspondence asserting that the requested records are exempt from disclosure pursuant to CHRIA. In its correspondence, PSP notes that it called the Requester on April 27, 2016, and that she indicated that the Request sought Frank Swan Martin's criminal history record. PSP explained that criminal history information is available for a fee from PSP's Pennsylvania Access to Criminal History ("PATCH") system, which was created to effectuate the requirements of CHRIA. PSP also provided a sworn statement, made under penalty of perjury by its Deputy Open Records Officer, who attests that CHRIA prohibits PSP from providing the requested criminal history record information, including arrest and disposition data, but that the records may be obtained through PATCH.

On June 27, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.^{1,2} In a position statement accompanying her appeal, the Requester acknowledges a call from PSP and admits that she may have mistakenly mischaracterized her Request. However, she maintains that her Request remains unchanged. The OOR invited both parties to supplement the record and directed PSP to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On July 19, 2016, PSP submitted a position statement, reasserting its position that criminal history record information is not public and is regulated by CHRIA. Accompanying the submission was a sworn and notarized statement, made under penalty of perjury by PSP's Open

¹ The OOR ordered the Requester to file a copy of the Request and the agency's response, and the Requester timely complied.

² The Requester agreed to allow the OOR additional time to issue a final order in this matter. *See* 65 P.S. § 67.1101(b)(1).

Records Officer, who attests that the Request was interpreted as a request for criminal history record information.

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, 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. 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request.” 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.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

PSP is a Commonwealth agency subject to the RTKL that is required to disclose public records. *See* 65 P.S. § 67.301. Records in possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. 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 respond within five business

days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. 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 *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

PSP asserts that criminal history records are exempt from disclosure under the RTKL because CHRIA applies and controls the process through which such a record may be obtained.

“Criminal history record information” is defined by CHRIA as follows:

Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom. The term *does not include* ... records specified in section 9104.

18 Pa.C.S. § 9102 (emphasis added). Section 9104 references “[o]riginal records of entry compiled chronologically, including, but not limited to, police blotters[.]” 18 Pa.C.S. § 9104(a)(1). The Act defines a “police blotter” as “[a] chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.” 18 Pa.C.S. § 9102.

Section 9104 of CHRIA declares that police blotters are public information. 18 Pa.C.S. § 9104(b).

The Commonwealth Court has held that “[a]n agency may not restrict access to public records requested under the RTKL by asserting that the records are subject to disclosure only under CHRIA. The RTKL offers an alternative to CHRIA to obtain public records. It is the duty of the disclosing agency to produce the records in accordance with any limitations set by either statute.” *Pa. State Police v. Zloczower*, No. 2082 C.D. 2010, 2011 Pa. Commw. Unpub. LEXIS 822 at *13 (Pa. Commw. Ct. Oct. 4, 2011), *petition for allowance of appeal denied*, 47 A.3d 1179 (Pa. 2012); *see also Guagliardo v. Luzerne County*, OOR. Dkt. Ap. 2012-0003, 2012 PA O.O.R.D. LEXIS 387.

Section 9121 of CHRIA addresses the dissemination of criminal history record information, and provides that “[c]riminal history record information shall be disseminated by a State or local police department to any individual or noncriminal justice agency only upon request,” 18 Pa.C.S. § 9121(b), and further provides that “[a] fee may be charged by a State or local police department for each request for criminal history record information by an individual....” 18 Pa.C.S. § 9121(b)(1). Furthermore, Section 9161 gives the Attorney General the power and authority to “[e]stablish the maximum fees which may be charged for the costs of reproducing criminal history record information for individual access and review by ... individuals.” 18 Pa.C.S. § 9161. The fee currently set by the Attorney General for obtaining this information is \$8. Pennsylvania Attorney General, *CHRIA Handbook*, Seventh (April 2013), § 4.1, *available at* <https://www.attorneygeneral.gov/uploadedFiles/MainSite/Content/Press/brochuresPublications/chria.pdf>. However, by its own terms, this fee structure applies to the dissemination of criminal history record information, *not* to police blotter information, which, as

established *supra*, is public information. Consequently, the fee structure developed by the Attorney General does not apply.

Here, the Request seeks a chronological listing of Frank Swan Martin's arrest record, explicitly indicating that it is only seeking police blotter information.³ As discussed *supra*, such information is not protected by CHRIA. Accordingly, it is publically available and must be disclosed by PSP, subject only to the RKTL's fee structure. *See* 65 P.S. § 67.1307(b)(1).

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted**, and PSP is required to provide the requested information to the Requester within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 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 as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 25, 2016

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Noelle Sartain (via e-mail only);
Nolan Meeks, Esq. (via e-mail only);
William Rozier (via e-mail only);
Melissa Laughlin (via e-mail only)

³ The OOR's review on appeal is confined to the Request as written, and any modifications of the Request on appeal will not be considered. *See Petka v. Pa. Dep't of Transp.*, OOR Dkt. AP 2014-1288, 2014 PA O.O.R.D. LEXIS 996.

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).