



September 29, 2016

HAND DELIVERED

Michael Krimmel, Esq.
Chief Clerk
Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 4500
Harrisburg, PA 17106-2575

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
29 SEP 2016 09 18

RE: Submission of Record in:
Cynthia Diveglia v. Pennsylvania State Police,
No. 1378 CD 2016

Dear Mr. Krimmel:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *DOT v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

Office of Open Records Docket No. 2016-0923:

1. The appeal filed by Cynthia Diveglia (“Requester”) to the Office of Open Records (“OOR”), received May 25, 2016.
2. Official Notice of Appeal dated May 26, 2016, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Requester’s submission dated June 1, 2016.
4. E-mail chain dated June 7, 2016, granting the parties a one-week extension of time to make a submission and containing the Pennsylvania State Police (“PSP”) underlying extension request.
5. PSP submission dated June 14, 2016.

6. OOR e-mail dated July 13, 2016, requesting an indefinite extension for issuing the Final Determination in order to do an *in camera* review of the documents on appeal.
7. E-mail chain dated July 13-14, 2016, with discussion and a denial of an indefinite extension to issue the Final Determination in the matter.
8. The decision in lieu of a Final Determination dated July 26, 2016, issued by the OOR.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,



Charles Rees Brown
Chief Counsel

Attachments

cc: Nolan B. Meeks, Esquire (Agency)
Cynthia Diveglia (Requester)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CYNTHIA DIVEGLIA,
Petitioner

v.

PENNSYLVANIA STATE POLICE,
Respondent

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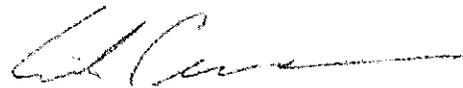
No. 1378 CD 2016

CERTIFICATION OF RECORD

I hereby certify the contents of the record transmitted with this Certification of Record pursuant to Pa.R.A.P. 1952 in *Cynthia Diveglia v. Pennsylvania State Police*, OOR Dkt. AP 2016-0923, which is the subject of this appeal.

The record transmitted with this certification is generated entirely from the Office of Open Records database. It is our practice to scan in each and every document submitted in an appeal. Thus, no originals are being transmitted to this Court.

Also, my signature on this Certification of Record and on all other correspondence directed to the Commonwealth Court in connection with this matter may be electronic and not original. I hereby certify that this is my true and correct signature and that I have approved the use thereof for these purposes.



Erik Arneson, Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
Phone: (717) 346-9903; Fax: (717) 425-5343
E-mail: OpenRecords@pa.gov

Dated: September 29, 2016

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CYNTHIA DIVEGLIA,
Petitioner

v.

PENNSYLVANIA STATE POLICE,
Respondent

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No. 1378 CD 2016

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record upon the following by First Class Mail, pre-paid or by e-mail at the e-mail address list below:

Nolan B. Meeks, Esquire
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
nomeeks@pa.gov
wrozier@pa.gov
RA-psprighttoknow@pa.gov

Cynthia Diveglia
41 Berkey Road
East Berlin, PA 17316
winterspringfarm@icloud.com



Faith Henry, Administrative Officer
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
Phone: (717) 346-9903
Fax: (717) 425-5343
E-mail: fahenry@pa.gov

Dated: September 29, 2016

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CYNTHIA DIVEGLIA,
Petitioner

v.

PENNSYLVANIA STATE POLICE,
Respondent

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No. 1378 CD 2016

CERTIFIED RECORD

Charles Rees Brown
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street - Plaza Level
Harrisburg, PA 17120-0225
Phone: (717) 346-9903
Fax: (717) 425-5343
E-mail: Charlebrow@pa.gov

September 29, 2016

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CYNTHIA DIVEGLIA,
Petitioner

v.

PENNSYLVANIA STATE POLICE,
Respondent

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No. 1378 CD 2016

TABLE OF CONTENTS
RECORD

Cynthia Diveglia v. Pennsylvania State Police,
OOR Dkt. No. AP 2016-0923

Office of Open Records Docket No. 2016-0923:

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2. Official Notice of Appeal dated May 26, 2016, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
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8. The decision in lieu of a Final Determination dated July 26, 2016, issued by the OOR.

1



pennsylvania
OFFICE OF OPEN RECORDS

RECEIVED

MAY 25 2016

OFFICE OF OPEN RECORDS

RIGHT-TO-KNOW LAW ("RTKL")
APPEAL OF DENIAL, PARTIAL DENIAL, OR DEEMED DENIAL

Office of Open Records ("OOR")

Email: openrecords@pa.gov

Fax: (717) 425-5343

Commonwealth Keystone Building

400 North St., 4th Floor

Harrisburg, PA 17120-0225

Today's Date: May, 25, 2016

Requester Name(s): Cynthia A. Diveglia

Address/City/State/Zip: 41 Berkey Road, East Berlin, PA 17316

Email: winterspringfarm@icloud.com

Phone/Fax: 717-476-1220

Request Submitted to Agency Via: Email Mail Fax In-Person (check only one)

Date of Request: April 7, 2016

Date of Response: May 16, 2016

Check if no response

Name of Agency: Pennsylvania State Police, Right-to-Know Office

Address/City/State/Zip: 1800 Elmerton Avenue, Harrisburg, PA 17110

Email: PSP-Righttoknow@pa.gov

Phone/Fax: 877-786-7771

(717-525-5795)

Name & Title of Person Who Denied Request (if any): Rachel Zellman, Deputy Agency Open Records Officer

I was denied access to the following records (**REQUIRED**, Use additional pages if necessary):

Mobile Video/Audio Recording related to PSP Incident Report H06-2342590, PSP/RTKL request no. 2016-0269

This is a dash cam recording from Tpr. Isaac White and/or Cpl James S. Flanagan, Car # H6-12.

I requested the listed records from the Agency named above. By signing below, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I am also appealing for the following reasons (Optional. Use additional pages if necessary):

I have attached a copy of my request for records. (**REQUIRED**)

I have attached a copy of all responses from the Agency regarding my request. (**REQUIRED**)

I have attached any letters or notices extending the Agency's time to respond to my request.

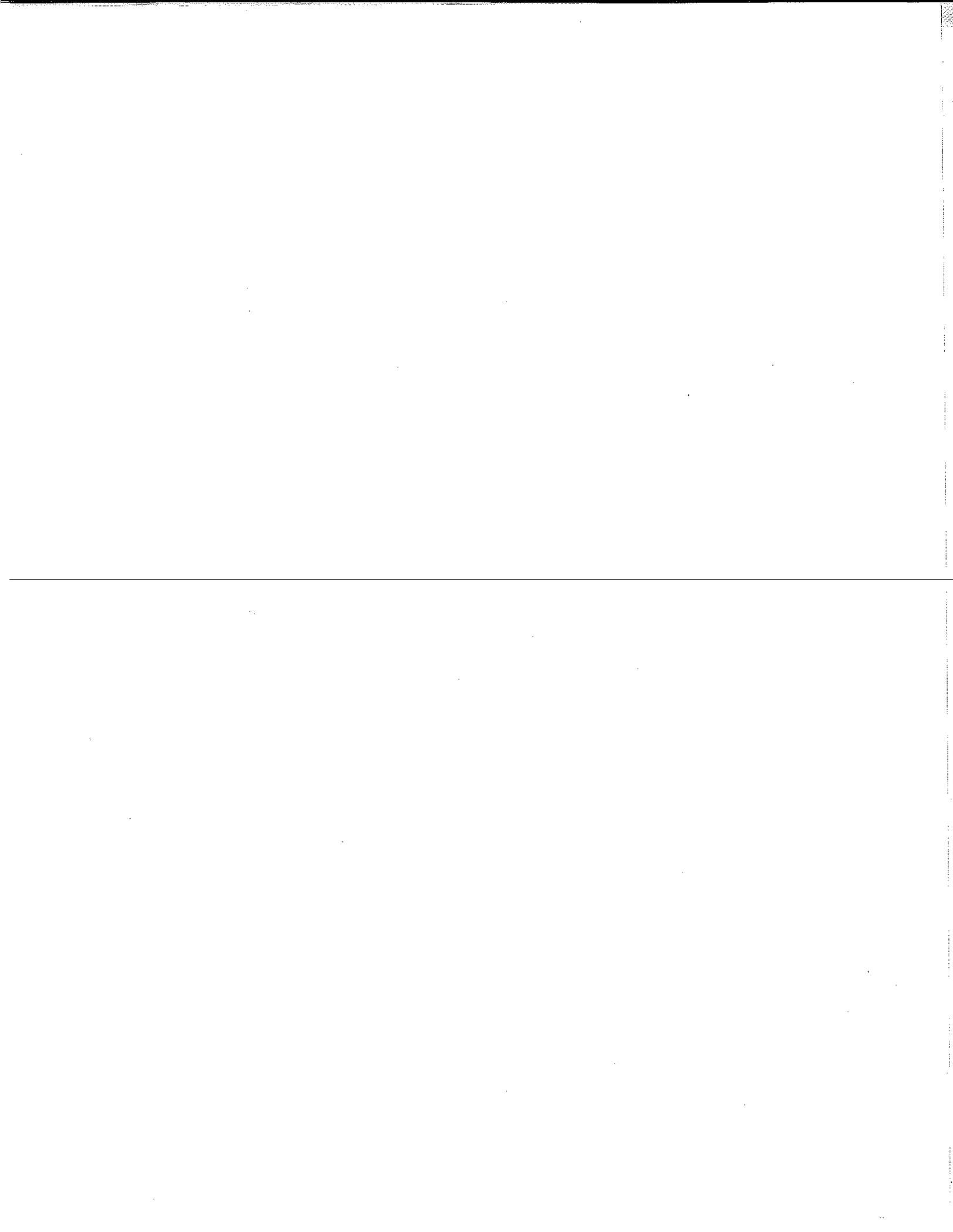
I hereby agree to permit the OOR an additional 30 days to issue a final order.

I am interested in resolving this issue through OOR mediation. *This stays the initial OOR deadline for the issuance of a final determination. If mediation is unsuccessful, the OOR has 30 days from the conclusion of the mediation process to issue a final determination.*

Respectfully submitted, Cynthia A. Diveglia

(SIGNATURE REQUIRED)

You should provide the Agency with a copy of this form and any documents you submit to the OOR.



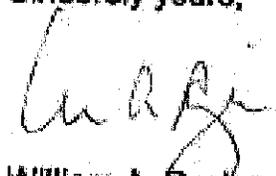
Your compliance with the following agency policies is required for access to the record(s): _____

You must pay the applicable fees authorized by the RTKL.

The extent or nature of the request precludes a response within the required time period.

Should you have any questions regarding this letter, please contact the undersigned.

Sincerely yours,



William A. Rozier, J.D.
Pennsylvania State Police
Agency Open Records Officer
Bureau of Records and Identification
Right to Know Law/Subpoena Unit
1800 Elmerton Ave.
Harrisburg, PA 17110
Office: 717.425.5743 Fax: 717.526.5795
wrozier@pa.gov

Enclosure: Request 2016-0269

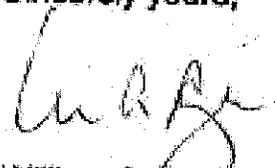
Your compliance with the following agency policies is required for access to the record(s): _____

You must pay the applicable fees authorized by the RTKL.

The extent or nature of the request precludes a response within the required time period.

Should you have any questions regarding this letter, please contact the undersigned.

Sincerely yours,



William A. Rozier, J.D.
Pennsylvania State Police
Agency Open Records Officer
Bureau of Records and Identification
Right to Know Law/Subpoena Unit
1800 Elmerton Ave.
Harrisburg, PA 17110
Office: 717.425.5743 Fax: 717.525.5795
wrozier@pa.gov

Enclosure: Request 2016-0269

2016-06

RIGHT-TO-KNOW LAW REQUEST

STATE POLICE PA 12-21

WWW.PSP.STATE.PA.US
1-877-RTK-PSP1 (1-877-786-7771)

4-1

REQUEST DATE: 04/07/2016

REQUESTER: DIVEGLIA CYNTHIA A.
Print Legibly) (Last) (First) (MI)

ADDRESS: 4 BERKEY ROAD
(Street/PO Box)

EAST BERLIN PA 17316
(City) (State) (Zip Code)

PHONE (Optional): 717-476-1220 FAX (Optional): _____

OPTIONAL): _____

IS REQUESTED: Please identify each of the documents that are subject to this request with sufficient specificity to ascertain whether we have these documents and how to locate them.

**TRAFFIC INCIDENT NUMBER # H06-2342590
DASH CAM RECORDING - UNEDITED, FROM TPR
C. C. WHITE'S DASH CAM. THE RECORDING OF THE TRAFFIC
WAS MADE BY CPT. JAMES S. FLAHERTY, FROM MVR OF
H06-12. THE COMPACT DISC WAS SECURED IN THE MVR
TRUNK LOCKER. PLEASE PROVIDE AN EXACT DUPLICATE &
THE RECORDING ON A COMPACT DISC.**

Intent that this request seeks or may be construed to seek Pennsylvania State Police records involving enforcement investigations, including intelligence gathering and analysis, the Department can neither confirm nor deny the existence of such records without risk of compromising investigations and imperiling public safety. UNDER NO CIRCUMSTANCES, therefore, should the Department's response to this request be construed as indicating otherwise. In all events, should such records exist, they are entirely exempt from public release under the Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, and the Criminal History Record Information Act, 18 P.S. §§ 9101-9183.

Accession of requested public records is subject to prepayment of all RTKL fees. For security purposes, this request will only produce public records in paper format, unless the records exclusively exist in another medium.

PLEASE MAIL, DELIVER IN PERSON, FAX, OR EMAIL YOUR REQUEST TO:

Pennsylvania State Police
Bureau of Records & Identification
ATTN: AGENCY OPEN RECORDS OFFICER
1800 Elmerton Avenue
Harrisburg, PA 17110-9768

PHONE: 717-525-5795

EMAIL: PSP-Righttoknow@pa.gov

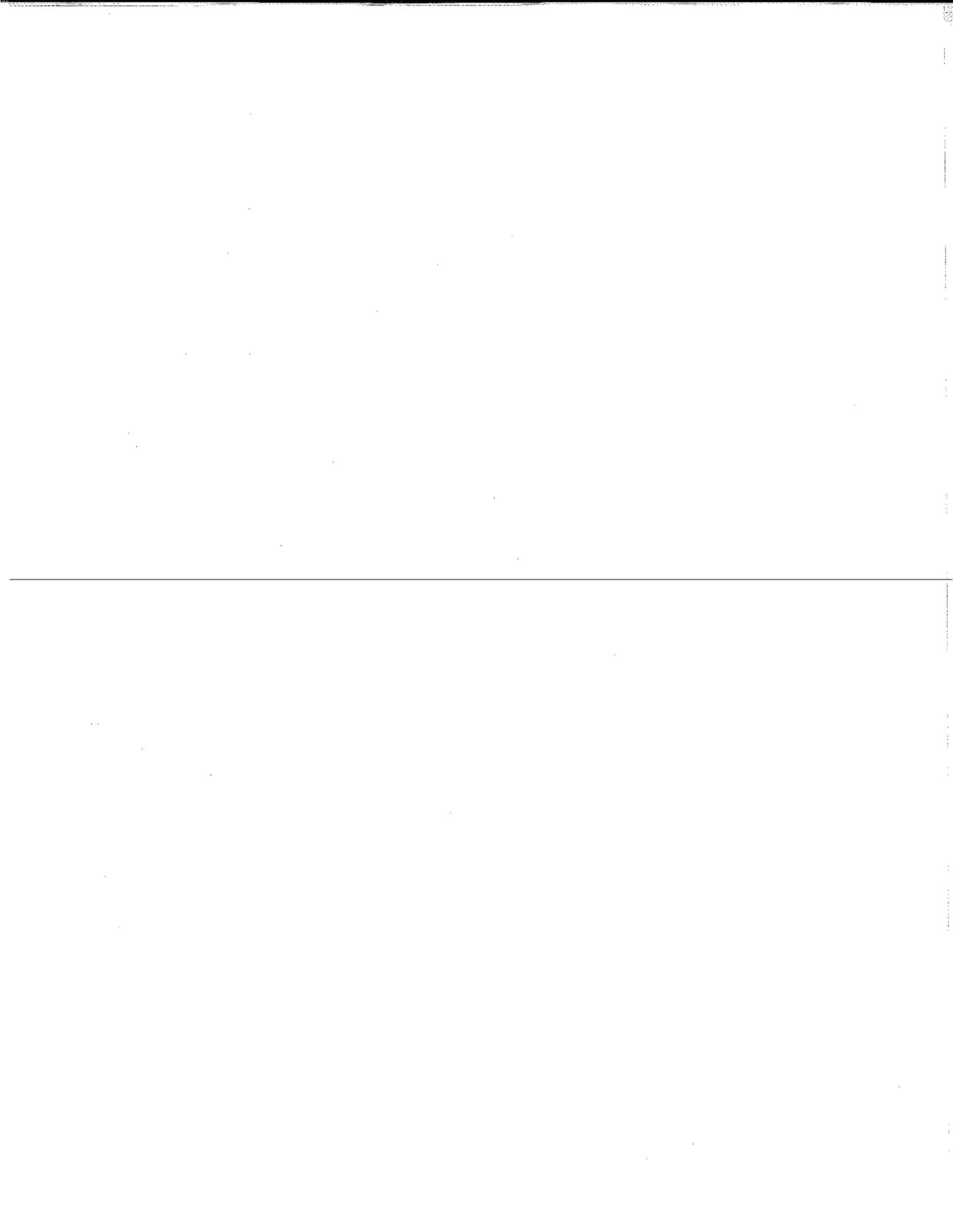
TRACKING NO.: _____

AGRO RECEIPT DATE/STAMP: _____

RESPONSE DATE: _____

CALCULATED RESPONSE DUE DATE: _____

FINAL RESPONSE DUE DATE: _____



SUPPLEMENTAL ATTACHMENT TO THE
Appeal of Denial of Records under the Right-To-Know Law ("RTKL")

Cynthia A. Diveglia
winterspringfarm@icloud.com 717-476-1220

DATE: May 25, 2016

Reasons the records requested are not public records and the Pennsylvania State Police Office of Open Records denial is incorrect.

The Pennsylvania State Police (hereinafter PSP), Right to Know Officer denied my request for the dash cam video recording related to the PSP Incident Report H062342590 for the following general reasons:

1. The requested MVR is not a public record;
2. The requested MVR is exempt as a public record; and
3. The release of the requested information is prohibited by CHRIA

This appeal is raised because Pennsylvania Courts have explained the construction of the RTKL and CHRIA in numerous cases and my request for the MVR was wrongfully denied for the following reasons:

1. The PSP Mobile Vehicle Recording (hereinafter MVR), is under the RTKL, information documenting the actions of a Commonwealth agency and as such is presumed to be a public record unless it is exempted under the RTKL, or privileged, or exempted from the RTKL under another federal or state law or regulation or judicial order. RTKL, 65 P.S. §67,102, 67.305. See also Pennsylvania State Police v. McGill, 83 A.3d 476, 479 (Pa. Cmwlth. 2014) (en banc); Carey v. Pennsylvania Department of Corrections, 61 A.3d 367 at 371-72 (Pa. Cmwlth. 2013)

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. Pennsylvania State Police v. Michelle Grove, 119 A.3d 1102 (Pa. Cmwlth. 2015) citing Levy v. Senate of Pennsylvania, 65 A.3d 361, at 381, (Pa. 2013); McGill, at 479.

Therefore, exemptions from disclosure must be narrowly construed. Grove, at 1104, citing McGill, *id.* and Carey, at 373.

2. The requested MVR is not exempted under 65 P.S. § 67.708(b)(16) because as the Commonwealth Court found in Grove Supra, “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 CHIRA” citing, Coley v. Philadelphia District Attorney’s Office, 77 A.3d 694, 697-98 (Pa. Cmwlth. 2013). PSP utilize MVR to document the entire interaction and actions of the trooper, including actions which have no investigation content. Therefore, MVR’s 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 18 Pa. C.S. §§ 9101-9183. The PSP contend that this statute prohibits criminal justice agencies from disseminating investigative information to non-criminal justice agencies, and specifically, albeit wrongfully, relies on 18 Pa Section 9106(c)(4) alleging that 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 allegation of criminal wrongdoing.” Out Commonwealth Court has explained this in Grove, *supra*, citing Coley, *id.* Specifically, the court explained that:

“MVR’s 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.**”

Emphasis added.

Further, if there were any portions of the requested MVR that can be properly proved to fall under an exemption, that portion of the recording could be redacted, rather than denying the entire MVR request, and the entire contents of the recorded MVR were wrongfully withheld.



PENNSYLVANIA STATE POLICE
Bureau of Records & Identification
RIGHT-TO-KNOW OFFICE
1800 Elmerton Avenue
Harrisburg, PA 17110

Mailing Date: May 16, 2016

Cynthia A. Diveglia
41 Berkey Road
East Berlin, Pennsylvania 17316

PSP/RTKL Request N° 2016-0269

Dear Ms. Diveglia:

On April 7, 2016, the Pennsylvania State Police (PSP) received your request for information pursuant to Pennsylvania's Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 – 67.3104, wherein you state:

Complaint incident number # H06-2342590.
Request dash cam recording-unedited, from Tpr Isaac C. White's dash cam. The recording of the traffic stop was made by Cpl. James S. Flanagan, from MVR of car # H6-12. The compact disc was secured in the MVR custodial locker. Please provide an exact duplicate of the recording on a compact disc.

A copy of your request is enclosed. By letter dated April 14, 2016, you were notified in accordance with RTKL section 67.902(b) that PSP required an additional thirty days to prepare this final response to your request.

Your request is respectfully denied because it is not a public record as defined in the RTKL. The Right-To-Know Law (RTKL) only requires Commonwealth agencies to provide documents that are public records. 65 P.S. § 67.301 (2010). It is well settled that the Pennsylvania State Police (PSP) is a Commonwealth agency within the meaning of the RTKL. See *id.* § 67.101; *Dekok v. PSP*, Dkt. AP 2011-0086 at 4. A document is not a public record if: (1) it is specifically exempted from disclosure in section 67.708 of the RTKL; (2) it is not otherwise exempt under other federal or state law; or (3) it is protected by a privilege. Tit. 65, § 67.102 (defining "Public Record").

Following the first limitation on the definition of public records, the responsive record (Mobile Video/Audio Recording (MVR) related to PSP Incident Report H06-2342590) is exempt from public disclosure as a criminal investigative record under RTKL section 67.708(b)(16). Section 708(b)(16) exempts from public disclosure a record of an agency relating to a criminal investigation, including:

- "[i]nvestigative materials, notes, correspondence, videos, and reports," [tit. 65, § 67.708(b)(16)(ii)]; and
- a record that, if disclosed, "would reveal the institution, progress or result of a criminal investigation," [id. § 67.708(b)(16)(vi)(A)].

Here, the MVR was created, received or retained pursuant to law, or in connection with the documentation of a PSP criminal investigation.

Following the second limitation or exemption from disclosure under state law, disclosing the video would violate Pennsylvania's Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §§ 9101-9183. This statute prohibits criminal justice agencies from disseminating investigative information to non-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." *Id.* § 9102. Therefore, PSP is barred by CHRIA from providing you with access to the record you have requested. A verification supporting these assertions is enclosed.

~~To the extent that your request seeks or may be construed to seek records involving covert law enforcement investigations, including intelligence gathering and analysis, PSP can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should this response to your request be interpreted as indicating otherwise.~~

In closing, you have a right to appeal this response by submitting an appeal form in writing to the Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. The appeal form may be obtained in the forms section on the OOR website, <http://openrecords.state.pa.us>. Should you choose to file an appeal, you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request; and
- 3) the reason why you think the agency is wrong in its reasons for withholding information (a statement that addresses any ground stated by the agency for the denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong.

Sincerely yours,

Rachel Johnson

Rachel Zeltmann
Deputy Agency Open Records Officer
Pennsylvania State Police
Bureau of Records & Identification
Right-to-Know Office
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110
1.877.785.7771 (Main); 717.525.5795 (Fax)

Enclosures: PSP/RTKL Request N° 2016-0269
Zeltmann Verification

PENNSYLVANIA STATE POLICE
BUREAU OF RECORDS & IDENTIFICATION
RIGHT-TO-KNOW OFFICE

VERIFICATION OF
RACHEL ZELTMANN
DEPUTY AGENCY OPEN RECORDS OFFICER

I, Rachel Zeltmann, Deputy Agency Open Records Officer of the Pennsylvania State Police (PSP or Department), am authorized to prepare this verification on the Department's behalf in response to PSP/RTKL Request N° 2016-0269. Accordingly, on this 16th day of May, 2016, I verify the following facts to be true and correct, to the best of my knowledge or information and belief:

1. I am familiar with PSP/RTKL Request N° 2016-0269, a copy of which accompanies this verification.
2. Utilizing the information provided, I searched all Departmental databases, to which I have access, for evidence of any PSP records that may respond. My searches revealed the following responsive record: Mobile Video/Audio Recording (MVR) related to PSP Incident Report H06-2342590.
3. I have determined that the responsive MVR is not a "public record" as defined by section 102 under the RTKL, because the responsive record is exempt from public disclosure under RTKL section 67.708(b)(16) as a PSP record that:
 - a. contains "[i]nvestigative materials, notes, correspondence videos and reports;" 65 P.S. § 67.708(b)(16)(ii).
 - b. clearly, based on its content, is a PSP record that, if disclosed, would "[r]eveal the institution, progress or result of a criminal investigation;" 65 P.S. § 67.708(b)(16)(vi)(A).
4. Therefore, I determined the Mobile Video/Audio Recording (MVR) related to PSP Incident Report H06-2342590 is not a "public record," and not subject to access by a requestor under the RTKL.

5. Accordingly, I have withheld this record from public disclosure.

I understand that false statements made in this verification are subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



Rachel Zeltmann
Deputy Agency Open Records Officer
Pennsylvania State Police

2016-026

07 APR 16 PM 2:21

4-14



RIGHT-TO-KNOW LAW REQUEST

WWW.PSP.STATE.PA.US
1-877-RTK-PSP1 ((1-877-786-7771))

REQUEST DATE: 04/07/2016

NAME OF REQUESTER: DIVEGLIA CYNTHIA A.
(Please Print Legibly) (Last) (First) (MI)

MAILING ADDRESS: 41 BERKEY ROAD
(Street/PO Box)

EAST BERLIN PA 17316
(City) (State) (Zip Code)

TELEPHONE (Optional): 717-476-1220 FAX (Optional): _____

EMAIL (Optional): _____

RECORDS REQUESTED: Please identify each of the documents that are subject to this request with sufficient specificity so we can ascertain whether we have these documents and how to locate them.

COMPLAINT INCIDENT NUMBER # HOG-2342590
REQUEST DASH CAM RECORDING - UNEDITED, FROM TRIP
ISAAC C. WHITE'S DASH CAM. THE RECORDING OF THE TRAFFIC
STOP WAS MADE BY Cpl. JAMES S. FLANAGAN, FROM MVE OF
CAR # HG-72. THE COMPACT DISC WAS SECURED IN THE MVE
CUSTODIAL LOCKER. PLEASE PROVIDE AN EXACT DUPLICATE OF
THE RECORDING ON A COMPACT DISC.

To the extent that this request seeks or may be construed to seek Pennsylvania State Police records involving covert law enforcement investigations, including intelligence gathering and analysis, the Department can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should the Department's response to this request be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, and the Criminal History Record Informatic Act, 18 Pa.C.S. §§ 9101-9103.

Production of requested public records is subject to prepayment of all RTKL fees. For security purposes, this agency will only produce public records in paper format, unless the records exclusively exist in another medium.

PLEASE MAIL, DELIVER IN PERSON, FAX, OR EMAIL YOUR REQUEST TO:

Pennsylvania State Police
Bureau of Records & Identification
ATTN: AGENCY OPEN RECORDS OFFICER
1800 Elmerton Avenue
Harrisburg, PA 17110-9758

FAX: 717-525-5795

EMAIL: PSP-Righttoknow@pa.gov

PSP/RTKL TRACKING NO.: _____

AORO RECEIPT DATE-STAMP: _____

FINAL RESPONSE DATE: _____

CALCULATED RESPONSE DUE DATE: _____

FINAL RESPONSE DUE DATE: _____

5. Accordingly, I have withheld this record from public disclosure.

I understand that false statements made in this verification are subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification of authorities.



Rachel Zeltmann
Deputy Agency Open Records Officer
Pennsylvania State Police



RIGHT-TO-KNOW LAW REQUEST

WWW.PSP.STATE.PA.US
1-877-RTK-PSP (1-877-781-7771)

REQUEST DATE: 09/07/2016

NAME OF REQUESTER: DIVEGLIA CYNTHIA A.
(Please Print Legibly) (Last) (First) (MI)

MAILING ADDRESS: 41 BERKEY ROAD
(Street/PO Box)

EAST BERLIN PA 17316
(City) (State) (Zip Code)

TELEPHONE (Optional): 717-476-1220 FAX (Optional): _____

EMAIL (Optional): _____

RECORDS REQUESTED: Please identify each of the documents that are subject to this request with sufficient specificity so we can ascertain whether we have these documents and how to locate them.

COMPLAINT INCIDENT NUMBER # H06-2342590
REQUEST DASH CAM RECORDING - UNEDITED, FROM TPR
ISAAC C. WHITE'S DASH CAM. THE RECORDING OF THE TRAFFIC
STOP WAS MADE BY Cpl. JAMES S. FLANAGAN, FROM MVR OF
CAR # H6-12. THE COMPACT DISC WAS SEIZED IN THE MVR
CUSTODIAL LOCKER. PLEASE PROVIDE AN EXACT DUPLICATE OF
THE RECORDING ON A COMPACT DISC.

To the extent that this request asks or may be construed to seek Pennsylvania State Police records involving covert law enforcement investigations, including intelligence gathering and analysis, the Department can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should the Department's response to this request be info. ret'd as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the Right-to-Know Law, 85 P.S. §§ 67.101-67.3104, and the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101-9182.

Production of requested public records is subject to prepayment of all RTKL fees. For security purposes, this agency will only produce public records in paper format, unless the records exclusively exist in another medium.

PLEASE MAIL, DELIVER IN PERSON, FAX, OR EMAIL YOUR REQUEST TO:

Pennsylvania State Police
Bureau of Records & Identification
ATTN: AGENCY OPEN RECORDS OFFICER
1800 Elmerton Avenue
Harrisburg, PA 17110-0758

FAX: 717-525-5785

EMAIL: PSP-RighttoKnow@pa.gov

PSP/RTKL TRACKING NO.: _____

FINAL RESPONSE DATE: _____

ACKNOWLEDGEMENT DATE-STAMP: _____

CALCULATED RESPONSE DUE DATE: _____

FINAL RESPONSE DUE DATE: _____

Henry, Faith

From: Cynthia Diveglia <winterspringfarm@icloud.com>
Sent: Wednesday, May 25, 2016 12:53 PM
To: DC, OpenRecords
Cc: Cindy Diveglia
Subject: appeal of denial by PSP for records request
Attachments: SIGNED APPEAL FORM .pdf; EXTENSION 04142016.pdf; supplement.docx; denial 051416 .pdf; REQUEST 04072016.pdf

Dear Office of Open Records:

Attached is my appeal form with supplement, a copy of my request for records, letters extending the Agency's time, and the denial of my request. Thus, there are 5 attachments. Please let me know if you do not get all the attachments
Cynthia A. Diveglia

2



May 26, 2016

Via E-Mail only:

Cynthia A. Diveglia
41 Berkey Road
East Berlin, PA 17316
winterspringfarm@icloud.com

Via E-Mail only:

William Rozier
Agency Open Records Officer
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
RA-psprighttoknow@pa.gov
noneeks@pa.gov
wrozier@pa.gov

RE: OFFICIAL NOTICE OF APPEAL -- DOCKET #AP 2016-0923

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, *et seq.* on May 25, 2016. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.** The law requires the agency position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law, and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR's website.

Submissions to OOR: Both parties may submit information and legal argument to support their positions by **11:59:59 p.m. seven (7) business days from the date of this letter.** *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the docket number above on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

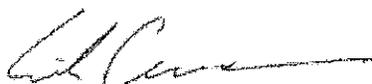
Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice to the OOR within seven (7) business days from the date on this letter.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

If you have any questions about the appeal process, please contact the assigned Appeals Officer (contact information is enclosed) – and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,



Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

IF YOU ARE OBJECTING TO THE DISCLOSURE OF YOUR HOME ADDRESS, DO NOT PROVIDE THE OFFICE OF OPEN RECORDS WITH YOUR HOME ADDRESS. PROVIDE AN ALTERNATE ADDRESS IF YOU DO NOT HAVE ACCESS TO E-MAIL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Joshua T. Young, Esquire

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

PHONE:

(717) 346-9903

FACSIMILE:

(717) 425-5343

E-MAIL:

joshyoung@pa.gov

**Preferred method of contact
and submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer. Please include the case name and docket number on all submissions.

You must copy the other party on everything you submit to the OOR.

The OOR website, <http://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.



pennsylvania

OFFICE OF OPEN RECORDS

IN THE MATTER OF

CYNTHIA DIVEGLIA
Requesters,

v.

PENNSYLVANIA STATE POLICE
Respondent.

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Docket No.: AP 2016-0923

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before July 25, 2016.

June 1, 2016

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street 4th Floor
Harrisburg, PA 17120-0225

Attention: Joshua T. Young, Esquire, Appeals Officer
joshyoung@pa.gov

re: Docket No.: AP 2016-0923

Dear Attorney Young:

Transmitted herewith is a copy of my Findings of Fact and Legal Argument, with Exhibits 1-3;
and Attachment A, in accordance with the Letter of Instruction dated May 26, 2016.

Very Truly Yours,


Cynthia A. Diveglia

ATTACHMENT A



PENNSYLVANIA STATE POLICE
Bureau of Records & Identification
RIGHT-TO-KNOW OFFICE
1800 Elmerton Avenue
Harrisburg, PA 17110

Mailing Date: May 16, 2016

Cynthia A. Diveglia
41 Berkey Road
East Berlin, Pennsylvania 17316

PSP/RTKL Request N° 2016-0269

Dear Ms. Diveglia:

On April 7, 2016, the Pennsylvania State Police (PSP) received your request for information pursuant to Pennsylvania's Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 - 67.3104, wherein you state:

Complaint incident number # H06-2342590.

Request dash cam recording-unedited, from Tpr Isaac C. White's dash cam. The recording of the traffic stop was made by Cpl. James S. Flanagan, from MVR of car # H6-12. The compact disc was secured in the MVR custodial locker. Please provide an exact duplicate of the recording on a compact disc.

A copy of your request is enclosed. By letter dated April 14, 2016, you were notified in accordance with RTKL section 67.902(b) that PSP required an additional thirty days to prepare this final response to your request.

Your request is respectfully denied because it is not a public record as defined in the RTKL. The Right-To-Know Law (RTKL) only requires Commonwealth agencies to provide documents that are public records. 65 P.S. § 67.301 (2010). It is well settled that the Pennsylvania State Police (PSP) is a Commonwealth agency within the meaning of the RTKL. See *id.* § 67.101; *Dekok v. PSP*, Dkt. AP 2011-0086 at 4. A document is not a public record if: (1) it is specifically exempted from disclosure in section 67.708 of the RTKL; (2) it is not otherwise exempt under other federal or state law; or (3) it is protected by a privilege. Tit. 65, § 67.102 (defining "Public Record").

Following the first limitation on the definition of public records, the responsive record (Mobile Video/Audio Recording (MVR) related to PSP Incident Report H06-2342590) is exempt from public disclosure as a criminal investigative record under RTKL section 67.708(b)(16). Section 708(b)(16) exempts from public disclosure a record of an agency relating to a criminal investigation, including:

- "[i]nvestigative materials, notes, correspondence, videos, and reports," [16 C.F.R. § 67.708(b)(16)(ii)]; and
- a record that, if disclosed, "would reveal the institution, progress or result of a criminal investigation," [*id.* § 67.708(b)(16)(vi)(A)].

Here, the MVR was created, received or retained pursuant to law, or in connection with the documentation of a PSP criminal investigation.

Following the second limitation or exemption from disclosure under state law, disclosing the video would violate Pennsylvania's Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §§ 9101-9183. This statute prohibits criminal justice agencies from disseminating investigative information to non-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." *Id.* § 9102. Therefore, PSP is barred by CHRIA from providing you with access to the record you have requested. A verification supporting these assertions is enclosed.

To the extent that your request seeks or may be construed to seek records involving covert law enforcement investigations, including intelligence gathering and analysis, PSP can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should this response to your request be interpreted as indicating otherwise.

In closing, you have a right to appeal this response by submitting an appeal form in writing to the Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. The appeal form may be obtained in the forms section on the OOR website, <http://openrecords.state.pa.us>. Should you choose to file an appeal, you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request; and
- 3) the reason why you think the agency is wrong in its reasons for withholding information (a statement that addresses any ground stated by the agency for the denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong.

Sincerely yours,

Rachael Jeltman

Rachel Zeltmann
Deputy Agency Open Records Officer
Pennsylvania State Police
Bureau of Records & Identification
Right-to-Know Office
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110
1.877.785.7771 (Main); 717.525.5795 (Fax)

Enclosures: PSP/RTKL Request N° 2018-0269
Zeltmann Verification

PENNSYLVANIA STATE POLICE
BUREAU OF RECORDS & IDENTIFICATION
RIGHT-TO-KNOW OFFICE

VERIFICATION OF
RACHEL ZELTMANN
DEPUTY AGENCY OPEN RECORDS OFFICER

I, Rachel Zeltmann, Deputy Agency Open Records Officer of the Pennsylvania State Police (PSP or Department), am authorized to prepare this verification on the Department's behalf in response to PSP/RTKL Request N° 2016-0269. Accordingly, on this 16th day of May, 2016, I verify the following facts to be true and correct, to the best of my knowledge or information and belief:

1. I am familiar with PSP/RTKL Request N° 2016-0269, a copy of which accompanies this verification.
2. Utilizing the information provided, I searched all Departmental databases, to which I have access, for evidence of any PSP records that may respond. My searches revealed the following responsive record: Mobile Video/Audio Recording (MVR) related to PSP Incident Report H06-2342590.
3. I have determined that the responsive MVR is not a "public record" as defined by section 102 under the RTKL, because the responsive record is exempt from public disclosure under RTKL section 67.708(b)(16) as a PSP record that:
 - a. contains "[i]nvestigative materials, notes, correspondence videos and reports;" 65 P.S. § 67.708(b)(16)(ii).
 - b. clearly, based on its content, is a PSP record that, if disclosed, would "[r]eveal the institution, progress or result of a criminal investigation;" 65 P.S. § 67.708(b)(16)(vi)(A).
4. Therefore, I determined the Mobile Video/Audio Recording (MVR) related to PSP Incident Report H06-2342590 is not a "public record," and not subject to access by a requestor under the RTKL.

5. Accordingly, I have withheld this record from public disclosure.

I understand that false statements made in this verification are subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Rachel Zellmann

Rachel Zellmann
Deputy Agency Open Records Officer
Pennsylvania State Police

2016-026



RIGHT-TO-KNOW LAW REQUEST

WWW.PSP.STATE.PA.US
1-877-RTK-PSP1 (1-877-784-7771)

07 APR 16 PM 2:21

4-14

REQUEST DATE: 04/07/2016

NAME OF REQUESTER: DIVIGLIA CYNTHIA A.
(Please Print Legibly) (Last) (First) (MI)

MAILING ADDRESS: 41 BERKEY ROAD
(Street/PO Box)

EAST BERLIN PA 17316
(City) (State) (Zip Code)

TELEPHONE (Optional): 717-476-1220 FAX (Optional): _____

EMAIL (Optional): _____

RECORDS REQUESTED: Please identify each of the documents that are subject to this request with sufficient specificity so we can ascertain whether we have these documents and how to locate them.

COMPLAINT INCIDENT NUMBER # HOG-2342590
REQUEST DASH CAM RECORDING - UNEDITED, FROM TPR
ISAAC C. WHITE'S DASH CAM. THE RECORDING OF THE TRAFFIC
STOP WAS MADE BY CPL JAMES S. FLANAGAN, FROM MVR OF
CAR # HG-12. THE COMPACT DISC WAS SEIZED IN THE MVR
CUSTODIAL LOCKER. PLEASE PROVIDE AN EXACT DUPLICATE OF
THE RECORDING ON A COMPACT DISC.

To the extent that this request seeks or may be construed to seek Pennsylvania State Police records involving covert law enforcement investigations, including intelligence gathering and analysis, the Department can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling its vital interests. UNDER NO CIRCUMSTANCES, therefore, should the Department's response to this request be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the Right-to-Know Law, 65 P.S. §§ 87.101-87.3104, and the Criminal History Record Informatic Act, 18 Pa.C.S. §§ 9101-9183.

Production of requested public records is subject to prepayment of all RTKL fees. For security purposes, this agency will only produce public records in paper format, unless the records exclusively exist in another medium.

PLEASE MAIL, DELIVER IN PERSON, FAX, OR EMAIL YOUR REQUEST TO:

Pennsylvania State Police
Bureau of Records & Identification
ATTN: AGENCY OPEN RECORDS OFFICER
1800 Elmerton Avenue
Harrisburg, PA 17110-9763

FAX: 717-526-5785

EMAIL: PSP-RighttoKnow@pa.gov

PSP/RTKL TRACKING NO.: _____

AGRO RECEIPT DATE-STAMP: _____

FINAL RESPONSE DATE: _____

CALCULATED RESPONSE DUE DATE: _____

FINAL RESPONSE DUE DATE: _____

5. Accordingly, I have withheld this record from public disclosure.

I understand that false statements made in this verification are subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification of authorities.

Rachel Zeltmann

Rachel Zeltmann
Deputy Agency Open Records Officer
Pennsylvania State Police

OFFICIAL DOCKET OF APPEAL DOCKET NUMBER AP 2016-0923

STATEMENT OF FACT AND LEGAL ARGUMENT

OF

Cynthia A. Diveglia

winterspringfarm@icloud.com 717-476-1220

DATE: May 31, 2016

FACTS:

On or about November 16, 2016, State Trooper Isaac White prepared and signed, an Affidavit of Probable Cause, for complaint number H062342590, a copy of which is attached hereto, as Exhibit 1. In that Affidavit of Probable Cause, he states in paragraph 2, last sentence "I had my emergency lights and siren activated for the duration of the pursuit."

Trp. White's statement is that his lights and sirens were on, thus his MVR equipment should have been activated. As such, it appears that an MVR does in fact, exist and as such should have been provided.

Not only did Trp. Isaac White have his emergency lights and siren's activated during the entire pursuit according to his affidavit, but also, Officer William J. Ceravola, of the Reading Township Police Department had his MVR operating, and a copy of his Incident Report, is attached as Exhibit 2. In his Incident report, Officer Creavola, states "I responded via SR94 south in RTPD Utility #14, this is an unmarked vehicle but has functioning red and blue LED lights, sirens and a rumbler system. All of these items **including my car video system** was on and active during this incident." (emphasis added)

Thus, it appears from the record that there are two MVR, both of which are not under any exemption, according to Grove.

A request was presented to the Pennsylvania State Police, Bureau of Records and Identification, Right to Know office, on April 7, 2016. An extension made, not because the records did not exist, but the stated reason the extra 30 days were needed was "The extent or nature of the request precludes a response within the required time period." (Exhibit 3). On May 16, 2016, the request for records was denied because for the following general reasons:

1. The requested MVR is not a public record;
2. The requested MVR is exempt as a public record; and
3. The release of the requested information is prohibited by CHRIA

LEGAL ARGUMENT

This appeal is raised because Pennsylvania Courts have explained the construction of the RTKL and CHRIA in numerous cases and my request for the MVR was wrongfully denied for the following reasons:

1. The PSP Mobile Vehicle Recording (hereinafter MVR), is under the RTKL, and is information documenting the actions of a Commonwealth agency and as such is presumed to be a public record unless it is exempted under the RTKL, or privileged, or exempted from the RTKL under another federal or state law or regulation or judicial order. RTKL, 65 P.S. §67,102, 67.305. See also Pennsylvania State Police v. McGill, 83 A.3d 476, 479 (Pa. Cmwlth. 2014) (*en banc*); Carey v. Pennsylvania Department of Corrections, 61 A.3d 367 at 371-72 (Pa. Cmwlth. 2013)

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. Pennsylvania State Police v. Michelle Grove, 119 A.3d 1102 (Pa. Cmwlth. 2015) citing Levy v. Senate of Pennsylvania, 65 A.3d 361, at 381, (Pa. 2013); McGill, at 479.

Therefore, exemptions from disclosure must be narrowly construed. Grove, at 1104, citing McGill, *id.* and Carey, at 373.

2. The requested MVR is not exempted under 65 P.S. § 67.708(b)(16) because as the Commonwealth Court found in Grove Supra, "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 CHIRA" citing, Coley v. Philadelphia District Attorney's Office, 77 A.3d 694, 697-98 (Pa. Cmwlth. 2013). PSP utilize MVR to document the entire interaction and actions of the trooper, including actions which have no investigation content. Therefore, MVR's 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 18 Pa. C.S. §§ 9101-9183.

In the case at bar, Trp. Isaac White, stated that his lights and sirens were on for the entire pursuit; and Officer William J. Ceravola, stated that his video recording device was on and active during the incident. (Exhibits 1, and 2). Thus, the entire incident was not investigative.

In addition, the PSP contends that the above referenced statutes prohibit criminal justice agencies from disseminating investigative information to non-criminal justice agencies, and specifically, albeit wrongfully, relies on 18 Pa Section 9106(c)(4) alleging that 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 allegation of criminal wrongdoing." Our Commonwealth Court has explained this in Grove, supra, citing Coley, id. Specifically, the court explained that:

"MVR's 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."

Emphasis added.

According to Pennsylvania State Police v. Michelle Grove, 119 A.3d 1102 (Pa. Cmwlth. 2015), citing Coley, *id.* Specifically, the court explained that: "... The MVR equipment is activated when an officer's siren or emergency lights are turned on, a non-investigative event."

Emphasis added.

Thus, it would follow that when Trp. White activated his lights and sirens, his MVR was also activated.

PSP utilize MVR to document the entire interaction and actions of the trooper, including actions which have no investigation content. The Grove, court goes on to explain that because MVR's themselves are not investigative materials or videos investigative information, or records relating or resulting in a criminal investigation these records are not exempt from disclosure under Section 708(b) (16) of the RTKL or CHRIA 18 Pa. C.S. §§ 9101-9183. Because Trp. White states that he had his sirens and emergency lights activated for the duration of the pursuit, the case at bar is right on point with the Grove, case and is not exempt from disclosure under Section 708(b) (16) of the RTKL or CHRIA 18 Pa. C.S. §§ 9101-9183.

Further, if there are any portions of the requested MVR that can be properly proved to fall under an exemption, that portion of the recording could be redacted, rather than denying the entire MVR request. To deny the entire contents of the recorded MVR was a wrongful withholding.

Respectfully Submitted


Cynthia A. Diveglia

AFFIDAVIT

I understand that false statements made in this verification are subject to the penalties of 18Pa. C.S. § 4904, relating to unsworn falsification to authorities.

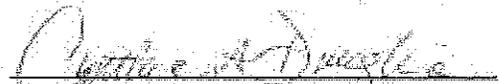

Cynthia A. Diveglia

EXHIBIT 1



POLICE CRIMINAL COMPLAINT

Docket Number: <i>CR 230-4</i>	Date Filed: <i>11-17-14</i>	OTN/LiveScan Number: <i>L9043930</i>	Complaint/Incident Number: <i>MS-2342580</i>
Defendant Name: First: <i>Cynthia</i>	Middle: <i>Anne</i>	Last: <i>DIVEGLIA</i>	

AFFIDAVIT of PROBABLE CAUSE

Your affiant is a member of the Pennsylvania State Police. I am employed as a Trooper. On 11/16/14, I was working 1500-2300 shift in full uniform and in a marked patrol car.

On 11/16/14 at approximately 2040 hours, I was dispatched to the report of an erratic driver on SR 94 northbound in the area of Dicko Dam Rd. Upon responding to the location, I located the vehicle on North Browns Dam Rd, Hamilton Twp. The vehicle was a 2007 Lexus SUV bearing PA reg GNJ4828, grey in color. I followed the vehicle for short period of time. I observed that the vehicle had a flat front passenger side tire. I also observed that the vehicle was continuously driving on the opposite side of the roadway. I activated my emergency lights and siren and attempted a traffic stop. The vehicle did not pull over and continued to drive. The vehicle went from North Browns Dam Rd onto Browns Dam Rd, then turned right onto Penn Ave., then turned left onto SR 94 southbound. The vehicle then proceeded southbound on SR 94 until it reached SR 30. The vehicle turned left on SR 30 and proceeded east until it reached the Abbotstown Square. The vehicle drove around the square and headed north on SR 194. It was at this time that myself and two police units from Eastern Adams Regional Police Department set up a rolling roadblock and stopped the vehicle on SR 194 just north of Abbotstown Square, Berwick Twp. I had my emergency lights and siren activated for the duration of the pursuit.

Upon stopping the vehicle, I made contact with the driver of the vehicle. The driver of the vehicle was the only person in the vehicle. I immediately smelled a very strong odor of an alcoholic beverage emanating from the vehicle. I removed the driver from the vehicle and attempted to perform Field Sobriety Testing on the driver. The driver had trouble standing upright and continuously swayed back and forth. The driver also leaned on her vehicle to keep from falling over. The driver could not perform Field Sobriety Testing due to the apparent level of intoxication. At one point during testing, I had to reach out and grab the driver so that she did not fall down. Due to my experience and training, it was in my opinion that the driver was incapable of safely operating a motor vehicle. I then placed the driver under arrest for driving while under the influence of an alcoholic beverage. I ran the registration of the vehicle and discovered that it is registered to Cynthia Anne DIVEGLIA. The driver related to me that she is the registered owner and I verified this information via a brief photograph of the driver. I then transported the defendant to Gettysburg Hospital for a chemical test.

The implied Consent warnings were read to the defendant at Gettysburg Hospital on 11/16/14 at 2200 hours in the presence of Lab Tech Cathy WORLEY. The defendant expressly refused the test.

The defendant was then transported to Adams County Prison for booking.

I respectfully ask that the defendant answer to the above listed charges.

I, TPR ISAAC WHITE, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

TPR Isaac White (White)
 (Signature of Affiant)

Sworn to me and subscribed before me this _____ day of _____

_____ Date _____, Magisterial District Judge

My commission expires first Monday of January.

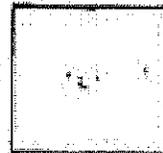


EXHIBIT 2

Incident Report		Reading Township Police Department		Incident #: 2014-3263	
Officer:	William J. Caravola	Badge:	4	SUNDAY	
Assisting:					
Incident Date:		11/16/2014		Time: 9:16 PM	
Location:	SR194 NEAR BROUGH HILL ROAD				
Nature of Call:	ASSIST PSP				
Complainant:	GETTYSBURG PSP OLD HBG RD. GETTYSBURG, PA 17325				
	Phone#:	Work #:			
	Race:	DOB:	Age:	Sex:	
Vehicle Involved:	Make:	Year:	Model:	Type:	
	Color:	Reg:	State:	Sticker:	
Value Stolen:					
List of Suspects/Perpetrators:					

DA COPY

ACC advised that PSP was in pursuit of a Lexus SUV south on RT94 passing Dicks Dam Rd and was requesting assistance.

It was reported by 41-11 that they were travelling at a low speed but the suspect vehicle had no front passenger tire and was dragging the front bumper.

I responded via SR94 south in RTPD Utility #14, this is an unmarked vehicle but has functioning red and blue LED lights, sirens and a rumbler system. All of these items including my in car video system was on and active during this incident.

I was able to catch up as the units as they approached the Abbottstown Square. On my arrival, PSP was the behind a gold colored Lexus SUV and EARPD was behind the PSP unit. Both units were fully marked and they had lights and sirens activated. As the Lexus entered the traffic circle it appeared to me that the driver was going to go south on SR194. I attempted to get in front of the vehicle by taking a left at the circle but was unsuccessful, but I was now in front of the marked units. The Lexus had crossed over the center line on SR194 by Borough Road and was almost struck head on by a S/B vehicle that swerved to avoid the Lexus. At this point, I was able to pass the Lexus on the left get in front of the vehicle and attempt to bring this to a stop. It appeared to me that the driver was trying to get around me as I was weaving back and forth to prevent that from happening. I noticed that EARPD had taken up position on the drivers side of the Lexus and PSP was behind the vehicle. I then stopped my patrol car in an area where there was guide rails on the sides of the roadway. I then exited my vehicle, withdrew my department issued weapon and ordered the wif driver to put her hands up. The driver didn't react to any commands. Trooper White approached and opened the drivers door, removed her from the vehicle and handcuffed her behind her back.

With my training and experience it was very obvious that the suspect was highly intoxicated. She claimed she was unaware that the police were behind her and didn't know her vehicle was damaged. It was raining during this incident and it occurred during hours of darkness. I felt the drivers actions created a very reckless and dangerous situation which could have caused death or serious bodily injury

Accident
Report

Reading Township Police Department

Incident #: 2014-3283

to the police officers or passing motorists.

At this time I noticed that other PSP Troopers arrived on the scene and my assistance was no longer needed. I then cleared the scene with ACC and returned to Reading Township.

A copy of this report will be forwarded to PSP Gettysburg.

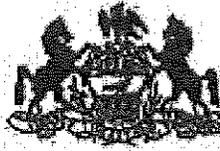
[Handwritten Signature] 174

11/18/14

Officer's Signature

Date

Complaint Report



Eastern Adams Regional Police Department

Commonwealth of Pennsylvania

Complaint Information			
Complaint Number	Issued Record	Police Lt	Call For Service
007-EAR20141116A11	No	No	PVHPST
Description			
VEHICLE PURSUIT			
Clear	Priority	Method Received	Date/Time Received
Cleared	0	CAD	11/16/2014 21:11:00
Day of the Week	New/Repeat		
Sunday	Officer Assigned		
<p>Patrol was advised that state police were in pursuit of a silver Lexus SUV traveling south on Carlisle Pike. A spike strip was deployed on Carlisle Pike in the area of the York Road intersection but the suspect vehicle was able to avoid the spikes. The pursuit continued east on York Road into Abbottstown Borough and turned north on to route 194. A short distance north of the Abbottstown square, a Reading Township unit was able to get in front of the suspect vehicle and the pursuit was brought to an end with a rolling road block.</p>			

Complaint Location						
Street Number	Street Name	Prefix	Street Name	Street Type	Zip Code	
			CARLISLE	PK		
PC Code	City/Post Office	County/Zone Name	State/Zip Code	Highway Name		
		DICKS DAM	RD			
Highway Number	Highway Mileage	Route Name	County	Jurisdiction Name		
			Adams			
Location Township			Recorder District	City/Town	Police Jurisdiction	
Hamilton Township				HAMILTON TWP		
State	Zone Number	Zip Code	Area	City	Post Office Type	Unit Type
PA	0	17350		VEE		
Unit Number	License	Length	Location Type	Country		
			Highway/Road/Alley	United States of America (USA)		
Location Description						
CARLISLE PIKE/CARLISLE PIKE/DICKS DAM/HAMILTON TWP/AC/HAMILTON TWP/HAMILTON TWP						

Complainant Information					
First Name	Last Name	Middle Name	Sex	Age	
Date of Birth		Place	PSP Gettysburg		
Address					
Old Harrisburg RD					
Address		City	State	Zip Code	
		Gettysburg	PA	17326	
Phone Number 1					
Area Code	Number	Ext	Phone Type		
717	334-8111		Work		
Phone Number 2					
Area Code	Number	Ext	Phone Type		
			Work		
Rec'd Complaint	Case Number	Case Date	Case Status		
No	PLPSTR		1814875		
User Defined Field 1			User Defined Field 2		
EAR20141116A11			2014-09062608		

Officers Involved	
Officer Name Gullay, Shawn - 11 - Eastern Adams Regional Police Department	Officer Dispatched ADAMS41-11

Location Dispatched						
Street Number	Street Block	Postcode	Street Name	Street Type	Postcode	
			CARLISLE	PK		
PO Box	Cross-Street Name	Cross-Street Name	Cross-Street Type	Highway Name		
		DICKS DAM	RD			
Highway Number	Highway Type	Postal Route	County	Location Number		
			Adams			
Location Township			Highway District	City/Town	Postal Subdivision	
Hamilton Township				HAMILTON TWP		
State	Area Number	Zip Code	Area	City	Residence Type	Unit Type
PA	8	17350		YES		
Unit Number	Latitude	Longitude	Location Type	Country		
			Highway/Road/Alley	United States of America (USA)		

Location Description	
CARLISLE PIKE	CARLISLE PIKE
DICKS DAM RD	HAMILTON TWP
HAMILTON TWP	HAMILTON TWP
HAMILTON TWP	HAMILTON TWP
Arrived	Dispatch
11/16/2014 21:25:19	11/16/2014 21:12:03
	Clear
	11/16/2014 21:33:02

Officers Involved	
Officer Name Cerevois, William - adams17-4 - Reading Township Police	Officer Dispatched ADAMB17-4

Location Dispatched						
Street Number	Street Block	Postcode	Street Name	Street Type	Postcode	
			CARLISLE	PK		
PO Box	Cross-Street Name	Cross-Street Name	Cross-Street Type	Highway Name		
		DICKS DAM	RD			
Highway Number	Highway Type	Postal Route	County	Location Number		
			Adams			
Location Township			Highway District	City/Town	Postal Subdivision	
Hamilton Township				HAMILTON TWP		
State	Area Number	Zip Code	Area	City	Residence Type	Unit Type
PA	8	17350		YES		
Unit Number	Latitude	Longitude	Location Type	Country		
			Highway/Road/Alley	United States of America (USA)		

Location Description	
CARLISLE PIKE	CARLISLE PIKE
DICKS DAM RD	HAMILTON TWP
HAMILTON TWP	HAMILTON TWP
HAMILTON TWP	HAMILTON TWP
Arrived	Dispatch
11/16/2014 21:25:19	11/16/2014 21:18:38
	Clear
	11/16/2014 21:31:29

Comments

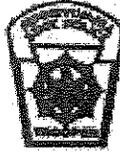
On 16 November at approximately 21:11 hours, this officer was requested to assist state police with a vehicle pursuit that was traveling south on Carlisle Pike from the area of Dick's Dam Road. I was requested and did deploy a spike strip across the southbound lane and partially across the center left turn lane. As the suspect vehicle approached it drove partially in the northbound lane and avoided the spike strip. As the vehicle passed, I observed that the right front tire was missing and the vehicle was running on the wheel. I collected the spike strip and joined the state vehicle in pursuit eastbound on York Road.

In the area of center square in Abbottstown Borough, Reading Township officer William Ceravola joined the pursuit and was able to get his patrol vehicle in front of the suspect vehicle. Approximately one quarter mile north of the Abbottstown square on Route 194, with a guide rail on the right and officer Ceravola in front, I moved around the suspect vehicle on the left. We were able to gradually slow and eventually stop the suspect vehicle without damage to any police vehicles. The operator of the suspect vehicle was taken into custody by state troopers and I cleared the scene.

CAD Messages

- Comment 11/16/2014 21:25:17 OperID: PLPETR>ADAMS17-4-Safety Check-CARLISLE PIKE/DICKS DAM RD, HAMILTON TWP
- Comment 11/16/2014 21:15:40 OperID: PLPETR>SPIKE STRIPS AT ENTRENCE TO MCDONALDS ON 94
- Comment 11/16/2014 21:15:30 OperID: PLPETR>POSS DUI
- Comment 11/16/2014 21:15:14 OperID: PLPETR>40 MPH / ENTERING ABBOTTSTOWN BORO
- Comment 11/16/2014 21:16:58 OperID: PLPETR>AT C AND D BAR AND GRILL
- Comment 11/16/2014 21:26:17 OperID: PLPETR>ADAMS41-11-Safety Check-CARLISLE PIKE/DICKS DAM RD, HAMILTON TWP
- Comment 11/16/2014 21:17:15 OperID: PLPETR>VEH HIT STRIPS / LOST RIGHT FRONT TIRE
- Comment 11/16/2014 21:31:48 OperID: PLPETR>ADAMS41-11-Safety Check-CARLISLE PIKE/DICKS DAM RD, HAMILTON TWP
- Comment 11/16/2014 21:20:23 OperID: PLPETR>194 N
- Comment 11/16/2014 21:14:03 OperID: PLPETR>SILVER LEXUS SUV
- Comment 11/16/2014 21:13:26 OperID: PLPETR>VEH PURSUIT
- Comment 11/16/2014 21:22:02 OperID: PLPETR>MALE SUBJECT IN CUSTODY
- Comment 11/16/2014 21:31:29 OperID: PLPETR>ADAMS17-4-Cleared-CARLISLE PIKE/DICKS DAM RD, HAMILTON TWP
- Comment 11/16/2014 21:25:19 OperID: PLPETR>ADAMS17-4-On Scene-CARLISLE PIKE/DICKS DAM RD, HAMILTON TWP
- Comment 11/16/2014 21:19:30 OperID: PLPETR>ADAMS17-4-Add Unit Enroute-CARLISLE PIKE/DICKS DAM RD, HAMILTON TWP
- Comment 11/16/2014 21:33:02 OperID: PLPETR>ADAMS41-11-Cleared-CARLISLE PIKE/DICKS DAM RD, HAMILTON TWP
- Comment 11/16/2014 21:25:19 OperID: PLPETR>ADAMS41-11-On Scene-CARLISLE PIKE/DICKS DAM RD, HAMILTON TWP
- Comment 11/16/2014 21:13:03 OperID: PLPETR>ADAMS41-11-Add Unit Enroute-CARLISLE PIKE/DICKS DAM RD, HAMILTON TWP

EXHIBIT 3



Pennsylvania State Police
Bureau of Records & Identification
RIGHT-TO-KNOW OFFICE
1800 Elmerton Avenue
Harrisburg, PA 17110

Mailing Date: April 14, 2016

Cynthia A. Diveglia
41 Berkey Road
East Berlin, PA 17316

PSP/RTKL Request N° 2016-0260

Dear Ms. Diveglia:

On April 7, 2016, the Pennsylvania State Police (PSP) received your request for information pursuant to the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 - 3104, wherein you wrote:

Complaint incident number H06-2342590. Request dash cam recording unedited from Tpr. Isaac White's dash cam. The records of the traffic stop were made by Cpl. James Flanagan, from MVR car H6-12. The compact disc was secured in the MVR custodial locker. Please provide an exact duplicate of the recording on a compact disc.

Under the RTKL, a written response to your request is due on or before April 14, 2016.

Under the provisions RTKL section § 67.902(b)(2), you are hereby notified that your request is being reviewed and the PSP will require up to an additional 30 days, i.e., until May 16, 2016, in which to respond to your request. Should your request be granted, the total for the estimated or actual fees owed, if any, will be included in our subsequent response. The reason for requiring additional time for a final response is checked below:

- Compliance with your request may require the redaction of certain information that is not subject to access under RTKL.
- Your request requires retrieval of one or more records that are stored at a remote location.
- A response by the mailing date of this letter could not be accomplished due to bona fide staffing limitations. In particular, _____.
- Your request is under legal review, which is necessary to determine whether a requested record is a "public record" for purposes of the RTKL.

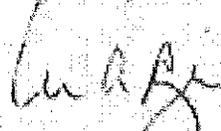
a Your compliance with the following agency policies is required for access to the record(s): _____

a You must pay the applicable fees authorized by the RTKL.

X The extent or nature of the request precludes a response within the required time period.

Should you have any questions regarding this letter, please contact the undersigned.

Sincerely yours,



William A. Rozler, J.D.
Pennsylvania State Police
Agency Open Records Officer
Bureau of Records and Identification
Right to Know Law/Subpoena Unit
1800 Elmerton Ave.
Harrisburg, PA 17110
Office: 717.425.5743 Fax: 717.525.5795
rozler@pa.gov

Enclosure: Request 2016-0269



2016-06

RIGHT-TO-KNOW LAW REQUEST

WWW.PSP.STATE.PA.US
1-877-RTK-PSP1 (1-877-784-7771)

RTK P.02/2016

4-1

REQUEST DATE: 06/07/2016

NAME OF REQUESTER: DIVELLA CYNTHIA A.
(Please Print Legibly) (Last) (First) (MI)

MAILING ADDRESS: 41 BERKEY ROAD
(Street/PO Box)

EAST BERLIN PA 17316
(City) (State) (Zip Code)

TELEPHONE (Optional): 717-476-1220 FAX (Optional): _____

EMAIL (Optional): _____

RECORDS REQUESTED: Please identify each of the documents that are subject to this request with sufficient specificity so we can ascertain whether we have these documents and how to locate them.

COMPLAINT INCIDENT NUMBER # NOG-2342590
REQUEST DASH CAM RECORDING - UNEDITED, FROM TPR
ISRAAC C. WHITE'S DASH CAM. THE RECORDING OF THE TRAFFIC
STOP WAS MADE BY Cpl. JAMES S. RANAKAN, FROM MVR OF
CAR # HG-12. THE CONTACT DISC WAS SECURED IN THE MVR
CUSTODIAL LOCKER. PLEASE PROVIDE AN EXACT DUPLICATE
THE RECORDING ON A COMPACT DISC.

To the extent that this request seeks or may be construed to seek Pennsylvania State Police records involving covert law enforcement investigations, including intelligence gathering and analysis, the Department can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should the Department's response to this request be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the Right-to-Know Law, 65 P.S. §§ 87.101-87.3104, and the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101-9183.

Production of requested public records is subject to prepayment of all RTKL fees. For security purposes, this agency will only produce public records in paper format, unless the records exclusively exist in another medium.

PLEASE MAIL, DELIVER IN PERSON, FAX, OR EMAIL YOUR REQUEST TO:

Pennsylvania State Police
Bureau of Records & Identification
ATTN: AGENCY OPEN RECORDS OFFICER
1800 Elmerton Avenue
Harrisburg, PA 17110-8758

FAX: 717-625-8785

EMAIL: PSP-RighttoKnow@pa.gov

PSP/RTKL TRACKING NO.: _____

AORG RECEIPT DATE-STAMP: _____

FINAL RESPONSE DATE: _____

CALCULATED RESPONSE DUE DATE: _____

FINAL RESPONSE DUE DATE: _____

Young, Joshua

From: Cynthia Diveglia <winterspringfarm@icloud.com>
Sent: Wednesday, June 01, 2016 10:40 AM
To: Young, Joshua
Cc: SP, PSP RIGHT TO KNOW; Cindy Diveglia; Meeks, Nolan; Rozier, William A
Subject: Findings of Fact and Legal Argument
Attachments: FILED 060116.pdf; ATT00001.htm

Dear Attorney Young,

Transmitted herewith is my letter submitting my findings of fact and legal argument. A copy will also be sent to RA-psprighttoknow@pa.gov, and nomeeks@pa.gov, and wrozier@pa.gov

Thank you.

Very Truly Yours,
Cynthia A. Diveglia

Young, Joshua

From: Young, Joshua
Sent: Tuesday, June 07, 2016 10:15 AM
To: Meeks, Nolan
Cc: 'winterspringfarm@icloud.com'; Rozier, William A
Subject: FW: Diveglia v. Pennsylvania State Police: OOR Dkt 2016-0923

Dear Attorney Meeks:

Thank you for your e-mail, a copy of which is included below for ease of reference by the Requester. Your request for an extension of the party submission deadline is **granted**, and the record in this matter will remain open until the end of the day (11:59:59 p.m.) on **June 14, 2016**. Please be sure to copy the Requester on all future correspondence in this matter.

Very truly yours,



Joshua T. Young | Attorney
Office of Open Records
Commonwealth Keystone Building
400 North St., Plaza Level
Harrisburg, PA 17120-0225
(717) 346-9903 | <http://openrecords.pa.gov>
joshyoung@pa.gov | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.

From: Meeks, Nolan
Sent: Tuesday, June 07, 2016 8:38 AM
To: Young, Joshua
Cc: Rozier, William A; Holley, Melissa K
Subject: Diveglia v. Pennsylvania State Police: OOR Dkt 2016-0923

Dear Appeals Officer Young:

I am writing to request a one week extension of time to provide PSP's submission in this case, making PSP's submission due Tuesday, June 14, 2016. I note that the Requester has provided the OOR with an additional 30 days to issue its Final Determination. Thank you for your consideration of this request.

Thank you,

Nolan B. Meeks | Assistant Counsel for Pennsylvania State Police
Governor's Office of General Counsel
1800 Elmerton Avenue
Harrisburg, PA 17110
Direct: (717) 346-1718 | Cell: (717) 409-2484 | Fax: (717) 772-2883
nomeeks@pa.gov | www.ogc.state.pa.us | www.psp.state.pa.us

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ATTORNEY WORK PRODUCT

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COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 14, 2016

Sent Only Via Electronic Transmission

Joshua Young, Esquire
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Re: *Diveglia v. Pa. State Police*
AP 2016-0923 (PSP/RTKL 2016-0269)
Brief of Appellee
Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-67.3104.

Encl. Affidavit of Trooper Isaac C. White
Affidavit of William A. Rozier, AORO
Pa. Bulletin -- 45 Pa.B. 5482

Dear Appeals Officer Young:

I am responding on behalf of my client, the Pennsylvania State Police ("PSP"), to the May 25 2016, appeal filed by Cynthia A. Diveglia ("Requester") regarding the denial of her Right-To-Know Law ("RTKL") request (PSP/RTK No. 2016-0269 now the subject of the Office of Open Records ("OOR") Appeal No. 2016-0923). Please accept this correspondence as my formal entry of appearance in the matter and kindly direct your future communications to me.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On April 7, 2016, PSP received a RTKL request from the Requester wherein she stated:

Complaint incident number # H06-2342590. Request dash cam recording- unedited, from Tpr Isaac C. White's dash cam. The recording of the traffic stop was made by Cpl. James S. Flanagan, from MVR of car # H6-12. The compact disc was secured in the MVR custodial locker. Please provide an exact duplicate of the recording on a compact disc.

By letter dated April 14, 2016, Requester was notified in accordance with RTKL section 67.902(b) that PSP required an additional thirty (30) days to prepare its final response to her request. In a letter dated May 16, 2016, PSP provided Requester with its final response denying the request. On May 25, 2016, Requester filed an appeal with the Office of Open Records ("OOR"). For the reasons set forth below, PSP continues to rely on the positions set forth in its



final response and the arguments made below and requests that Ms. Diveglia's appeal be dismissed.

ARGUMENT

The RTKL only requires Commonwealth agencies to provide documents that are public records. 65 P.S. § 67.301. It is well settled that PSP is a Commonwealth agency within the meaning of the RTKL. *Id.* at § 67.101; *Dekok v. PSP*, Dkt. AP 2011-0086 * 4. A document is not a public record if: (1) it is specifically exempted from disclosure in section 67.708 of the RTKL; (2) it is exempt under other federal or state law; or (3) it is protected by a privilege. See *id.* § 67.102 (defining "Public Record").

I. THE RESPONSIVE MOBILE VIDEO RECORDING (MVR) IS EXEMPT FROM DISCLOSURE PURSUANT TO SECTION 708(B)(16) OF THE RTKL AND THE CRIMINAL HISTORY RECORDS INFORMATION ACT.

In response to the request, PSP identified and retrieved the MVR from Trooper White's patrol vehicle that is responsive to the request. However, the responsive MVR is not a public record because it is exempt from disclosure under the criminal investigation exemption found in Section 708(b)(16) of the RTKL. 65 P.S. § 67.708(b)(16). Additionally, PSP is prohibited from disclosing the responsive MVRs pursuant to the Criminal History Records Information Act (CHRIA) because it is investigative information. 18 Pa.C.S. § 9106(c)(4).

The MVR is "investigative information" exempt from disclosure under CHRIA. CHRIA provides:

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. (Emphasis added).

18 Pa.C.S. § 9106(c)(4). Investigative information is defined as "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." *Id.* § 9102. Although CHRIA allows for dissemination of criminal incident information on police blotters,¹ information contained in blotters is distinct from investigative information. *Id.* § 9104(b).

The responsive MVR is a component of PSP Incident #H06-2342590, which is a criminal investigation. Trooper White has attested that he began his investigation of this incident based upon a "complaint of a witness of an erratic driver weaving all over the roadway and driving in

¹ A police blotter is "[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.

the oncoming lane of traffic.” (White Affidavit, ¶5). Trooper White further attested that he observed the vehicle driving on the opposite side of the road and attempted to pull the vehicle over; however, the vehicle fled from Trooper White. (White Affidavit, ¶¶ 5-7). Trooper White also attested that “[t]he MVR was created during [his] investigation into a complaint of criminal activity and the MVR documents [the suspect] engaged in that activity.” (White Affidavit, ¶ 9).

Thus, the responsive MVR is “investigative information” under CHRIA because it was “assembled as a result of the performance of [a] inquiry...into a criminal incident. 18 Pa.C.S. §9102. Because the MVRs are “investigative information” under CHRIA, PSP is prohibited from providing the MVRs to Requester because she is not a criminal justice agency. Id. §9106(c)(4). Additionally, given Trooper White’s Affidavit, the MVR is a record of PSP that is related to a criminal investigation and, therefore, exempt from disclosure pursuant to Section 708(b)(16) of the RTKL. 65 P.S. 67.708(b)(16).

II. THE *GROVE* DECISIONS ARE NOT CONTROLLING IN THIS CASE.²

The Commonwealth Court’s holdings in *Grove I* and *Grove II* provide the legal principle that whether or not a MVR is exempt from disclosure depends on the facts of the given case. *Grove II*, WL 5670686 *6 (“In sum, *Grove* held that the mobile video recordings are not *automatically* exempt under Section 708(b)(16)”) (emphasis added). Here, the responsive MVR is clearly distinguishable from the MVRs that were the subject of the *Grove* cases. The evidence provided here demonstrates that the MVRs are clearly investigative material and exempt from disclosure. 18 Pa.C.S. §9106(c)(4); 65 P.S. §67.708(b)(16).

III. DISCLOSURE OF THE RESPONSIVE MVRs IS PROHIBITED UNDER THE SECTION 5749 OF THE WIRETAP ACT.

The Pennsylvania State Police’s use of a MVR is made pursuant to Section 5704(16) of the Wiretapping and Electronic Surveillance Act (“Wiretap Act”), 18 Pa.C.S. §5704(16). Section 5704(16) states:

(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,

² The Supreme Court granted allocatur in *Pennsylvania State Police v. Michelle Grove* (*Grove I*). The case is docketed at 25 MAP 2016.

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).

18 Pa.C.S. § 5704(16).

The disclosure of the communication captured by police with a device approved under Section 5706(b)(4) is governed by Section 5749 of the Wiretap Act.³ Under Section 5749 disclosure of a MVR can only be made in certain circumstances. A MVR may only be disclosed when it is an "investigative disclosure" made pursuant to Section 5717 of the Wiretap Act, an "evidentiary disclosure made pursuant to Section 5721.1 of the Wiretap Act, or for training purposes upon the consent of all participants. 18 Pa.C.S. 5717, 5721.1, 5749(a)(2), (5), (b). Furthermore, under these provisions the MVRs may only be disclosed via a subpoena or in the criminal discovery process. 18 Pa.C.S. 5749(a)(3),(b)(1). Therefore, PSP is prohibited from disseminating a MVR through the RTKL. 65 P.S. 67.3101.1 ("If the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply.")

In the Commonwealth Court's decision in *Grove I*, the Court considered the Wiretap Implications of the MVR; however, the court only did so pursuant to Sections 5702 and 5703 of the Wiretap Act. *Grove*, A.3d 119 at 1110. The court did not analyze the sections of the Wiretap Act that allow the State Police to record "oral communications" as explained above, thus, the OOR is not bound by the Commonwealth Court's decision in that case.

IV. REQUESTER CANNOT CHANGE HER REQUEST ON APPEAL.

In her June 1, 2016 submission, Requester makes the statement that "it appears from the record that there are two MVR, both of which are not under any exemption, according to *Grove*." (Requester's Statement of Fact and Legal Argument, pg. 1). In her request, Requester only requested the "dash cam recording-unedited, from Tpr. Isaac C. White's dash cam," therefore there is only one MVR responsive to her request and she cannot change her request to include additional items on appeal. *Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Cmwlth. Ct. 2010).

³ Section 5706(b)(4) of the Wiretap Act states:

[t]he Pennsylvania State Police shall annually establish equipment standards for any electronic, mechanical or other device which is to be used by law enforcement officers for purposes of interception as authorized under Section 5704(16). The equipment standards shall be published annually in the Pennsylvania Bulletin.

18 Pa.C.S. §5706(b)(4). This section is in reference to MVRs. Attached is a copy of the State Police Notice published in the Pennsylvania Bulletin.

CONCLUSION

In conclusion, based upon the RTKL, case law, and the facts contained within the Affidavits of Trooper White and William A. Rozier, the Pennsylvania State Police respectfully requests that you dismiss Ms. Diveglia's appeal. I thank you in advance for your thoughtful deliberations.

Respectfully,



Nolan B. Meeks, Esquire
Assistant Counsel
Pennsylvania State Police
717.783.5568 / nomeeks@pa.gov

cc Cynthia A. Diveglia, Esquire (w/ encl.) (*sent only via electronic transmission*)
William A. Rozier (w/ encl.) (*sent only via electronic transmission*)

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE

VERIFICATION OF
ISAAC C. WHITE

1. My name is Isaac C. White. 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 a Trooper with the Pennsylvania State Police (PSP). In this capacity, I am authorized to make this statement on behalf of the Department, its Commissioner, Tyree C. Blocker, in the interests of the Commonwealth of Pennsylvania and its citizens.

3. I am assigned to Troop H-Harrisburg Patrol Division.

4. I am executing this verification in response to a RTKL appeal filed by Cynthia A. Diveglia ("Requester") with the Office of Open Records ("OOR"), which has been docketed by OOR as N° AP 2016-0923. I do so in order to explain why a mobile video recording (MVR) was created in this case.

5. I began my investigation into the incident that gave rise to the responsive MVR upon receiving a complaint from a witness of an erratic driver weaving all over the roadway and driving in the oncoming lane of traffic. I was provided turn by turn instructions regard the location of the suspect vehicle. I arrived on scene and after following the suspect vehicle, I observed that the suspect vehicle was consistently driving on the opposite side of the road.

6. After making this observation, I activated my emergency lights in an attempt to initiate a traffic stop. When I activated my emergency lights the MVR equipment in my patrol vehicle began recording.

7. The suspect vehicle did not stop and I continued to follow the suspect vehicle until the vehicle was forcibly stopped with the help of officers from the Reading Township Police Department.

8. The driver of the suspect vehicle was identified as Cynthia Anne Diveglia and because of the Ms. Diveglia's actions, I filed the following criminal charges against her:

- Recklessly endangering another person, 18 Pa.C.S. § 2705;
- Driving under the influence of alcohol or a controlled substance, 18 Pa.C.S. § 3802; and

- Fleeing or attempting to elude police officer, 75 Pa.C.S. § 3733

9. My investigation concluded with the filing of the above criminal charges. The MVR was created during my investigation into a complaint of criminal activity and the MVR documents Ms. Diveglia engaged in that activity.

I, Isaac C. White, hereby verify that the facts set forth in this document are true and correct. I also understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 06/09/16



Tpr. Isaac C. White
Pennsylvania State Police

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
RTKL OFFICE

Commonwealth of Pennsylvania :
:
:
:
:
:
County of Dauphin :

AFFIDAVIT OF
WILLIAM A. ROZIER
AGENCY OPEN RECORDS OFFICER

BEFORE ME, the undersigned notary public, appeared the affiant, WILLIAM A. ROZIER, on this 14th day of June, 2016, who being duly sworn by me according to law, stated the following:

1. My name is William A. 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 with 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, Tyree C. Blocker, 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 RTKL for Agency Open Records Officers.
4. As the Agency Open Records Officer, I am respectful of the objectives embodied by RTKL and personally committed to their realization. Although I am very familiar with most aspects of the RTKL, I consult regularly with PSP legal counsel regarding those RTKL provisions that impact significantly upon my duties and responsibilities.
5. I have prepared this affidavit in response to a RTKL appeal filed by Cynthia A. Diveglia ("Requester") with the Office of Open Records ("OOR"), which has been docketed by OOR as N° AP 2016-0923. I do so in order to clarify PSP's response to Ms. Diveglia's request and subsequent appeal.

6. Requester filed an RTKL request with PSP, wherein he stated:

Complaint incident number # H06-2342590.
Request dash cam recording-unedited, from Tpr Isaac C. White's dash cam. The recording of the traffic stop was made by Cpl. James S. Flanagan, from MVR of car # H6-12. The compact disc was secured in the MVR custodial locker. Please provide an exact duplicate of the recording on a compact disc.

7. PSP's RTK Office identified and retrieved the mobile video recording (MVR) that is responsive to the request. For the purposes of clarification Corporal James S. Flanagan is the MVR custodian who, under Department regulations, is responsible for downloading the recordings from the server and storing the MVRs.

8. The responsive MVR is a component of PSP Incident Report No. H06-2342590.

10. The responsive MVR was created pursuant to Section 5704(16) of the Wiretapping and Electronic Surveillance Act (Wiretap Act), 18 Pa.C.S. §§ 5701-5782.

11. I have reviewed the responsive MVR and found that the MVR depicts Trooper White following the suspect and attempting to conduct a forcible traffic stop of the suspect. The MVR then depicts the suspect fleeing from Trooper White in her vehicle and eventually being forcibly stopped by Trooper White and members of the Reading Township Police Department. The MVR further depicts the suspect being removed from her vehicle and arrested. The MVR goes on to show the vehicle being searched by PSP Troopers. There is no audio of this portion of the MVR.

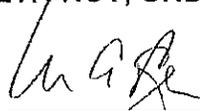
12. The MVR depicts the suspect being transported following her arrest. During this transport, the suspect makes numerous statements to Trooper White. The transport portion of the MVR does have audio.

13. The responsive MVR is exempt from disclosure pursuant to Section 708(b)(16) of the RTKL.

14. Furthermore, disclosing the MVR to Requester would violate Pennsylvania's Criminal History Record Information Act (CHRIA), 18 Pa.C.S. § 9101-9183, which prohibits criminal justice agencies from disseminating investigative information, except to other criminal justice agencies.

15. Thus, I withheld the responsive MVR from public dissemination.

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 14th day of June 2016, to certify which witness my hand and seal.



COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Carolee A. Fernback, Notary Public
Susquehanna Twp., Dauphin County
My Commission Expires March 23, 2019

NOTICES

STATE POLICE

Mobile Video Recording System Equipment Standards and Approved Mobile Video Recording Systems

[45 Pa.B. 5482]

[Saturday, August 29, 2015]

The State Police, under the authority of 18 Pa.C.S. §§ 5704(16)(ii)(C) and 5706(b)(4) (relating to exceptions to prohibition of interception and disclosure of communications; and exceptions to prohibitions in possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices), has approved, until the next comprehensive list is published, subject to interim amendment, the following equipment standards for electronic, mechanical or other devices (mobile video recording systems) which may be used by law enforcement officers for the purpose of interception as authorized under 18 Pa.C.S. § 5704(16). Mobile video recording systems must consist of the following components.

Vehicle-Mounted Mobile Video Recording Systems Overview

Vehicle-Mounted Mobile Video Recording Systems shall be defined as those which are permanently mounted in vehicles requiring the operator to possess a Class A, B, C or M Pennsylvania Driver's License, as defined in 75 Pa.C.S. § 1504 (relating to classes of licenses). The design of the vehicle-mounted mobile video recording system must use technology, which includes a camera, monitor, wireless voice transmitter/receiver and a recording device with a secure protective enclosure for the recording device, electronics and receiver components. The vehicle-mounted mobile video recording system must be powered from a standard automotive vehicle operating at 11 to 16.5 volts DC, negative ground. Current drain on the vehicle electrical system must not exceed 3.0 amps. The system must operate over the following temperature range: -4°F to 130°F (-20°C to 55°C).

Camera

The camera component must have the following features:

- A. Auto focus and auto iris.
- B. Flexible mounting bracket to allow manual aiming controls.
- C. Auto zoom (automatic zoom in then back out to normal distance).

- D. Minimum sensitivity rating of 2.0 lux.
- E. Minimum horizontal resolution of 330 TV lines.

Monitor

The monitor component must have the following features:

- A. Controls for picture brightness and contrast.
- B. Capability of being switched off without affecting recording.
- C. A speaker and volume control system.

The monitor must be capable of displaying:

- A. Camera image (live).
- B. Previously recorded information from the recording unit.
- C. Date and time.
- D. Recording index indicator.
- E. In-car/wireless microphone activity indicator.

Wireless Voice Transmitter/Receiver

The wireless voice transmitter/receiver must have the following features:

- A. Battery powered wireless microphone transmitter.
- B. Antenna incorporated into the microphone.
- C. A plug-in connector and a clothing clip on the microphone.
- D. FCC: Type acceptable under 47 CFR Part 74, Subpart H (relating to low power auxiliary stations).
- E. The transmitter must not have recording capabilities.
- F. The wireless audio system must be equipped with either a digital coded squelch or a PL tone squelch circuit to prevent accidental activation of the record mode in stray RF fields.

Recording Device

The recording device must be capable of recording onto tape or other comparable media and have the following features:

- A. Enclosed in a secure housing protected from physical damage and unauthorized access.

- B. Capable of recording audio and video for a minimum of 2 continuous hours.
- C. Record time/date, recording index and remote microphone indicator.
- D. Record over protection.

System Control

The control console must be mounted within easy reach of the operator. The control console must contain the controls to operate the following functions:

- A. Power.
- B. Record.
- C. Play.
- D. Rewind.
- E. Fast forward.
- F. Pause.

The State Police, under the authority of 18 Pa.C.S. §§ 5704(16)(ii)(C) and 5706(b)(4), has approved for use, until the next comprehensive list is published, subject to interim amendment, the following list of approved vehicle-mounted mobile video recording systems which meet the minimum equipment standards in this notice.

System 7, Mobile Vision, Boonton, NJ
 Eyewitness, Kustom Signals, Lenexa, KS
 Patrol Cam, Kustom Signals, Lenexa, KS
 Motor Eye, Kustom Signals, Lenexa, KS
 Cruise Cam, The Cruisers Division, Mamaroneck, NY
 I Track, McCoy's Law Line, Chanute, KS
 Docucam, MPH Industries Inc., Owensboro, KY
 Digital Mobile Witness, T.A.W. Security Concepts, Wheat Ridge, CO
 Car Camera AV360, A.S.S.I.S.T. International, New York, NY
 OPV, On Patrol Video, Ontario, OH
 Gemini System, Decatur Electronics, Decatur, IL
 SVS-500, ID Control Inc., Derry, NH
 PAVE System, Video Systems Plus, Bryan, TX
 InCharge 5555, Applied Integration, Tucson, AZ
 VMDT, Coban Research and Technology, Houston, TX
 Mobile Vision 5-C Video Recording System, Mobile Vision, Boonton, NJ
 Stalker Vision VHS, Applied Concepts Inc., Plano, TX
 Stalker Vision HI8, Applied Concepts Inc., Plano, TX
 Digital Eyewitness, Kustom Signals, Lenexa, KS
 Eagleye Model 800, Eagleye Technologies, Inc., Rome, GA
 Eagleye Model 900, Eagleye Technologies, Inc., Rome, GA
 Flashback, Mobile Vision, Inc., Boonton, NJ
 Digital Patroller, Integrian, Morrisville, NC

Digital Patroller 2 Mobile Video Recorder, Digital Safety Technologies, Morrisville, NC

Panasonic Arbitrator 360 Mobile Video Recorder, Panasonic Corporation of North America, Secaucus, NJ

WatchGuard DV-1 Mobile Video Recorder, WatchGuard Video, Plano, TX

EDGE Mobile Video Recorder, Coban Technologies, Stafford, TX

DVM-500 Plus and DVM-750 Mobile Video Recorders, Digital Ally, Overland Park, KS

WatchGuard 4RE Mobile Video Recorder, WatchGuard, Plano, TX

DigitalPatroller 3 Mobile Video Recorder, Digital Safety Technologies, Morrisville, NC

X22 Mobile Video Recorder, RDR Mobility, Flemington, NJ

Data 911 Mobile Digital Video System, Data 911 Mobile, Computer Systems, Alameda, CA

DVM-400 Mobile Video Recorder, Digital Ally, Lenexa, KS

DVB-777 Mobile Video Recorder, Digital Ally, Lenexa, KS

MVX1000 Mobile Video Recorder, Motorola Solutions Inc., Schaumburg, IL

DVM800, Digital Ally, Lenexa, KS

DVR-704, PRO-VISION, Byron Center, MI

1200-PA SD2+2, 10-8 Digital Video Evidence Solutions, Fayetteville, TN

Non-Vehicle-Mounted Mobile Video Recording Systems Overview

Non-Vehicle-Mounted Mobile Video Recording Systems shall be defined as those which are not permanently mounted in vehicles requiring the operator to possess a Class A, B, C or M Pennsylvania Driver's License, as defined in 75 Pa.C.S. § 1504. Non-vehicle-mounted mobile video recording systems shall include, but not be limited to, mobile video recorders worn on or about a law enforcement officer's person or affixed to an all-terrain vehicle, bicycle or horse.

The design of the non-vehicle-mounted mobile video recording system must use technology which includes a camera with date/time stamp capability, a microphone and a recording device, enclosed in secure protective enclosure(s). It may also contain controls, a monitor, GPS, wireless transceiver components and other electronic components. The non-vehicle-mounted mobile video recording system must be powered from a battery internal to the protective enclosure and must be weatherproof. The internal battery may be integral to the unit or removable. It is permissible to have an external battery to extend the operating life of the system. The non-vehicle-mounted mobile video recording system must have a minimum record time of 2 continuous hours. The system must operate over the following temperature range: -4°F to 122°F (-20°C to 50°C).

Camera

The camera component must have the following features:

- A. Must be color video.
- B. Minimum of 640 x 480 pixel resolution.
- C. Minimum of 68 degrees field of view.

- D. Minimum of 30 frames per second.
- E. Minimum sensitivity rating of 3.4 lux or lower. Unit may use Infrared LED illumination to obtain lower than 3.4 lux equivalent.
- F. Camera does not have to be in the same enclosure as the recorder. Can be connected to the recorder either by cable or wireless connection.

Recorder

The recorder component must have the following features:

- A. Enclosed in a secure housing protected from physical damage.
- B. Date/time recording index.
- C. Minimum of 4 gigabytes of nonremovable solid state memory, 4 gigabytes removable media or a combination of both removable and nonremovable memory.
- D. Editing and record-over protection.

System Control

The system must:

- A. Be capable of recording audio and video simultaneously, but may also provide the user with the option to record video only or audio only.
- B. Provide the user with the capability to manually turn the power on and off as necessary.

Wireless Link (optional)

The unit may use a wireless link to connect the camera to the recorder, recorder to another device, combination camera/recorder to another device or be used to download the evidence. The wireless link must have the following features:

- A. Use a secure digital connection.
- B. Wireless link can be used to play back a locally stored event on the recorder or store the media to a remote location such as secure Cloud storage.
- C. FCC Type acceptable under 47 CFR Part 15 (relating to radio frequency devices).

The State Police, under the authority of 18 Pa.C.S. §§ 5704(16)(ii)(C) and 5706(b)(4), has approved for use, until the next comprehensive list is published, subject to interim amendment, the following list of approved non-vehicle-mounted mobile video recording systems which meet the minimum equipment standards in this notice.

AXON Body Mobile Video Recorder, TASER, Scottsdale, AZ
AXON Flex Mobile Video Recorder, TASER, Scottsdale, AZ
FIRST Vu, Digital Ally, Lenexa, KS

FIRST Vu HD, Digital Ally, Lenexa, KS
LE 3 Mobile Video Recorder, VIEVU, Seattle, WA
BODYCAM BC-100, PRO-VISION, Byron Center, MI
Prima Facie, Safety Vision LLC, Houston, TX

Conducted Electrical Weapons with integrated Mobile Video Recording Systems

Notwithstanding any other standards or requirements contained in this notice, conducted electrical weapons equipped with integrated mobile video recording systems are only required to meet the following minimum specifications:

- A. Be capable of recording audio and video simultaneously, but may also provide the user with the option to record video only or audio only.
- B. Be capable of having the audio video recording extracted from the conducted electrical weapon by means of downloading or by the removal of a media storage device.

Nothing in this notice prohibits the authorized use of a mobile video recording system that is not specifically identified if the mobile video recording system otherwise meets the equipment standards in this notice. Moreover, mobile video recording systems that are not activated to record oral communications or do not have an oral recording capability need not meet the equipment standards in this notice. Manufacturers may submit equipment to be added to the list by contacting the State Police, Bureau of Patrol (Bureau). New units must be in full commercial production. No prototype models will be considered. Proof of current sales and delivery of the specified equipment over the past 6 months must be provided, in writing, referencing current customers with contacts and phone numbers for verification. When requested by the Bureau, the manufacturer/bidder must furnish a complete working system installed in a vehicle for inspection within 30 days.

Comments, suggestions or questions should be directed to the State Police, Bureau of Patrol, Department Headquarters, 1800 Elmerton Avenue, Harrisburg, PA 17110.

COLONEL TYREE C. BLOCKER,
Acting Commissioner

[Pa.B. Doc. No. 15-1613. Filed for public inspection August 28, 2015, 9:00 a.m.]

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webmaster@PaBulletin.com

Young, Joshua

From: Meeks, Nolan
Sent: Tuesday, June 14, 2016 1:48 PM
To: Young, Joshua
Cc: 'winterspringfarm@icloud.com'; Rozier, William A; Holley, Melissa K
Subject: RE: Diveglia v. Pennsylvania State Police: OOR Dkt 2016-0923
Attachments: Diveglia v. PSP Response and Affidavits - 2016-0923.pdf

Dear Appeals Officer Young:

Attached please find PSP's submission in the above-referenced appeal. Thank you for your consideration of this matter.

Respectfully,

Nolan B. Meeks | Assistant Counsel for Pennsylvania State Police
Governor's Office of General Counsel
1800 Elmerton Avenue
Harrisburg, PA 17110
Direct: (717) 346-1718 | Cell: (717) 409-2484 | Fax: (717) 772-2883
nomeeks@pa.gov | www.ogc.state.pa.us | www.psp.state.pa.us

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT

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From: Young, Joshua
Sent: Tuesday, June 07, 2016 10:15 AM
To: Meeks, Nolan
Cc: winterspringfarm@icloud.com; Rozier, William A
Subject: FW: Diveglia v. Pennsylvania State Police: OOR Dkt 2016-0923

Dear Attorney Meeks:

Thank you for your e-mail, a copy of which is included below for ease of reference by the Requester. Your request for an extension of the party submission deadline is **granted**, and the record in this matter will remain open until the end of the day (11:59:59 p.m.) on **June 14, 2016**. Please be sure to copy the Requester on all future correspondence in this matter.

Very truly yours,



Joshua T. Young | Attorney
Office of Open Records
Commonwealth Keystone Building
400 North St., Plaza Level
Harrisburg, PA 17120-0225
(717) 346-9903 | <http://openrecords.pa.gov>
joshyoung@pa.gov | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

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From: Meeks, Nolan
Sent: Tuesday, June 07, 2016 8:38 AM
To: Young, Joshua
Cc: Rozier, William A; Holley, Melissa K
Subject: Diveglia v. Pennsylvania State Police: OOR Dkt 2016-0923

Dear Appeals Officer Young:

I am writing to request a one week extension of time to provide PSP's submission in this case, making PSP's submission due Tuesday, June 14, 2016. I note that the Requester has provided the OOR with an additional 30 days to issue its Final Determination. Thank you for your consideration of this request.

Thank you,

Nolan B. Meeks | Assistant Counsel for Pennsylvania State Police
Governor's Office of General Counsel
1800 Elmerton Avenue
Harrisburg, PA 17110
Direct: (717) 346-1718 | Cell: (717) 409-2484 | Fax: (717) 772-2883
nomeeks@pa.gov | www.ogc.state.pa.us | www.psp.state.pa.us

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Young, Joshua

From: Young, Joshua
Sent: Wednesday, July 13, 2016 10:49 AM
To: 'winterspringfarm@icloud.com'
Cc: Meeks, Nolan; Rozier, William A
Subject: re: Diveglia v. PSP; AP 2016-0923

Dear Ms. Diveglia:

I write to request an indefinite extension of time to issue the Final Determination in the above-referenced Right-to-Know matter for the purpose of conducting an *in camera* inspection of records withheld by PSP. At your earliest convenience, please confirm whether you will agree to the requested extension.

Thank you for your kind attention to this matter.

Very truly yours,



Joshua T. Young | Attorney

Office of Open Records
Commonwealth Keystone Building
400 North St., Plaza Level
Harrisburg, PA 17120-0225

(717) 346-9903 | <http://openrecords.pa.gov>
jshyoung@pa.gov | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

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Young, Joshua

From: Cynthia Diveglia <winterspringfarm@icloud.com>
Sent: Thursday, July 14, 2016 1:23 PM
To: Young, Joshua
Cc: Meeks, Nolan; Rozier, William A; Cindy Diveglia
Subject: Re: Diveglia v. PSP; AP 2016-0923

Dear Msr. Young, Meeks, and Rozier,
I do not agree to an extension of time to issue a Final Determination on my request, based upon the information that you have provided. If you feel you can provide additional information for my reconsideration, please do.
Cindy Diveglia

On Jul 13, 2016, at 1:45 PM, Young, Joshua <joshyoung@pa.gov> wrote:

Dear Ms. Diveglia:

Thank you for your e-mail, a copy of which is included below for ease of reference by Attorney Meeks. The OOR has requested an indefinite extension of time to issue its Final Determination in this matter because access to similar records as those at issue in the above-referenced appeal is currently being litigated before the Pennsylvania Supreme Court. Additionally, an enforcement action has been filed in the Commonwealth Court with respect to the OOR's ability to receive dash/body camera video recordings for *in camera* review. We do not believe that either of these actions will be resolved prior to September 2, 2016. Therefore, please confirm whether you will agree to an extension later than September 2, 2016, or to the indefinite extension initially requested by the OOR.

As always, please be sure to copy opposing counsel on all future correspondence in this matter.

Very truly yours,

<image001.jpg> **Joshua T. Young** |Attorney
Office of Open Records
Commonwealth Keystone Building
400 North St., Plaza Level
Harrisburg, PA 17120-0225
(717) 346-9903 | <http://openrecords.pa.gov>
joshyoung@pa.gov | [@OpenRecordsPA](#)

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From: Cynthia Diveglia [<mailto:winterspringfarm@icloud.com>]
Sent: Wednesday, July 13, 2016 1:32 PM
To: Young, Joshua
Subject: Re: Diveglia v. PSP; AP 2016-0923

Dear Atty. Young,
I apologize for not understanding your policy, however, I have some time constraints on my end which was the purpose of this request. Could you please see if you could possibly have the requested information to me by September 2, 2016? Thank you for your kind cooperation.
Cindy Diveglia

On Jul 13, 2016, at 11:53 AM, Young, Joshua <joshyoung@pa.gov> wrote:

Dear Ms. Diveglia:

Thank you for your e-mail. It is the Office of Open Records' ("OOR") general practice to seek an indefinite extension of time to issue its Final Determination when *in camera* inspection of records is necessary, given the time needed to gather and review the records and prepare the Final Determination. Many requesters grant the OOR an indefinite extension; however, in the past, we have had some requesters grant the OOR a ninety-day extension of time with the possibility of future extensions, if needed. Would you be willing to grant the OOR a ninety-day extension of time to issue the Final Determination?

Thank you for your kind attention to this matter.

Very truly yours,

<image001.jpg> **Joshua T. Young** | Attorney
Office of Open Records
Commonwealth Keystone Building
400 North St., Plaza Level
Harrisburg, PA 17120-0225
(717) 346-9903 | <http://openrecords.pa.gov>
joshyoung@pa.gov | [@OpenRecordsPA](#)

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From: Cynthia Diveglia [<mailto:winterspringfarm@icloud.com>]

Sent: Wednesday, July 13, 2016 11:03 AM

To: Young, Joshua

Cc: Meeks, Nolan; Rozier, William A

Subject: Re: Diveglia v. PSP; AP 2016-0923

Dear Atty, Young.

Is it possible to tighten up this request just a bit as "indefinite" is a bit broad. Could we say 30 days, or 45 days? If there is a reason I am certainly willing to listen to that reasoning, as I am fully willing to cooperate and be flexible in the interest of justice.

Cindy Diveglia

On Jul 13, 2016, at 10:49 AM, Young, Joshua
<joshyoung@pa.gov> wrote:

Dear Ms. Diveglia:

I write to request an indefinite extension of time to issue the Final Determination in the above-referenced Right-to-Know matter for the purpose of conducting an *in camera* inspection of records withheld by PSP. At your earliest convenience, please confirm whether you will agree to the requested extension.

Thank you for your kind attention to this matter.

Very truly yours,

<image001.jpg> **Joshua T. Young** | Attorney
Office of Open Records
Commonwealth Keystone Building
400 North St., Plaza Level
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pennsylvania
OFFICE OF OPEN RECORDS

DECISION IN LIEU OF FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
CYNTHIA DIVEGLIA,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2016-0923
	:	
PENNSYLVANIA STATE POLICE,	:	
Respondent	:	

INTRODUCTION

Cynthia Diveglia (“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 audio and video recordings associated with a particular PSP incident report. The PSP denied the Request, citing the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101 *et seq.*, and stating that the records relate to a criminal investigation. The Requester appealed to the Office of Open Records (“OOR”). As the Requester declined to agree to an extension of time for the OOR to issue a final determination in this matter, the appeal was deemed denied by operation of law on July 25, 2016.

FACTUAL BACKGROUND

On April 7, 2016, the Request was filed, stating as follows:

Complaint incident number # H06-2342590
Request dash cam recording-unedited, from Tpr Isaac C. White’s dash cam. The recording of the traffic stop was made by Cpl. James S. Flanagan, from MVR of

car #H6-12. The compact disc was secured in the MVR custodial locker. Please provide an exact duplicate of the recording on a compact disc.

On April 14, 2016, the PSP invoked a thirty-day extension of time to respond to the Request. *See* 65 P.S. § 67.902(b). On May 16, 2016, the PSP denied the Request, citing CHRIA and stating that the records are related to a criminal investigation, 65 P.S. § 67.708(b)(16).

On May 25, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the PSP to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).¹

On July 13, 2016, the OOR sent correspondence to the parties noting that the records at issue in this matter are similar to the records at issue in numerous other appeals pending before the OOR (*Collazo v. Pa. State Police*, OOR Dkt. AP 2016-0320, *Hamill v. Pa. State Police*, OOR Dkt. AP 2016-0349, *Schillinger and the Times-Tribune v. Pa. State Police*, OOR Dkt. AP 2016-0533 and *Blanchard and the York Daily Record v. Pa. State Police*, OOR Dkt. AP 2016-0858). *See* 65 P.S. § 67.1101(b)(1). In these cases, the OOR ordered the PSP to produce the requested records for *in camera* review; however, the PSP declined to provide the records to the OOR. The requesters agreed to an extension of time so that the OOR could obtain a court order directing the PSP to produce the records for *in camera* review.

Likewise, the OOR asked the Requester to agree to an extension so that the OOR could conduct an *in camera* review of the requested audio/video recording and, if necessary, obtain a court order directing the PSP to produce the recording to the OOR for *in camera* review. On July 13, 2016, the Requester declined to grant the OOR an indefinite extension of time to issue the final determination, but offered the possibility of extending the deadline to September 2, 2016. By

¹ On her appeal form, the Requester granted the OOR an additional thirty days to issue the final determination in this matter, which was due to be issued on or before July 25, 2016.

correspondence dated the same day, the OOR explained that that the pending court actions before the Pennsylvania Supreme Court² and the Commonwealth Court³ were unlikely to be resolved before September 2, 2016. As a result, the OOR again requested an indefinite extension of time to issue the final determination on this matter. On July 14, 2016, the Requester declined to grant the OOR any extension of time to issue its final determination.

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. *See* 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).

The PSP is a Commonwealth agency subject to the RTKL that is required to disclose public records. 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. *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 respond within five business

² *Pa. State Police v. Michelle Grove*, 119 A.3d 1102 (Pa. Commw. Ct. 2015), *appeal granted*, 133 A.3d 282 (Pa. 2016) (“Grove I”); *Pa. State Police v. Casey Grove*, No. 1646 C.D. 2014, 2015 Pa. Commw. Unpub. LEXIS 714 (Pa. Commw. Ct. Sept. 28, 2015), *appeal pending* 801 MAL 2015 (“Grove II”).

³ 370 M.D. 2016 (Pa. Commw. Ct. 2016)

days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

“Under the RTKL, OOR is charged with developing an evidentiary record before its appeals officers to ensure meaningful appellate review.” *Twp. of Worcester v. Office of Open Records*, 129 A.3d 44, 57 (Pa. Commw. Ct. 2016) (citing *Pa. Dep’t of Educ. v. Bagwell*, 114 A.3d 1113 (Pa. Commw. Ct. 2015)). The RTKL mandates that the OOR issue final determinations “within 30 days of [its] receipt of the appeal” unless “the requester agrees otherwise.” *See* 65 P.S. § 67.1101(b)(1). Under the RTKL, only a requester has the power to extend the deadline for issuing final determinations, and, “[i]f the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.” *See* 65 P.S. § 67.1101(b).

The records at issue are similar to numerous other appeals currently pending before the OOR (*Collazo*, *Hamill*, *Schillinger*, and *Blanchard*) and involve the same agency (the PSP). Because the PSP declined to provide similar records for the OOR’s *in camera* review in *Collazo*, *Hamill*, *Schillinger*, and *Blanchard*, the OOR sought an extension of time to issue the final determination in this matter from the Requester so that the OOR could order *in camera* review and, if necessary, pursue an enforcement action against the PSP related to its *in camera* order. The Requester initially declined the OOR’s request. In the interest of developing the evidentiary record before the OOR in order to “ensure meaningful appellate review” and because of the similarities between this appeal and the other appeals pending before the OOR, the OOR again asked the Requester to agree to an extension of time. After some discussion, the Requester again declined to agree to an extension.

Because the OOR has been unable to develop the evidentiary record before it, the OOR declines to issue a final determination in this matter. As a result, this appeal was deemed denied by operation of law on July 25, 2016. *See* 65 P.S. § 67.1101(b)(2).

As the OOR has not issued a final determination concerning the accessibility of the records at issue in this matter, the deemed denial of this appeal does not prejudice or otherwise affect the accessibility of the records requested here.

CONCLUSION

The Requester's appeal was **deemed denied** by operation of law, and the PSP is not required to take any further action. Within thirty days of July 25, 2016, 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, the OOR is not a proper party to any appeal and should not be named as a party.⁴ This Decision In Lieu of Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

ISSUED AND MAILED: July 26, 2016



JOSHUA T. YOUNG, ESQ.
APPEALS OFFICER

Sent to: Cynthia Diveglia (via e-mail only);
Nolan Meeks, Esq. (via e-mail only);
William Rozier (via e-mail only)

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