

the PSP denied the Request claiming that the records relate to a criminal investigation, 65 P.S. § 67.708(b)(16), and are exempt under the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101-9183.

On September 30, 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 this appeal. *See* 65 P.S. § 67.1101(c).

On October 17, 2016, the PSP submitted a position statement reiterating its grounds for denial. The PSP claims that the lab test results are findings and conclusions of a forensic scientist performing an analysis in a criminal investigation. In support of its position, the PSP submitted the affidavit of William Rozier, the PSP’s Open Records Officer.

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” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a

hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing and the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The PSP is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in 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 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).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The PSP states that the records responsive to the Request are PSP Lab Report Nos. H11-04056-1 and H11-04056-2 (“Reports”). Mr. Rozier attests that the Reports were compiled by forensic scientists working at the PSP’s Harrisburg Regional Laboratory in conjunction with the Lancaster County Detective Department. Mr. Rozier further attests that the Reports document the findings of the forensic scientists regarding the identification of illegal drugs, arguing that the Reports are exempt because they are part of a criminal investigation. 65 P.S. § 67.708(b)(16).

Section 708(b)(16), in relevant part, states that “records relating to or resulting in a criminal investigation, including ... [i]nvestigative materials, notes, correspondence, videos and reports” and “a record, that if disclosed would ... reveal the institution, progress or result of a criminal investigation.” 65 P.S. §§ 67.708(b)(16)(ii),(vi)(A). Here, the PSP provided evidence establishing that as part of its investigation, forensic scientists conducted lab tests to identify any illegal drugs and prepared the Reports with their findings. Under the RTKL, an affidavit may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Based upon the evidence presented, the PSP has met its burden of proving that the Reports are related to a criminal investigation. *See also Graham v. Pa. State Police*, OOR Dkt. AP 2014-0279, 2014 PA O.O.R.D. LEXIS 369 (exempting from disclosure ballistics crime lab test results under CHRIA).

CONCLUSION

For the foregoing reasons, Requester’s appeal is **denied**, and the PSP is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall

be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 31, 2016

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent to: Miguel Morris, 20997-014 (via e-mail only);
Nolan Meeks, Esq. (via e-mail only);
William Rozier (via e-mail only)

¹ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).