



**FINAL DETERMINATION**

**IN THE MATTER OF**

**MATT DAWES,  
Requester**

**v.**

**UPPER ST. CLAIR TOWNSHIP,  
Respondent**

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**Docket No.: AP 2022-2398**

**FACTUAL BACKGROUND**

On October 2, 2022, Matt Dawes (“Requester”) filed a request (“Request”) made under the Right-to-Know Law (“RTKL”), 65 P.S. § 67.101 *et seq.*, with Upper St. Clair Township, Department of Police (“Department”), as follows:

I’m requesting a copy of the police report from 25 Sept 2022 for an officer dispatched to my house. I’m seeking a copy of that report, including notes from my 26 Sept 2022 discussion with the police.

On October 6, 2022, the Department denied the Request, stating the report was exempt from disclosure under the RTKL’s criminal and noncriminal investigative records exemptions and under the exemption pertaining to children under the age of eighteen. *See* 65 P.S. §§ 67.708(b)(16), (17) and (30).

On October 17, 2022, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the Department’s denial of the Request on the basis that the report in

question, CCN #22-04278, relates to an officer being dispatched to the Requester's home while he was away. The OOR invited the parties to supplement the record and directed the Department to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On November 30, 2022, the OOR received the Department's response reiterating its grounds for denial. The Department contends the requested record, a Department incident report (which includes an incident report and supplemental report), is entirely exempt under the criminal and noncriminal investigation exemptions of the RTKL, 65 P.S. § 67.708(b)(16) and (17)(i)(ii), and (vi). The Department claims the record is also protected under the Criminal History Record Information Act ("CHRIA"), 18 Pa.C.S. §§ 9101-9183 and the Constitutional right to privacy and acknowledges the Requester's argument that he has a personal interest in the record, but this does not nullify the application of RTKL exemptions. The Department argues the OOR lacks jurisdiction to determine the applicability of the criminal investigation exemption and claims the records must be redacted under Section 708(b)(30), which exempts "[a] record identifying the name, home address or date of birth of a child 17 years of age or younger." 65 P.S. § 67.708(b)(30). The Department provides factual support for its arguments by providing the attestation of its Chief of Police, Jonathan Wharton ("Chief Wharton"), made pursuant to 18 Pa. C.S. § 4904 related to making unsworn falsification to authorities. On November 30, 2022, the OOR received the Requester's submission recapping his personal interest in the record, describing family dynamics, confirming the record requested pertains to his residence and family, and for these reasons he wants to see the details of the record.

### **LEGAL ANALYSIS**

The Department is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other

law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Department is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 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 Department argues, and Chief Wharton affirms, that the Request seeks records related to a noncriminal investigation. Section 708(b)(17) of the RTKL exempts from disclosure records of an agency relating to a noncriminal investigation, including “[c]omplaints submitted to an agency...[i]nvestigative materials, notes, correspondence and reports...” or “[a] record that, if disclosed, would ... [r]eveal the institution, progress or result of an agency investigation....” 65 P.S. § 67.708(b)(17)(i)(ii) and (vi)(A). In order for this exemption to apply, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *See Pa. Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw Ct. 2010). Further, the inquiry, examination, or probe must be “conducted as part of an agency’s official duties.” *Id.* at 814; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies within their legislatively granted fact-finding and investigative powers. *Pa. Dep’t of Pub. Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” *Id.* at 259.

The Request seeks the Department's incident report CCN #22-04278 that includes the initial report and a supplemental report (collectively, "Incident Report"). The Department contends the Incident Report documents the Department's investigation into a complaint filed with the Department regarding the wellbeing of children. In support of this argument, the Department submitted the affidavit of Chief Wharton, who attests that:

6. As explained below, the Department interpreted the Request as seeking an Incident Report, which consists of an initial report dated September 25 ("Initial Report") and follow-up report dated September 26 ("Supplemental Report") (collectively "Incident Report").
7. On October 6, 2022, the Department denied the Request. Specifically, the Department identified the responsive Incident Report, but determined that it was exempt from disclosure under the RTKL and other applicable laws.
8. After conducting a reasonable search, which included reviewing Department files and databases, I have determined that there are no other records or reports responsive to the Request.
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11. On September 25, 2022, Department Police Sergeant J. Abbott and Officer Deremer responded to a request from a parent to assist a resident return an item to a child in accordance with a custody agreement.
12. Sergeant Abbott and Officer Deremer are municipal police officers for the Department and Officer Abbott was the primary Officer with respect to this incident.
13. Sergeant Abbott and Officer Deremer were asked to check on the children at the residence due to a concern raised by the parent.
14. In response to the request, Sergeant Abbott and Officer Deremer commenced [an] investigation into the well-being of the children.
15. As part of the investigation, Sergeant Abbott created the Incident Report, which consists of the Initial Report dated September 25, 2022 and the Supplemental Report dated September 26, 2022.
16. The Incident Report is on a form used by the Department when investigating allegations of criminal wrongdoing. These same report forms are used for investigations involving noncriminal matters.

17. The Incident Report was created in accordance with standard Department practice following a response to a complaint or a response to a disturbance in the Township.
18. The Incident Report documents the findings and conclusions of Sergeant Abbott and Officer Deremer relating to the investigation resulting from the underlying incident.
19. The Incident Report also documents statements made by the individuals Sergeant Abbott and Officer Deremer spoke to during the investigation.
20. The Incident Report details the actions, observations, and notes of Sergeant Abbott and Officer Deremer relating to the investigation resulting from the underlying incident.
21. The Incident Report also identifies two minors.
22. Officer Deremer did not draft a separate incident report.
23. The investigation was conducted through the Department's inherent police powers.
24. Section 8952 of Title 42 grants municipal police officers the power to enforce the laws of the Commonwealth and "preserve, protect or defend persons ... or to otherwise maintain the peace and dignity of this Commonwealth."

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury 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). In the absence of any evidence that the Department acted in bad faith "the averments in [the affidavit] should be accepted as true." *McGowan*, 103 A.3d 374, 382-83.

Section 8951 of Title 42 grants municipal police officers the power to enforce the laws of the Commonwealth or otherwise perform the functions as to "any ...event that occurs within his primary jurisdiction and which reasonably requires action on the part of the police in order to preserve, protect or defend persons or property or to otherwise maintain the peace and dignity of this Commonwealth." 42 Pa.C.S. § 8952. This investigative power includes investigations of

complaints regarding the welfare of children, and therefore, the investigation conducted by the Department may qualify as a noncriminal investigation under Section 708(b)(17) of the RTKL. *See* 42 Pa.C.S. § 8952; *Narisi v. Buckingham Twp. Police Dep't*, OOR Dkt. AP 2019-0489, 2019 PA O.O.R.D. LEXIS 564; *Miller v. Upper Providence Twp. Police Dep't*, OOR Dkt. AP 2018-0497, 2018 PA O.O.R.D. LEXIS 571 (each holding investigative reports prepared as a result of a noncriminal investigation are exempt from disclosure).

Based on the Department's evidence and the information provided on appeal, there is sufficient evidence to find the Department conducted an investigation as part of its official duties, that investigation constitutes an "official probe", and the release of the Incident Report would necessarily reveal the institution of that investigation, which are all the necessary elements required to find the noncriminal investigation exemption of the RTKL applies. 65 P.S. § 67.708(b)(17). The OOR acknowledges the Requester's situation. However, the OOR must comply with the RTKL, which states that the identity of the Requester does not supplant the application of the RTKL or its exemptions. 65 P.S. § 67.301; *Hunsicker v. Pa. State Police*, 93 A.3d 911, 912 (Pa. Commw. Ct. 2014) (the relationship of the requester to the subject of a police report did not render records that fell under the investigative exemption of the RTKL accessible). As such, the OOR is constrained to deny the appeal.

For the foregoing reasons, the Requester's appeal is **denied**, and the Department 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 Allegheny County Court of Common Pleas. 65 P.S. § 67.1302(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.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: December 7, 2022**

/s/ Lois Lara

Lois Lara, Esq.  
Appeals Officer

Sent to: Matt Dawes, (via email only);  
Christopher Voltz, Esq. (via email only); and  
Jonathan Wharton, Chief of Police, AORO (via email only)

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