



FINAL DETERMINATION

IN THE MATTER OF

**RICHARD ANDERSON AND
EWU MEDIA LLC,
Requester**

v.

**PENNSYLVANIA STATE POLICE,
Respondent**

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Docket No.: AP 2023-0141

FACTUAL BACKGROUND

On December 9, 2022, Richard Anderson and EWU Media LLC (collectively “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.*, stating:

NAME: Randy Stair

LOCATION: Tunkhannock, Eaton Township, Pennsylvania

CRIME: Weis markets shooting; murder of Terry Sterling, Victoria Brong, and Brian Hayes.

DATE: June 8, 2017

REQUESTING: CCTV footage from Weis Markets relevant to the case, Randy's autopsy report and photos, Randy's internet search history, crime scene photos, all photos taken in relation to the case (such as in his house and room), all body camera footage filmed in relation the case, any interrogations/interviews conducted in relation to the case, text messages from Randy Stair the day of the incident in document format, and all case files in document format.

On January 17, 2023, following a thirty-day extension, 65 P.S. § 67.902(b), the PSP partially granted the Request and provided a responsive a one-page Public Information Release

Report, while also partially denying the Request, asserting that the requested records are exempt from disclosure as records relating to or resulting in a criminal investigation, 65 P.S. § 67.708(b)(16), as well as records that are confidential pursuant to Pennsylvania’s Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101 *et seq.* The PSP also stated that the requested records contain personal identification information. *See* 65 P.S. § 67.708(b)(6). In support of its denial, the PSP also provided the verification, made under the penalty of perjury, of Teresa Torres, Deputy Open Records Officer for the PSP.

On January 19, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ 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. 65 P.S. § 67.1101(c).

On January 31, 2023, the PSP submitted a position statement, reiterating its reasons for denial. The PSP also submitted the verification, made under the penalty of perjury, of William A. Rozier, Open Records Officer for the PSP. The Requester did not submit any additional information during the course of the appeal.

LEGAL ANALYSIS

The PSP is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the PSP 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

¹ The Requester granted the OOR an extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

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 argues that the requested records are exempt from disclosure under Section 708(b)(16) of the RTKL which exempts from disclosure, “[a] record of an agency relating to or resulting in a criminal investigation, including:...[c]omplaints of potential criminal conduct other than a private criminal complaint.... [i]nvestigative materials, notes correspondence, videos and reports...[v]ictim information...[a] record that, if disclosed, would do any of the following:...[r]eveal the institution, progress or result of a criminal investigation, except the filing of charges. 65 P.S. §§ 67.708(b)(16)(i)-(ii), (v), (vi)(A).

In support of the PSP’s position, the Rozier Verification provides, in pertinent part, as follows:

7. The PSP [RTKL] Section has access to various PSP and Commonwealth databases. To obtain possible responsive records for this [R]equest, the following databases were searched: Portal, PSP Records Management System (RMS), QIC (Query Initial Crime), and PSP Archives.

8. In response to the [R]equest, PSP identified PSP Homicide Investigation Action Report No. PA E5-2017-607247 and associated Public Information Release Report (PIRR) as records responsive to the Request.

9. Specifically, PSP Homicide Investigation Action Report. No. PA 2017-607247 and its attachments include the requested “CCTV footage from Weis Markets relevant to the case, Randy's autopsy report and photos, Randy’s internet search history, crime scene photos, all photos taken in relation to the case (such as in his house and room), all body camera footage filmed in relation the case, any interrogations/interviews conducted in relation to the case, text messages from Randy Stair the day of the incident....”

10. I have personally reviewed PSP Homicide Investigation Action Report. No. PA 2017-607247 and its attachments and found that the report was created and the

evidence gathered as the result of PSP Troopers' investigation into a shooting that resulted in multiple homicide victims.

11. PSP Homicide Investigation Action Report. No. PA 2017-607247 [and] its components detail a PSP investigation into criminal activity. Thus, the reports and each of their components is "[a] record of an agency relating to or resulting in a criminal investigation," which is exempt from public disclosure under RTKL section 67.708(b)(16).

12. ...none of the report's components comprise original records of entry, a chronology of arrests, the identification of arrested individuals, the specification of criminal charges or any other "information contained in a police blotter as defined in 18 Pa.C.S. § 9102" that would be accessible to the public.

Under the RTKL, a sworn verification 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 PSP has acted in bad faith, "the averments in [the verification] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). The Requester argues that because the individual identified in the Request is deceased, the investigation report should be disclosed; however, the status of the individual being deceased does not impact the OOR's analysis of whether the PSP has met its burden of proving that the responsive records are related to a criminal investigation. The Request itself implicates records related to a criminal investigation, as it seeks video footage, crime scene photos, video of interrogations and interviews, and all case files related to a "murder." *See Pa. Game Comm'n v. Fennell*, 148 A.3d 101 (Pa. Commw. Ct. 2016) (explaining that the OOR must consider uncontradicted statements contained in the appeal as evidence). Moreover, the OOR has consistently held that a homicide report and its components are exempt from disclosure under Section 708(b)(16) of the RTKL. *See, e.g., Kirk v. Pa. State Police*, OOR Dkt. AP 2022-1319,

2022 PA O.O.R.D. LEXIS 1319 (finding that a homicide investigation report is exempt); *Ullman v. Pa. State Police*, OOR Dkt. AP 2021-0749, 2021 PA O.O.R.D. LEXIS 0749 (same). Here, based on the evidence provided, the PSP has proven that the withheld report and supporting attachments are related to a criminal investigation and, are therefore, exempt under Section 708(b)(16) of the RTKL.² See 65 P.S. § 67.708(a)(1).

CONCLUSION

For the foregoing reasons, the 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 or petition for review 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 according to court rules as per Section 1303 of the RTKL. 65 P.S. § 67.1303. 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.³ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: March 9, 2023

/s/ Kathleen A. Higgins

KATHLEEN A. HIGGINS
DEPUTY CHIEF COUNSEL

Sent via email to: Richard Anderson;
William Rozier;
Nolan Meeks, Esq.

² The Requester challenges only the denial of the PSP Homicide Investigation Action Report and its supporting attachments. However, to the extent the Requester challenges the PSP's denial of the portion of the Request seeking body cam footage, the Torres Verification provides that such footage does not exist within the PSP's possession, custody or control because the PSP does not utilize bodycam equipment. See Torres Verification, ¶¶ 7-8.

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