pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JAVIER ANTONETTY-RODRIGUEZ,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2025-0879**
	:	
PENNSYLVANIA STATE POLICE,	:	
Respondent	:	

FACTUAL BACKGROUND

On February 4, 2025, Javier Antonetty-Rodriguez ("Requester"), an inmate at SCI-Chester, 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:

> [A] copy of the "DNA PROFILE" that was a mixture of multiple contributors and entered into the states[‘] version of CODIS. This DNA mixture was submitted approximately December 17, 2010[,] and concerning the criminal case of Commonwealth v. Javier Antonetty Rodriguez, #CP-06-CR-0003057-2009, out of Berks County, Reading Pennsylvania. The DNA mixture profil[e] must consist of: (1) The chemical structure of all samples recovered. (2) The combinations of chromosomes that make up the DNA profile mixture. (3) The DNA strands that are compared to other DNA samples to identify the primary.

On March 13, 2025, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), PSP partially granted and partially denied the Request. PSP asserts that the responsive record, PSP lab report no. B08-1996-3, is exempt from disclosure under the RTKL as part of a

criminal investigation and because it contains DNA information. *See* 65 P.S. §§ 67.708(b)(16), (b)(19).

On April 1, 2025, 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 PSP to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On April 15, 2025, PSP submitted a position statement and a statement made under the penalty of unsworn falsification to authorities[2] from William A. Rozier ("Rozier Statement"), PSP's Open Records Officer ("AORO"), reiterating its grounds for denial. On May 4, 2025, the Requester submitted a position statement asserting that the responsive record is not exempt under the RTKL and the criminal investigation has concluded.

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, 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 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*,

[1] The appeal was postmarked April 1, 2025 and received by the OOR on April 7, 2025. In light of the "prisoner's mailbox rule," the appeal is considered to have been field on April 1, 2025. Furthermore, the Requester granted the OOR a 30-day 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).").
[2] 18 Pa.C.S. § 4904.

18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

PSP asserts that the records are part of a criminal investigation and exempt from public disclosure. PSP provides the Rozier Statement, which provides, in part:

> 2. I am an Administrative Officer 3 with the [PSP] presently serving as the [AORO]. In this capacity, I am authorized to make this statement on behalf of the Department and its Commissioner, Christopher Paris, in the interest of the Commonwealth of Pennsylvania and its citizens.
>
> 3. […]. My duties encompass the responsibilities specified in the RTKL for [AOROs].
>
> …
>
> 7. The PSP RTK office searched all Department databases to which it has access for evidence of any PSP records that may respond to the [R]equest.
>
> 8. The RTK Office identified and retrieved the following PSP responsive record: single page PSP Lab Report No. B08-01966-3 for Incident No. 2008-17981 concerning the criminal case of Commonwealth v. Javier Antonetty Rodriguez, # CP-06-CR-0003057-2009, out of Berks County, Reading Pennsylvania.
>
> 9. I personally examined PSP Lab Report No. B08-01966-3 and found that the report is manifestly related to a homicide investigation conducted by Angel Cabrera of the Reading City Police Department.
>
> 10. Specifically, PSP Lab Report No. B08-01966 is a record documenting the testing results of sealed evidence presented to the [PSP] Bethlehem Regional Laboratory.
>
> 11. Accordingly, the report and its components constitute a record "relating to or resulting in a criminal investigation and is therefore exempt from disclosure pursuant to Section 708(b)(16) of the RTKL.
>
> 12. Additionally, the responsive record is exempt as:
>
> - As records comprising, "investigative materials, notes, correspondence, videos and reports," 65 P.S. § 67.708(b)(16)(ii);
>
> - As "records that, if disclosed would reveal the institution, progress, and result of criminal investigation," *Id.* § 67.708(b)(16)(vi)(A).

[…].

Under the RTKL, a 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that PSP has acted in bad faith, "the averments in the [attestation] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Based upon the evidence provided, PSP has established that the responsive PSP Lab Report No. B08-01966 details a PSP investigation into a criminal matter. The Requester asserts that the matter is now closed so as not to impede an investigation. However, the outcome and open/closed status of the PSP investigation does not change its criminal nature. *See Castillo v. Pa. State Police* (Off. of Open Recs.), 310 A.3d 831 (Pa. Commw. Ct. 2024) ("Although we recognize that the criminal action has long since concluded, and [r]equester has completed his sentence, the status or 'staleness' of a criminal matter is not relevant for disclosure purposes …. [t]o withhold a record under Section 708(b)(16), PSP only needed to show that the record related to a criminal investigation, period."); *Cafoncelli v. Pa. State Police*, 172 A.3d 140 (Pa. Commw. Ct. 2017) ("The RTKL does not provide an expiration date for exemptions"). As a result, the PSP has met its burden to withhold the responsive PSP Lab Report No. B08-01966. 65 P.S. § 67.708(a)(1).[3]

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

[3] Because the responsive records are exempt from disclosure under Section 708(b)(16) of the RTKL, the OOR need not reach the PSP's alternative grounds for denying access. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

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 according to court rules as per 65 P.S. § 67.1303, but as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.[4] All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: May 29, 2025

/s/ Damian J. DeStefano

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DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent to: Javier Antonetty-Rodriguez, SCI-Chester, #JX6127 (via U.S. mail); William Rozier (via portal only); Megan Madaffari, Esq. (via portal only)

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