pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
SHAKIA PERRY,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2025-1431**
	:	
PENNSYLVANIA STATE POLICE,	:	
Respondent	:	

FACTUAL BACKGROUND

On April 4, 2025, Shakia Perry ("Requester") filed a request ("Request") with the Pennsylvania State Police ("PSP") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking: "[A] complete and unredacted copy of the investigative report identified as PA 2024-476258[] prepared by Trooper Karl Kulpak of the [PSP]." On May 12, 2025, after invoking a thirty-day extension of time to respond, *see* 65 P.S. § 67.902(b),[1] the PSP denied the Request PSP General Offense Report No. PA 2024-1555557 ("the Report"), but denied access to the Report itself, arguing that it is related to a criminal investigation. 65 P.S. § 67.708(b)(16). The PSP also argued that the Report contains personal identification information, *see* 65 P.S. § 67.708(b)(6)(i)(A), and its disclosure is prohibited by the Criminal History Record Information Act, 18 Pa.C.S. § 9102 ("CHRIA"). With its response, the PSP included a statement made under

[1] Requester repeatedly claims that PSP did not invoke an extension. However, in response to the OOR's request, the PSP produced a copy of the letter it sent to the Requester on April 11, 2025.

the penalties of unsworn falsification to authorities by Deputy Agency Open Records Officer Janiel Rhoden.

On May 19, 2025, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.[2] 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 various dates between May 22 and 25, 2025, the Requester submitted several position statements, making various arguments. On May 30, 2025, the PSP submitted a position statement, accompanied by a statement made under the penalties of unsworn falsification to authorities by Open Records Officer William Rozier ("Rozier Attestation"). On June 2, 2025, the OOR asked the PSP to submit the letter invoking a thirty-day extension to respond, and the PSP provided the document on the next day.

On June 2 and 3, 2025, the Requester submitted several position statements. However, as the submissions appear to be cumulative and not probative and were made after the record had closed, they were not considered for purposes of this appeal.[3] *See* 65 P.S. § 67.1102(a)(2) ("The appeals officer may admit into evidence … documents … believe[d] to be reasonably probative and relevant to an issue in dispute [and] may limit the nature and extent of evidence found to be cumulative."); 65 P.S. § 67.1102(b)(3) ("In the absence of a regulation, policy or procedure …, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute"); *UnitedHealthcare of Pa., Inc. v. Baron*, 171 A.3d 943, 952

[2] The Requester suggests that the OOR can refer misconduct to the "appropriate authority," citing to 65 P.S. § 67.1304(c). However, that section of the RTKL provides a reviewing court authority to impose penalties; it does not confer any authority upon the OOR.

[3] On June 3, 2025, the OOR reminded the Requester that the record had closed, but that if she desired the OOR to admit her submissions into the record, she could agree to an extension of the Final Determination due date to allow the PSP the opportunity to respond. On that same day and again on June 5, 2025, the Requester objected to an extension.

(Pa. Commw. Ct. 2017) ("Requester is not entitled to rebuttal for the sake of having the last word"); *Jensen v. Pa. Dep't of Corr.*, No. 317 C.D. 2023, 2024 Pa. Commw. Unpub. LEXIS 108, *8 (finding that a requester did not have a due process right to respond to the agency's position statement).

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 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 Report is related to a criminal investigation. Section 708(b)(16) of the RTKL exempts:

> A record of an agency relating to or resulting in a criminal investigation, including:
>
> (i) Complaints of potential criminal conduct other than a private criminal complaint.
>
> (ii) Investigative materials, notes, correspondence, videos and reports … [and]
>
> (vi) A record that, if disclosed, would … [r]eveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

65 P.S. § 67.708(b)(16)(i)-(ii), (vi)(A).

The Rozier Attestation provides:[4]

8. The RTK Office identified and retrieved the [Report].

9. I personally examined [the Report] and found that [it] is manifestly related to an investigation of potential criminal conduct.

10. Specifically, PSP General Offense Report, PA 2024-476258 including its attachments is a 58 page report compiled on or after April 12, 2024 by Trooper Alicea and Trooper Kulpak describing and documenting an investigation into an incident of potential criminal activity. Specifically, Trooper Alicea was requested by the Pennsylvania Department of Transportation to investigate a possible fraudulent titling of a 2019 Mercedes sedan.

11. Accordingly, the [R]eport and its components constitute a record "relating to or resulting in a criminal investigation["] and is therefore exempt from disclosure.

12. Additionally:

> • The [R]eport contains "[c]omplaints of potential criminal conduct other than a private criminal complaint[,]" and, thus, is exempt from public disclosure ….
>
> • Because they reflect the findings and conclusions, as well as the actions, observations and notes of investigating troopers, the [R]eport's components constitute "[i]nvestigative materials, notes, correspondence, ... and reports," all of which are exempt from public disclosure ….
>
> • In its entirety, as well as in its components, the [R]eport is "[a] record that, if disclosed, would ... [r]eveal the institution, progress, or result of a criminal investigation," and, therefore, exempt from public disclosure ….
> …
> • Yet, none of the [R]eport's components comprises 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."]

In the absence of any evidence that the PSP has acted in bad faith,[5] "the averments in the [Rozier Attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env't Prot.*, 103 A.3d

[4] Under the RTKL, an affidavit or statement made under 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).

[5] The Requester does ask the OOR to make a finding of bad faith. Section 1304(a) of the RTKL states that a court "may award reasonable attorney fees and costs of litigation … if the court finds … the agency receiving the … request

374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Evidence establishes that the Report contains complaints of criminal conduct and documents the PSP's investigation into a criminal incident and is not the equivalent of a police blotter. The OOR routinely finds that PSP General Offense Reports are related to criminal investigations. *See*, *e.g.*, *Strom v. Pa. State Police*, OOR Dkt. AP 2025-0400, 2025 PA O.O.R.D. LEXIS 559; *Schwartz v. Pa. State Police*, OOR Dkt. AP 2024-2451, 2025 PA O.O.R.D. LEXIS 168. Accordingly, the PSP has met its burden of proving that the Report is exempt from disclosure. *See* 65 P.S. § 67.708(a)(1).

The Requester suggests that the PSP should have provided the Report to her in redacted form. However, agencies are not required to redact exempt records. *See*, *e.g.*, *Castillo v. Pa. State Police*, 310 A.3d 831, 836 (Pa. Commw. Ct. 2024) (internal quotation and citations omitted); *Heavens v. Pa. Dep't of Env't Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013) ("the redaction requirement contained in Section 706 … applies only to records that are public and contain information that is not subject to access.").

Further, the Requester suggests that her identity entitles her to the Report and argues that the PSP provided the Report to her adversary in related civil litigation and should have exercised its discretion in releasing the Report to her. Section 506 of the RTKL provides that an agency "may exercise its discretion to make an otherwise exempt record accessible for inspection and copying" if, among other requirements, "[t]he agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of

willfully or with wanton disregard deprived the requester of access to a public record … or otherwise acted in bad faith…" 65 P.S. § 67.1304(a). Similarly, Section 1305(a) authorizes a court to "impose a civil penalty of not more than $1,500 if an agency denied access to a public record in bad faith." 65 P.S. § 67.1305. However, the record does not support a finding of bad faith.

access." 65 P.S. § 67.506(c). However, that decision is solely within the discretion of the agency and is not subject to the OOR's legal review. Nor does an agency's decision to exercise its discretion in favor of disclosure in one instance obligate it to release records in the future. *See*, *e.g.*, *Steele v. Lower Allen Twp. Police Dep't*, OOR Dkt. AP 2023-0827, 2023 PA O.O.R.D. LEXIS 1365; *Sanek v. Phoenixville Borough*, OOR Dkt. AP 2018-1221, 2018 PA O.O.R.D. LEXIS 932. Further, a requester's identity or motivation for making a request is not relevant to determining whether a record is accessible under the RTKL. *See Padgett v. Pa. State Police*, 73 A.3d 644, 647 (Pa. Commw. Ct. 2013). Under the RTKL, a record is either available to the public at large as a public record or it is shielded from disclosure. *See* 65 P.S. § 67.102; 65 P.S. § 67.305. In conclusion, none of the arguments advanced by the Requester have any effect on the availability of the Report under the RTKL.

CONCLUSION

For the foregoing reasons, the 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, 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.[6] 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 website at: http://openrecords.pa.gov.

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

FINAL DETERMINATION ISSUED AND MAILED: June 12, 2025

/s/ Blake Eilers
Blake Eilers, Esq.
Senior Appeals Officer

Delivered via e-file portal to: Shakia Perry; William Rozier; Megan Madaffari, Esq.