



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
PRESTON WALTERS,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2020-2135
	:	
PENNSYLVANIA STATE POLICE,	:	
Respondent	:	

INTRODUCTION

Preston Walters (“Requester”), an inmate at SCI-Camp Hill, 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 “paperwork” on a criminal investigation, including testimony and DNA and test results. The PSP partially denied the Request, providing a Public Information Release Report (“PIRR”) regarding the underlying incident and arguing that an incident report is related to a criminal investigation, among other reasons for withholding. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the PSP is not required to take any further action.

FACTUAL BACKGROUND

On August 28, 2020, the Request was filed, seeking “[a]ny paperwork” on an investigation involving the Requester, including “reports of DNA/Rape test or ... testimony to PSP.” On October 5, 2020, following a thirty-day extension to respond, 65 P.S. § 67.902(b), the PSP partially denied the Request, providing a Public Information Release Report but arguing that the other responsive record – a PSP incident report – relates to a criminal investigation, 65 P.S. § 67.708(b)(16), contains individually identifiable health information, 65 P.S. § 67.708(b)(5), and is exempt under the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101-9183. In support of the arguments, the PSP provided the verification, made under penalty of perjury, of William Rozier, the PSP’s Agency Open Records Officer.

On October 22, 2020, the Requester appealed to the OOR, challenging the partial 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 November 6, 2020, the PSP submitted an additional verification from Mr. Rozier. On November 17, 2020, the Requester made a submission, explaining his reasoning for the Request and stating that he wishes to obtain test results.

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,

¹ The appeal was postmarked October 16, 2020 and received on October 22, 2020. Regardless of date, the appeal was timely filed. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

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.” 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* 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.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing; however, the OOR has the necessary 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 the 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 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). 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 RTKL exempts from disclosure “[a] record of an agency relating to or resulting in a criminal investigation....” 65 P.S. § 67.708(b)(16). The Commonwealth Court has held that PSP investigative reports may be exempt from disclosure. *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 477 (Pa. Commw. Ct. 2010), *appeal denied*, 76 A.3d 540 (Pa. 2013).

The PSP provided the verification of Mr. Rozier, who identifies PSP General Offense Report No. PA 2018-1358201 as the responsive record that was withheld by the PSP. He affirms that he “personally examined the report and found that it is manifestly related to a criminal investigation. As confirmed by the PIRR, this was a criminal investigation into an allegation of involuntary deviate sexual intercourse.” The Requester does not dispute that PSP conducted a criminal investigation. *See Pa. Game Comm’n v. Fennell*, 149 A.3d 101, 105 (Pa. Commw. Ct. 2016) (“[W]e see no reason why OOR cannot decide the legal issue presented based on those undisputed facts”).

Under the RTKL, an affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support to withhold requested records. *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 competent evidence that PSP 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)). Based upon the evidence provided, as well as the undisputed facts of this case, the PSP has established that PSP General Offense Report No. PA 2018-1358201 is exempt from disclosure because it is related to a criminal investigation. 65 P.S. § 67.708(a)(1).

Moreover, “[u]nder the RTKL, whether the document is accessible is based only on whether a document is a public record, and if so, whether it falls within an exemption that allows that it not be disclosed. The status of the individual requesting the record and the reason for the request, good or bad, are irrelevant as to whether a document must be made accessible under Section 301(b) [of the RTKL].” *Hunsicker v. Pa. State Police*, 93 A.3d 911, 913 (Pa. Commw. Ct. 2014). Therefore, the RTKL must be interpreted and applied without regard to the Requester’s identity beyond meeting the RTKL’s requester definition. *See Clinkscale v. Pa. Dep’t of Pub. Welfare*, 101 A.3d 137, 141 (Pa. Commw. Ct. 2014).

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. 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.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: November 20, 2020

/s/ Kyle Applegate

APPEALS OFFICER
KYLE APPLGATE, ESQ.

Sent to: Preston Walters, #NX2444 (via U.S. Mail only)
Nolan Meeks, Esq. (via email only);
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