



FINAL DETERMINATION

IN THE MATTER OF

**BRANDON COHN,
Requester**

v.

**PENNSYLVANIA STATE POLICE,
Respondent**

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Docket No: AP 2020-2050

INTRODUCTION

Brandon Cohn (“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.*, seeking a copy of a police report. The PSP denied the Request, arguing that the record relates to a noncriminal investigation. 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 24, 2020, the Request was filed, seeking the “May 4, 2019[,] police report that I filed because my car was egged. Officer Laskoski[,] PA-2019-570095.” Following a thirty day extension, 65 P.S. § 67.902(b), on September 30, 2020, the PSP denied the Request, arguing that the record relates to a noncriminal investigation, 65 P.S. § 67.708(b)(17), and that the record contains personal identification information, 65 P.S. § 67.708(b)(6)(i)(A). The PSP’s response

included the verification made under penalty of perjury of Rachel Zeltmann, the PSP's Deputy Open Records Officer.

On October 8, 2020, the Requester appealed to the 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 November 10, 2020, the PSP submitted the verification made under penalty of perjury from William Rozier, the PSP's Open Records Officer.² The Requester did not submit any additional information on appeal.

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, 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” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing

¹In the appeal, the Requester granted the OOR an additional thirty days to issue the Final Determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

² The PSP's submission was received after the record closed; however, to develop the record, the submission was considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

to resolve an appeal. 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.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request 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)(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 identified a PSP General Offense Report as the record responsive to the Request, but argues that it is exempt from disclosure because it relates to a noncriminal investigation. 65 P.S. § 67.708(b)(17). Section 708(b)(17) of the RTKL exempts from disclosure “[a] record of an agency relating to a noncriminal investigation, including ... [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)(ii); 65 P.S. § 67.708(b)(17)(vi)(A). To successfully assert the noncriminal investigative records exemption, the agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *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. An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Johnson v. Pa. Convention Center Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012); *see also Pa. Dep’t of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014).

In support of the PSP’s position, Mr. Rozier affirms that the only record responsive to the Request is “PSP General Offense Report No. PA-2019-570229 (formerly referred to as PSP Assignment Report).” Mr. Rozier further affirms that he has personally examined the report and “found that it is manifestly related to an investigation into a complaint in which the Troopers determined no criminal activity had occurred.” Under the RTKL, an affidavit 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 the 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)).

In the PSP’s verified denial letter, it states that, pursuant to PSP Operations Manual, 7-2, Ch. 6, Trooper Kyle Laskoskie used the assignment report to “record the results of investigations or action taken on miscellaneous matters which are not covered on a more specific report” and “[t]he report is also intended to serve as an information resource to assist troopers in resolving investigations.” Further, the OOR has previously held that a PSP Assignment Report, now known as the PSP General Offense Report, is a noncriminal investigation record. *See Kline v. Pa. State Police*, OOR Dkt. AP 2018-0068, 2017 PA O.O.R.D. LEXIS 341.

The Requester argues that as the person who reported the alleged incident, he is entitled to a copy of the responsive General Offense Report. However, under 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 requestor definition. *See Clinkscale v. Dep’t of Pub. Welfare*, 101 A.3d 137, 141 (Pa. Commw. Ct. 2014). As such, the Requester’s identity or reason why he is seeking the requested record is not relevant to the determination of the public nature of the record.

On its face, the Request seeks a noncriminal investigative report and Mr. Rozier’s verification establishes that the requested General Offense Report describes and documents the

PSP's noncriminal investigation. *See Pa. Game Comm'n v. Fennell*, 148 A.3d 101 (Pa. Commw. Ct. 2016) (explaining that the OOR must consider the uncontradicted submissions of the initial appeal document when deciding an appeal). Therefore, the PSP has met its burden of proving that the Offense Report is exempt from disclosure as a noncriminal investigative record. *See* 65 P.S. § 67.708(a)(1); *see also Trego v. Pa. State Police*, OOR Dkt. AP 2018-1913, 2018 PA O.O.R.D. LEXIS 1512 (concluding that a PSP General Offense Report involving the Requester was an exempt record related to a noncriminal investigation under Section 708(b)(17) of the RTKL).

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 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. 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 OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 16, 2020

/s/ Kelly C. Isenberg

APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

Sent to: Brandon Cohn (via email only);
William Rozier (via email only)

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