



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**CINDEE DELUCA,
Requester**

v.

**PENNSYLVANIA STATE POLICE,
Respondent**

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Docket No.: AP 2021-0185

INTRODUCTION

Cindee DeLuca (“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 specific towing forms. The PSP denied the Request, asserting that the records relate 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 December 15, 2020, the Request was filed, seeking “all copies of MV-952 [and] MV-952PP forms for a mini[m]um of the past 3 [years] for Paul’s Towing or on behalf of Paul’s Towing....” On January 21, 2021, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b)(2), the PSP denied the Request, asserting that the records relate to a noncriminal investigation, 65 P.S. § 67.708(b)(17).

On January 27, 2021, 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 March 12, 2021, after being afforded additional time to do so, the PSP submitted the sworn verification of William Rozier (“Mr. Rozier”), the PSP’s Open Records Officer, in support of its denial. The Requester did not submit additional evidence 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 to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, the parties did not request a hearing.

¹ In the appeal, the Requester granted the OOR an additional thirty days to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).

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 argues that the requested forms are related to a noncriminal investigation. Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “[i]nvestigative materials, notes, correspondence and reports.” 65 P.S. § 67.708(b)(17)(ii). In order for this exemption to apply, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *See 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; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Pa. Dep't of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would "craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure." *Id.* at 259.

In the present matter, Mr. Rozier verifies, in part, as follows:

7. The RTK office searched all [the PSP] 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 responsive forms. The responsive records total 8 pages. The forms are related to and attachments of PSP General Offense Numbers: PA 2018-20373; PA 2019-76690; PA 2019-786892; PA 2020-34834; PA 2020-167311; PA 2020-1062554.
9. I personally examined the responsive forms and determined that they are related to non-criminal investigations by PSP Troopers. Pursuant to 75 Pa.C.S. § 7303.1, when a police officer, after conducting an investigation into whether a vehicle is abandon[ed] and then concludes that the vehicle is abandoned, the police officer is required to complete the responsive forms as required by statute. The responsive forms contain the information gathered by PSP Troopers and reported on the form. Pursuant to PSP Reporting Manual 5-4, "The investigating member shall prepare a General Offense-Assignment Report (GO-AR). The yellow copy of the MV- 952, along with any necessary attachments, shall be scanned, uploaded, and attached to the associated GO-AR."
10. Accordingly, the responsive forms constitute a record []relating to or resulting in a non-criminal investigation and is therefore exempt from disclosure pursuant to Section 708(b)(17) of the RTKL.
11. Additionally[,] ... [t]he reports reflect the findings and observations and notes of the investigating trooper....

Under the RTKL, a verification made under the penalty of perjury is generally competent evidence to sustain an agency's burden of proof. *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). Here, the PSP has demonstrated that the responsive forms relate to a noncriminal investigation. *See, e.g., Mayer v. Pa. State Police*, OOR Dkt. AP 2021-0003, 2021 PA O.O.R.D. LEXIS 352; *Cobb v. Pa. State Police*, OOR Dkt. AP 2016-2044, 2017 PA O.O.R.D. LEXIS 40 (each finding the PSP's General Offense Report is exempt from disclosure because it relates to a noncriminal investigation). Accordingly, the PSP has proven that the responsive records are exempt from disclosure under Section 708(b)(17) of the RTKL. *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 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.² This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 6, 2021

/s/ Magdalene C. Zeppos-Brown

MAGDALENE C. ZEPPOS-BROWN, ESQ.
ASSISTANT CHIEF COUNSEL

Sent to: Cindee DeLuca (via email only);
William Rozier, AORO (via email only); and
Nolan Meeks, Esq. (via email only)

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