



### **FINAL DETERMINATION**

**IN THE MATTER OF**

**JAMES MILLER,  
Requester**

**v.**

**PENNRIDGE REGIONAL  
POLICE DEPARTMENT,  
Respondent**

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**Docket No.: AP 2021-0773**

### **INTRODUCTION**

James Miller (“Requester”) submitted a request (“Request”) to Pennridge Regional Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a police report and related phone calls. The Department denied the Request, arguing that it relates to criminal or noncriminal investigations. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **transferred**, and the Department is not required to take any further action at this time.

### **FACTUAL BACKGROUND**

On March 22, 2021, the Request was filed, stating:

On January 7, 2019, [an identified individual] filed a complaint against me with the [Department] concerning an incident with a Pennridge School Bus [at the identified individual’s address]. I am requesting a copy of all information, including follow up calls, that the [Department] have on file for this complaint.

On March 24, 2021, the Department denied the Request, arguing that the requested records are part of a criminal and/or noncriminal investigation. *See* 65 P.S. §§ 67.708(b)(16); (17).

On April 13, 2021, the Requester appealed to the OOR, challenging the denial and stating reasons for disclosure.<sup>1</sup> The OOR invited the parties to supplement the record and directed the Department to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On May 6, 2021, the Department submitted a position statement explaining that there were nine pages of responsive records, consisting of an Incident Report and a narrative statement, both regarding a potential violation of the Pennsylvania Motor Vehicle Code (“MVC”). 75 Pa.C.S. §§ 101 *et seq.* The Department argued that the responsive records all relate to a noncriminal investigation and submitted the verification of Chief Paul Dickinson, who attests that he conducted a search and determined that the incident report and narratives are the only responsive records in the Department’s possession. Chief Dickinson attests that both records relate to an investigation conducted by police officers to determine if a violation of the MVC had occurred, including observations of the officers and the personal information of several individuals.

On June 7, 2021, following an inquiry by the OOR, the Department identified the alleged violations of the MVC which had been investigated.

### **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,

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<sup>1</sup> The Requester granted the OOR an additional 30 days to issue its Final Determination. *See* 65 P.S. § 67.1101(b)(1).

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, neither party requested a hearing.

The Department is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local 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. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *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 Department argues that the Request seeks records 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). 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. Welfare 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.

Here, the Request seeks a police report and related calls filed by a specific individual regarding an incident with a school bus. The Department identifies the potentially responsive records as the police incident report created as a response to a complaint of a potential violation of the MVC, and the main and subsequent narratives created by officers investigating that complaint. In support of this argument, the Department submitted the affidavit of Chief Dickinson, who attests that:

3. I located a four (4) page Incident Report and five (5) page Main Narrative/Supplemental Narrative which correspond to the records requested.
4. There are no other records of the incident in the possession of the Department.

5. The records are all related to an investigation that spanned several days and that was conducted by Pennridge Regional Police Department Officers as part of their official duties regarding a possible violation of the [MVC].<sup>2</sup>

6. The records contain information regarding the investigation, including observations of the officers and personal information regarding [the Requester] and several other individuals.

7. The records relate to a noncriminal investigation.

8. The investigation was conducted as part of the [Department's] official duties pursuant to the Second Class Township Code and Commonwealth Statu[t]es which grant municipal police officers with the authority to protect individuals and to maintain the peace in the Commonwealth.

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. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith, “the averments in [the statement] 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)).

Section 8951 of Title 42 grants municipal police officers the power to enforce the laws of the Commonwealth or otherwise perform the functions as to “any ... event that occurs within his primary jurisdiction and which reasonably requires action on the part of the police in order to preserve, protect or defend persons or property or to otherwise maintain the peace and dignity of this Commonwealth.” 42 Pa.C.S. § 8952. This investigative power includes investigations into traffic violations. However, both Sections 3736 and 3345 of the MVC result in summary offenses under the MVC, and, therefore, could not have been the subject of noncriminal investigations. *See*,

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<sup>2</sup> In response to an inquiry from the OOR, the Department identified the sections of the MVC at issue as 75 Pa.C.S. § 3736 (Reckless Driving) and 75 Pa.C.S. § 3345 (Meeting or Overtaking School Bus).

*e.g., Imperium, Inc., v. Exeter Twp.*, OOR Dkt. AP 2019-0276, 2019 PA O.O.R.D. LEXIS 281 (investigations of summary offenses are criminal matters, and appeals centered around such investigations should be transferred to the responsible District Attorney's office); *Nunez v. State College Police Dep't*, OOR Dkt. AP 2016-0900, 2016 PA O.O.R.D. LEXIS 928 (records of an investigation of a summary offense could only be granted to the extent that another appeal had been filed to the responsible District Attorney's office and granted). Therefore, the Department has instead submitted evidence to demonstrate that the Request seeks records related to a criminal investigation.

The OOR does not have jurisdiction over records related to criminal investigations in the possession of a local agency. A case is properly transferred when there is sufficient evidence on record to suggest that the responsive records are likely to relate to a criminal investigation. *See Bush v. Westtown-East Goshen Police Dep't*, OOR Dkt. AP 2016-1869; 2016 PA O.O.R.D. LEXIS 1708 (transferring a case where the agency demonstrated how the requested records related to a specific criminal investigation); *Burgess v. Willistown Twp. Police Dep't*, OOR Dkt. AP 2013-1511, 2013 PA O.O.R.D. LEXIS 868 (holding that where a local agency made a preliminary showing that records relate to a criminal investigation, the OOR lacked jurisdiction to consider the merits of the appeal). In this instance, the Department's affidavit demonstrates that the responsive records are part of an investigation into potentially criminal conduct, carried out by local law enforcement.

Accordingly, because these records may relate to a criminal matter, this appeal is hereby transferred to the Appeals Officer for the Bucks County District Attorney's Office to determine whether the records are criminal investigative records. *See Pennsylvanians for Union Reform v. Centre Cnty. Dist. Attorney's Office*, 139 A.3d 354 (Pa. Commw. Ct. 2016) (citing 42 Pa.C.S. §

5103(a) (relating to the process for handling improperly filed appeals)). A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Burks County District Attorney's Office.

### **CONCLUSION**

For the foregoing reasons, the Requester's appeal is **transferred**, and the Department is not required to take any further action at this time. 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 Bucks County Court of Common Pleas. 65 P.S. § 67.1302(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 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.<sup>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: June 14, 2021**

*/s/ Jordan C. Davis*

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Jordan C. Davis, Esq.  
Appeals Officer

Sent to: James Miller (via email only);  
Daniel Keane, Esq. (via email only);  
RTKL Appeals Officer, Bucks County DA's Office (via email only)

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