

June 15, 2021

FILED VIA PACFILE

Michael Krimmel, Esq.
Prothonotary
Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
Harrisburg, PA 17106-2575

RE: Submission of Record in:
Technology & Entrepreneurial Ventures Law Group, PC v. Pennsylvania State Police, No. 504 CD 2021

Dear Mr. Krimmel:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

Office of Open Records Docket No. 2021-0277:

1. The appeal filed by Gregg Zegarelli (“Requester”) to the Office of Open Records (“OOR”), received February 8, 2021.
2. Official Notice of Appeal dated February 8, 2021, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Requester’s position statement received on February 18, 2021.
4. Email chain dated April 2, 2021 wherein the Pennsylvania State Police (“PSP”) responds to the OOR’s email regarding its participation in the appeal.
5. Requester’s email dated April 2, 2021 objecting to the PSP intended submission deadline.

6. PSP's email dated April 5, 2021 advising the OOR that they would be relying on the final response to the underlying Request.
7. Requester's additional argument received April 7, 2021.
8. OOR's email dated April 8, 2021 asking the PSP to respond to the Requester's April 7, 2021 submission and establishing a submission deadline.
9. PSP's submission received April 9, 2021.
10. Requester's April 9, 2021 response to PSP's submission.
11. OOR's email asking the Requester for an extension to issue the final determination and asking the PSP for clarification on its submission.
12. PSP's revised submission received April 9, 2021.
13. Requester's email dated April 9, 2021 making a submission and granting the OOR the requested extension.
14. OOR's email confirming receipt of the parties' submissions and the extension granted by the Requester.
15. Final Determination dated April 14, 2021, issued by the OOR.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,



Kyle Applegate
Chief Counsel

Attachments

cc: Gregg Zegarelli, Esq. (Requester)
Nolan B. Meeks, Esq. (PSP)

Commonwealth of Pennsylvania

Agency Docket Number: AP 2021-0277

Appellate Court Docket Number: 504 CD 2021

I, Elizabeth Wagenseller, certify that the accompanying electronically transmitted materials are true and correct copies of all materials filed in the Office of Open Records and constitute the record for :

Technology and Entrepreneurial
Ventures Law Group, PC,
Petitioner

v.

Pennsylvania State Police
(Office of Open Records),
Respondent

/s/ Elizabeth Wagenseller

06/15/2021

Executive Director

Volumes:

Agency Record (2)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TECHNOLOGY and ENTREPRENEURIAL	:	
VENTURES LAW GROUP	:	
Petitioner,	:	
	:	
v.	:	No. 504 CD 2021
	:	
PENNSYLVANIA STATE POLICE	:	
Respondent.	:	

CERTIFIED RECORD

Kyle Applegate
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: Kyapplegat@pa.gov

June 15, 2021

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TECHNOLOGY and ENTREPRENEURIAL	:	
VENTURES LAW GROUP	:	
Petitioner,	:	
	:	
v.	:	No. 504 CD 2021
	:	
PENNSYLVANIA STATE POLICE	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record upon the following by First Class Mail, pre-paid or by Email at the address or email listed below:

Nolan B. Meeks, Esquire
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
nomeeks@pa.gov

Gregg R. Zegarelli, Esq.
TEV Law Group PC
PO Box 113345
Pittsburgh, PA 15241
mailroom.grz@zegarelli.com



Faith Henry, Administrative Officer
Office of Open Records
333 Market Street 16th floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: fahenry@pa.gov

Dated: June 15, 2021

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TECHNOLOGY and ENTREPRENEURIAL	:	
VENTURES LAW GROUP	:	
Petitioner,	:	
	:	
v.	:	No. 504 CD 2021
	:	
PENNSYLVANIA STATE POLICE	:	
Respondent.	:	

**TABLE OF CONTENTS
RECORD**

Gregg Zegarelli v. Pennsylvania State Police,
OOR Dkt. AP 2021-0277

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14. OOR's email confirming receipt of the parties' submissions and the extension granted by the Requester.
15. Final Determination dated April 14, 2021, issued by the OOR.

OOB Exhibit 1

Devenyi, Dylan

From: no-reply@openrecordspennsylvania.com
Sent: Monday, February 8, 2021 2:14 PM
To: mailroom.grz@zegarelli.com
Subject: [External] PA Office of Open Records - Appeal Confirmation

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Gregg Zegarelli
Company:	TEV Law Group
Address 1:	2585 Washington Road
Address 2:	Suite 134
City:	Pittsburgh
State:	Pennsylvania
Zip:	15241
Phone:	412-833-0600
Email:	mailroom.grz@zegarelli.com
Agency (typed):	PA State Police
Agency Address 1:	1800 Elmerton Avenue
Agency Address 2:	
Agency City:	Harrisburg
Agency State:	Pennsylvania
Agency Zip:	17110
Agency Phone:	877-785-7771
Agency Email:	RA-psprighttoknow@pa.gov

Records at Issue in this Appeal:	All records requested. There is no way that the agency can have seized property without any portion of the seizure being a public record, including, but not limited to reports or inventories regarding, eg, the location and identity of property seized. There may be an investigation, but the subject of the investigation relates to seizures of property, and the property and circumstances of the seizure must be public by Constitutional due process. An entire objection is not Constitutionally proper.
Request Submitted to Agency Via:	e-mail
Request Date:	12/11/2020
Response Date:	01/19/2021
Deemed Denied:	No
Agency Open Records Officer:	Rachel Zeltmann
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • State Police.pdf • PA State Police.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.



PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110

Mailing Date: January 19, 2021

Gregg R. Zegarelli, Esquire
TEV Law Group PC
PO Box 113345
Pittsburgh, Pennsylvania 15241

PSP/RTKL Request N° 2020-1648

Dear Attorney Zegarelli:

On December 11, 2020, the Pennsylvania State Police (PSP) received your request for information pursuant to Pennsylvania's Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 – 67.3104, wherein you requested:

All records regarding taking or seizure of amusement or other game devices from 322 Philipsburg Bigler Highway, Philipsburg, PA 16866 (Country Garden 6-Pack) within the last 7 years, including, but not limited to, so-call skill games by any manufacturer and/or Pace-O-Matic games of any nature.

A copy of your request is enclosed for your reference. By letter dated December 18, 2020, you were notified in accordance with RTKL section 67.902 (b)(2) that the PSP required an additional thirty days, to respond to your request.

Your request is denied because the responsive PSP Administrative Investigation Reports PA 2019-449748, PA 2019-1662933, PA 2020-142953 and pending citation nos. 20-0685 and 20-0778 are records that are exempt under the RTKL as PSP records:

- "relating to a noncriminal investigation[.]" 65 P.S. § 67.708(b)(17);
- containing "[c]omplaints submitted to an agency[.]" *id.* § 67.708(b)(17)(i);
- comprising "investigative materials, notes, correspondence and reports[.]" *id.* § 67.708(b)(17)(ii);
- that, if disclosed, would "[r]eveal the institution, progress, or result of

an agency investigation," *id.* § 67.708(b)(17)(vi)(A);

- "A record that includes the identity of a confidential source..." 65 P.S. § 67.708(b)(17)(iii).

Please be advised that PSP Administrative Investigation Reports PA 2019-1662933 and PA 2020-142953 are **open and ongoing** investigations and supplements will be added as the investigation continues.

To the extent that your request seeks or may be construed to seek records involving covert law enforcement investigations, including, intelligence gathering and analysis, PSP can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. Under No Circumstances, therefore, should this final response be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the RTKL and CHRIA.

In closing, you have a right to appeal this response in writing to, the Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17126-0333. The pertinent OOR appeal form is available for your use at <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>. If you choose to appeal, you must do so within 15 business days of the mailing date of this response and send to the OOR: 1) this response; 2) your request; 3) the reason or reasons why you think PSP wrongfully responded to your request. If you have any questions, please feel free to contact our office at the number listed below.

Sincerely yours,



Rachel Zeltmann
Deputy Agency Open Records Officer
Pennsylvania State Police
Bureau of Records & Identification
Right-to-Know Office
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110
RA-psprighttoknow@pa.gov
1.877.785.7771 (Main) | 717.525.5795 (Fax)

Enclosures: PSP/RTKL Request N° 2020-1648
Zeltmann Verification

PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS

VERIFICATION OF
RACHEL ZELTMANN
DEPUTY AGENCY OPEN RECORDS OFFICER

I, Rachel Zeltmann, Deputy Agency Open Records Officer of the Pennsylvania State Police (variously, PSP or Department), am authorized to prepare this verification in response to PSP/RTKL Request N° 2020-1648. Accordingly, on this 19th day of January, 2021, I verify the following facts to be true and correct, to the best of my knowledge or information and belief:

1. I am familiar with PSP/RTKL Request N° 2020-1648, which is attached to this verification.
2. Utilizing the information contained in the request, I searched all Department databases to which I have access for evidence of any PSP records that may respond to the request.
3. As a result of my searches, I have located and retrieved the PSP Administrative Investigative Reports Nos. 2019-449748, PA 2019-1662933, PA 2020-142953 and pending citation nos. 20-0685 and 20-0778.
4. Upon reviewing the reports I have found the investigations of these incidents wholly exempt from public disclosure because the results are:
 - "A record of an agency relating to or resulting in a non criminal investigation," 65 P.S. § 67.708(b)(17);
 - "A record containing complaints submitted to an agency." 65 P.S. § 67.708(b)(17)(i);
 - "Investigative materials, notes, correspondence and reports." 65 P.S. § 67.708(b)(17)(ii); and/or
 - "A record that includes the identity of a confidential source..." 65 P.S. § 67.708(b)(17)(iii).

5. Therefore, I determined PSP Administrative Investigative Report Nos. 2019-449748, PA 2019-1662933, PA 2020-142953 and pending citation nos. 20-0685 and 20-0778 are not "public records," and not subject to access by a requestor under the RTKL.
6. The requestor was advised that PSP Administrative Investigation Reports PA 2019-1662933 and PA 2020-142953 are **open and ongoing** investigations and supplements will be added as the investigation continues.

I understand that false statements made in this verification are subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



Rachel Zeltmann
Deputy Agency Open Records Officer
Pennsylvania State Police



PENNSYLVANIA STATE POLICE
RIGHT-TO-KNOW LAW REQUEST

1-877-RTK-PSP1 (1-877-785-7771)

2020-1648
12-18-2020

REQUEST DATE: 12/11/2020

NAME OF REQUESTER: TEV Law Group PC by Gregg Zegarelli, Esq.
(Please Print Legibly) (Last) (First) (MI)

MAILING ADDRESS: PO Box 113345
(Street/PO Box)
Pittsburgh, PA 15241
(City) (State) (Zip Code)

TELEPHONE (Optional): 412-833-0600 FAX (Optional): 412-833-0601

EMAIL (Optional): mailroom.grz@zegarelli.com

RECORDS REQUESTED: Please identify each of the documents that are subject to this request with sufficient specificity so we can ascertain whether we have these documents and how to locate them.

All records regarding taking or seizure of amusement or other game devices from 322 Philipsburg Bigler Highway, Philipsburg, PA 16866 (Country Garden 6-Pack) within the last 7 years, including, but not limited to, so-called skill games by any manufacturer and/or Pace-O-Matic games of any nature.

To the extent that this request seeks or may be construed to seek Pennsylvania State Police records involving covert law enforcement investigations, including intelligence gathering and analysis, the Department can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should the Department's response to this request be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, and the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101-9183.

Production of requested public records is subject to prepayment of all RTKL fees. For security purposes, this agency will only produce public records in paper format, unless the records exclusively exist in another medium.

PLEASE MAIL, DELIVER IN PERSON, FAX, OR EMAIL YOUR REQUEST TO:

Pennsylvania State Police
Bureau of Records & Identification
ATTN: AGENCY OPEN RECORDS OFFICER
1800 Elmerton Avenue
Harrisburg, PA 17110-9758

RECEIVED
RIGHT-TO-KNOW LAW OFFICE
DEC 11 P 3:52

FAX: 717-525-5795

EMAIL: (RA-psprighttoknow@pa.gov)

PSP/RTKL TRACKING NO.: _____

AORO RECEIPT DATE-STAMP: _____

FINAL RESPONSE DATE: _____

CALCULATED RESPONSE DUE DATE: _____

FINAL RESPONSE DUE DATE: _____

Gaul, Candace M

From: Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>
Sent: Friday, December 11, 2020 3:48 PM
To: SP, PSP RIGHT TO KNOW
Subject: [External] Right to Know Request
Attachments: PA State 20201211 RTK_Request_Form filed.pdf

Importance: High

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Please see attached. Thank you.

Gregg R. Zegarelli
v.412.559.5262 | s.gregg.zegarelli
gregg.zegarelli@zegarelli.com
www.zegarelli.com/staff/grz | [in](#) | [qr](#) | [vcf](#)

All Post to Administrative and Postal Office
2585 Washington Road, Suite 134 • Summerfield Commons Office Park
Pittsburgh, PA 15241-2565 USA

Z E G A R E L L I

**Technology & Entrepreneurial
Ventures Law Group, PC**

301 Grant Street, Suite 4300 • One Oxford Centre
Pittsburgh, PA 15219-1407 USA
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2020 DEC 11 P 3:52



PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110

Mailing Date: December 18, 2020

Gregg Zegarelli, Esquire
TEV Law Group PC
PO Box 113345
Pittsburgh, Pennsylvania 15241

PSP/RTKL Request N° 2020-1648

Dear Attorney Zegarelli:

On December 11, 2020, the Pennsylvania State Police (PSP) received your request for information pursuant to the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 - 3104, wherein you state:

All records regarding taking or seizure of amusement or other game devices from 322 Philipsburg Bigler Highway, Philipsburg, PA 16866 (Country Garden 6-Oack) within the last 7 years, including, but not limited to, so-called skill games by any manufacturer and/or Pace-O-Matic games of any nature.

Under the RTKL, a written response to your request is due on or before December 18, 2020.

Under the provisions RTKL section § 67.902(b)(2), you are hereby notified that your request is being reviewed and the PSP will require up to an additional 30 days, i.e., until January 19, 2021, in which to respond to your request. Should your request be granted, the total for the estimated or actual fees owed, if any, will be included in our subsequent response. The reason for requiring additional time for a final response is checked below:

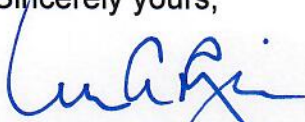
- Compliance with your request may require the redaction of certain information that is not subject to access under RTKL.
- Your request requires retrieval of one or more records that are stored at a remote location.
- A response by the mailing date of this letter could not be accomplished due to bona fide staffing limitations. In particular, _____.

- Your request is under legal review, which is necessary to determine whether a requested record is a "public record" for purposes of the RTKL.
- Your compliance with the following agency policies is required for access to the record(s): _____
- You must pay the applicable fees authorized by the RTKL.

X The extent or nature of the request precludes a response within the required time period.

Should you have any questions regarding this letter, please contact the undersigned.

Sincerely yours,



William A. Rozier, J.D.
Agency Open Records Officer
Pennsylvania State Police
Bureau of Records and Identification
Right-to-Know Law/Subpoena Section
1800 Elmerton Ave.
Harrisburg, PA 17110
RA-psprighttoknow@pa.gov
Office: 1.877.785.7771 Fax: 717.525.5795

Enclosure: Request 2020-1648



PENNSYLVANIA STATE POLICE
RIGHT-TO-KNOW LAW REQUEST

1-877-RTK-PSP1 (1-877-785-7771)

2020-1648
12-18-2020

REQUEST DATE: 12/11/2020

NAME OF REQUESTER: TEV Law Group PC by Gregg Zegarelli, Esq.
(Please Print Legibly) (Last) (First) (MI)
MAILING ADDRESS: PO Box 113345
(Street/PO Box)
Pittsburgh, PA 15241
(City) (State) (Zip Code)
TELEPHONE (Optional): 412-833-0600 FAX (Optional): 412-833-0601
EMAIL (Optional): mailroom.grz@zegarelli.com

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Bureau of Records & Identification
ATTN: AGENCY OPEN RECORDS OFFICER
1800 Elmerton Avenue
Harrisburg, PA 17110-9758

FAX: 717-525-5795

EMAIL: RA-psprighttoknow@pa.gov

PSP/RTKL TRACKING NO.: _____

AORO RECEIPT DATE-STAMP: _____

FINAL RESPONSE DATE: _____

CALCULATED RESPONSE DUE DATE: _____

FINAL RESPONSE DUE DATE: _____

Gaul, Candace M

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Importance: High

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Please see attached. Thank you.

Gregg R. Zegarelli *
v.412.559.5262 | s.gregg.zegarelli@zegarelli.com
gregg.zegarelli@zegarelli.com
www.zegarelli.com/staff/grz | [in](#) | [qr](#) | [vcf](#)

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2585 Washington Road, Suite 134 • Summerfield Commons Office Park
Pittsburgh, PA 15241-2565 USA

Z E G A R E L L I
Technology & Entrepreneurial
Ventures Law Group, PC

301 Grant Street, Suite 4300 • One Oxford Centre
Pittsburgh, PA 15219-1407 USA
f.412.833.0601 | www.zegarelli.com

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2020 DEC 11 P 3:52

OOOR Exhibit 2

NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **April 9, 2021**.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **February 18, 2021**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters during this time to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

February 8, 2021

Via Email Only:

Mr. Gregg Zegarelli
TEV Law Group
2585 Washington Road
Suite 134
Pittsburgh, PA 15241
mailroom.grz@zegarelli.com

Via Email Only:

William Rozier
Agency Open Records Officer
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
RA-psprighttoknow@pa.gov
wrozier@pa.gov

----- **RE: OFFICIAL NOTICE OF APPEAL - Zegarelli and TEV Law Group v. Pennsylvania State Police OOR Dkt. AP 2021-0277** -----

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

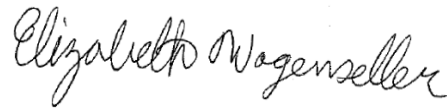
The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on February 8, 2021. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19).**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

----- If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal. -----

Sincerely,



Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the enclosed information regarding the coronavirus (COVID-19). If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. Â§ 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Angela Edris, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

FACSIMILE:

(717) 425-5343

EMAIL:

aedris@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.



IN THE MATTER OF

**GREGG ZEGARELLI,
Requester**

v.

**PENNSYLVANIA STATE POLICE,
Respondent**

:
:
:
:
:
:
:
:
:
:

Docket No.: AP 2021-0277

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.110l(b)(l), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before April 9, 2021.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

00R Exhibit 3

From: [Gregg R. Zegarelli](#)
To: [Edris, Angela](#)
Cc: [SP, PSP RIGHT TO KNOW](#); [Rozier, William A](#)
Subject: [External] OOR Dkt. AP 2021-0277
Date: Thursday, February 18, 2021 4:41:29 PM
Attachments: [20210209 Submission.pdf](#)

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.*

Please see attached.

Gregg R. Zegarelli *
v.412.559.5262 | s.gregg.zegarelli
gregg.zegarelli@zegarelli.com
www.zegarelli.com/staff/grz | [in](#) | [qr](#) | [vcf](#)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ZEGARELLI AND TEV LAW GROUP,

OOB DKT. AP 2021-0277

Requestor/Appellant

v.

PENNSYLVANIA STATE POLICE,

Agency.

SUBMISSION BY REQUESTOR APPELLANT¹

1. **Presumption of Public Records.** The Pennsylvania legislature has established a rebuttable presumption that documents in the possession of a Commonwealth agency are public records. [Section 305(a) of the Right-to-Know Law, 65 P.S. § 67.305(a).] The burden of proving that a record is exempt from public access is on the Commonwealth agency. [Section 708(a)(1) of the Right-to-Know Law, 65 P.S. § 67.708(a)(1). *Com., Pennsylvania Gaming Control Bd. v. Office of Open Records*, 48 A.3d 503, at 508 (Pa.Cmmw. 2012); RTKL GUIDE FOR LAW ENFORCEMENT AGENCIES (June 2020) <https://www.openrecords.pa.gov/Documents/RTKL/rtkguidelawenforcement.pdf>, *citing*, 65 P.S. § 67.101, *et seq.* (“Law enforcement agencies are generally no different than other agencies under the Right-to-Know Law”)]

¹ The undersigned hereby declares under penalty of perjury, pursuant to 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities, upon information and belief, that, on January 27, 2021, at 12:35 PM, the undersigned contacted the Pennsylvania State Police and spoke with Rachel Zeltmann, Deputy Agency Open Records Officer, in an effort to clarify the records request for purposes of avoiding any appeal. The undersigned represented a familiarity with the exemptions claimed and suggested that public seizures or property in the public require some form of public due process, by warrant, citation, receipt, docketed report, or seizure inventory. Ms. Zeltmann mechanically repeated over and over that I must appeal. When pressed that she is the Deputy Open Records Officer and asked whether she understood my inquiry, she directed me to talk with William Rozier, Agency Open Records Officer. At that time, I then deposited voicemail for Mr. Rozier to return my telephone call to try to cooperatively manage the request, which was never returned. Thus, this appeal and the related time and cost became necessary.

“Consistent with the Right-to-Know Law's goal of promoting government transparency, the exceptions to disclosure of public records must be narrowly construed.” *Highlands School District v. Rittmeyer*, --- A.3d ---, WL 7061810 (Commw. 2020). Statutory exceptions to disclosure of government records under the law must be construed strictly, lest they subvert the RTKL's purpose. *Payne v. Penna. Dept. of Health*, 240 A.3d 221 (Commw. 2020)

2. **Distinguishing Public Facts from Investigative and Deliberative Facts.** By way of example, the public *occurrence* of a public murder is public information. Any future investigation and deliberation regarding that particular public murder cannot and does not make the seminal grounding public facts to be thereby converted into confidential information. The public has a right to know and to obtain public facts of public occurrences.

The Pennsylvania State Police admit they seized publicly operated machines from the public location identified in the Request. And, yet, the Pennsylvania State Police refuse to provide any information, claiming *everything* is subsumed into a police secret procedure, *even the documentation regarding the public seizure, warrants, receipts, documents to any third-party, evidence “tags” and the index reconciliations, citations (if any), or the even simple non-deliberative factual routine inventory* of seized publicly-used machines “taken” from the open and public location. If the *investigation* of a murder thereby converted every public murder into a secret, the family might never have a full and fair opportunity to assert their legal rights or claim the body, which is the case here. Requester, as legal counsel, has the right to determine if any client has an interest in the seized property for the purpose of further legal process.

Due process of law on a public “taking” requires *something* fundamental to be public, including any publicly issued warrant, the documented facts of publicly viewed probable cause, etc. Respectfully, it is an embarrassment to American jurisprudence for the State Police to suggest that

people or things just “secretly disappear” with *nothing* subject to the RTKL relating to a taking of life, liberty or property—it all being a “secret of the State Police.” If that were the standard, every murdered body would be a missing lost person torture for the interested or potentially interested persons. America does not have a “Secret Police” or Gestapo such as it was in Nazi Germany, permitting the State Police to walk into a building, and then people or property just “disappear.” Due process requires notice, consistent with the Right-to-Know Law's goal of promoting government transparency. *Highlands School District, supra*. The entire body of public scrutiny is subverted if life, liberty or property *secretly disappears* by action of a *complete secret* by the Police.

The effect may be an investigation, but the public causation remains public. Seminal public facts remain seminal public facts. It is that simple. The Pennsylvania State Police conducted public seizure of property that existed within the public view, used in the public, with the acts occurring in the public view. These seminal public acts of “taking” are public information and cannot be converted into secrets. The subject is the required disclosure is not investigative material, as such. The investigation of a subject prior to arrest is one thing, the investigation of a subject’s associates after his arrest is another thing, but the important thing here is that the public seizure of the subject itself from a public location and release of his identity as such is not and cannot be a secret. It is a travesty of a free society for the State Police to take life, liberty or property, *entirely in secret*. The Request seeks to know what was *taken*, not what the State Police is *thinking*. *Payne v. Penna. Dept. of Health, supra*.

The location of the seizure is not confidential, the inventory of property seized in the public is not confidential, any and every document provided to a third party is not confidential. The Pennsylvania State Police’s *complete and unyielding* refusal to provide any information whatsoever is frivolous, and they know better in light of the entire line of rulings in *Pennsylvania State*

Police v. Groves, regarding which the OOR ruling against the Pennsylvania State Police was upheld by the Commonwealth Court and the Pennsylvania Supreme Court, to wit:

The mere fact that a record has some connection to a criminal proceeding does not automatically exempt it under Section 708(b)(16) of the RTKL or CHRIA. *Coley v. Philadelphia District Attorney's Office*, 77 A.3d 694, 697–98 (Pa.Cmwltth.2013) (while witness statements were exempt as investigative under Section 708(b)(16) and CHRIA, immunity agreement with witness was not exempt unless its contents were shown to be investigative information). ...

In contrast, PSP's evidence demonstrates that the MVRs are created to document troopers' performance of their duties in responding to emergencies and in their interactions with members of the public, not merely or primarily to document, assemble or report on evidence of a crime or possible crime. The MVR equipment is activated when an officer's siren or emergency lights are turned on, a non-investigative event. (Rozier Affidavit ¶ 14.) Moreover, PSP uses MVRs to document the entire interaction and actions of the trooper, including actions which have no investigative content, such as directions to motorists in a traffic stop or at an accident scene, police pursuits, and prisoner transports. (Id. ¶¶ 10, 16.) MVRs themselves are therefore not investigative material or videos, investigative information, or records relating or resulting in a criminal investigation exempt from disclosure under Section 708(b)(16) of the RTKL or CHRIA. Indeed, as documentation of law enforcement officers' conduct in carrying out their duties, MVRs are records at the core to the RTKL's purpose of enabling the public to “scrutinize the actions of public officials, and make public officials accountable for their actions.” *McGill*, 83 A.3d at 479.4

Pennsylvania State Police v. Grove, 119 A.3d 1102 (2015), and upheld, to wit:

With respect to the specific MVRs at issue here, our inquiry is whether the video portions contain investigative information under CHRIA such that they should be exempt from disclosure. As we have determined with respect to PSP's claims under the RTKL, we hold the Commonwealth Court did not err in concluding the CHRIA does not preclude disclosure either. The court correctly determined the only potential “investigative information” on these MVRs is contained in the audio portion of witness interviews on Trooper Thomas's MVR. As this potentially investigative aspect of the MVRs was ordered redacted, and neither PSP nor Grove challenged that order before this Court, we affirm the Commonwealth Court's decision on this issue.

Pennsylvania State Police v. Grove, 640 Pa. 1161 A.3d 877, 45 Media L. Rep. 2376 (Pa. 2017).

3. **Transparency as Check and Balance.** Not only is due process an issue in order to allow the public to claim or to take a proper interest the seized property, but there is a significant potential for corruption and graft, including taking machines containing monies from the cash box,

without the opportunity for public scrutiny. Power corrupts and absolute power corrupts absolutely. The secret taking of property from public use by the Police is dangerous for a free society. The RTKL is a proper check and a balance, and it is exactly this check and balance—or the risk of getting caught by a RTKL disclosure—that keeps a powerful organization with powerful people in check by deterrence. “Indeed, as documentation of law enforcement officers' conduct in carrying out their duties, MVRs are records at the core to the RTKL's purpose of enabling the public to ‘scrutinize the actions of public officials, and make public officials accountable for their actions.’” *Pennsylvania State Police v. Grove*.

4. **Obligation to Redact.** The Pennsylvania State Police has the obligation to redact as necessary to disclose the inventory actually seized, documents provided to third parties, or other information not part of the deliberative investigation; to wit:

Section 706. Redaction. If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.

(emphasis added); *See, Payne v. Pennsylvania Department of Health*, 240 A.3d 221 (Commw. 2020) (overruling the OOR and referencing the redaction requirement); *Pennsylvania State Police, supra*. The fact that some otherwise public document gets included into an “investigation file” does not prevent an otherwise public document from proper disclosure by the Request. The agency must redact to satisfy the intention of the statute. The OOR is hereby requested to and must conduct a complete *in camera* review of the file.

5. In short, there is simply no way that the entire process of a public seizure of publicly used game machines, during and while in the public view, can be completely isolated from any transparent public scrutiny by refusal to provide any documentation whatsoever. It violates the United States and Pennsylvania Constitutions, due process rights, and fair agency transparency. An investigation after the fact cannot subsume and convert the seminal public facts into secrets. It is absurd and an embarrassment to suggest such a state of secret State Police activity and will not withstand fair scrutiny. The Pennsylvania State Police's response is frivolous. It should be admonished, with fees granted to the undersigned.

WHEREFORE, Requester prays for a ruling in its favor.

Dated: February 18, 2021

s/Gregg R. Zegarelli
Gregg R. Zegarelli, Esq.

Pa. I.D. #52717

TECHNOLOGY & ENTREPRENEURIAL
VENTURES LAW GROUP, P.C.
2585 Washington Road, Suite 134
Pittsburgh, PA 15241-2565, USA
v.412.833.0600 f.412.833.0601

CERTIFICATE OF SERVICE

I hereby certify this document was submitted to the following by electronic mail on the date set forth below:

February 18, 2021

Angela Edris, Esq.
aedris@pa.gov

William Rozier
RA-psprighttoknow@pa.gov; wrozier@pa.gov

Respectfully submitted,

s/Gregg R. Zegarelli
Gregg R. Zegarelli, Esq.
Pa. I.D. #52717

TECHNOLOGY & ENTREPRENEURIAL
VENTURES LAW GROUP, P.C.
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Summerfield Commons Office Park
Pittsburgh, PA 15241-2565, USA
v.412.833.0600 f.412.833.0601
mailroom.grz@zegarelli.com

00R Exhibit 4

From: [Rozier, William A](#)
To: [Edris, Angela](#); [SP, PSP RIGHT TO KNOW](#)
Cc: mailroom.grz@zegarelli.com
Subject: RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested
Date: Friday, April 2, 2021 10:14:30 AM
Attachments: [image004.png](#)
[image001.png](#)

Appeals Officer Edris,

PSP will submit a response to this appeal. PSP's response will be submitted by COB Monday, April 5, 2021.

Respectfully,

William A. Rozier, J.D.
Agency Open Records Officer
Pennsylvania State Police

From: Edris, Angela <aedris@pa.gov>
Sent: Friday, April 2, 2021 9:50 AM
To: Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Cc: mailroom.grz@zegarelli.com
Subject: FW: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

Dear Mr. Rozier,

To date, the OOR has not received any submissions from the PSP concerning the above-referenced appeal. Does PSP intend to respond to Mr. Zegarelli's appeal?

Please respond to this email today. Thank you.

Sincerely,



Angela Edris
Attorney
Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | Fax (717) 425-5343
<https://openrecords.pa.gov>
[@OpenRecordsPA](#)

From: DC, OpenRecords <RA-OpenRecords@pa.gov>
Sent: Monday, February 8, 2021 5:16 PM
To: mailroom.grz@zegarelli.com; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>; Rozier, William A <wrozier@pa.gov>
Cc: Edris, Angela <aedris@pa.gov>
Subject: Zegarelli v. PSP: AP 2021-0277

Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records. The above mentioned matter has been assigned to Appeals Officer Angela Edris (refer to the attachment for contact information). Please forward all future correspondence directly to the Appeals Officer (cc'd on this email) and all other parties.

Sincerely,



Dylan Devenyi
Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | Fax (717) 425-5343
<https://openrecords.pa.gov>
[@OpenRecordsPA](#)

NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **April 9, 2021**.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **February 18, 2021**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters during this time to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

February 8, 2021

Via Email Only:

Mr. Gregg Zegarelli
TEV Law Group
2585 Washington Road
Suite 134
Pittsburgh, PA 15241
mailroom.grz@zegarelli.com

Via Email Only:

William Rozier
Agency Open Records Officer
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
RA-psprighttoknow@pa.gov
wrozier@pa.gov

----- **RE: OFFICIAL NOTICE OF APPEAL - Zegarelli and TEV Law Group v. Pennsylvania State Police OOR Dkt. AP 2021-0277** -----

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on February 8, 2021. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19).**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

----- If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal. -----

Sincerely,



Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

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The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

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See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Angela Edris, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

FACSIMILE:

(717) 425-5343

EMAIL:

aedris@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.



IN THE MATTER OF

**GREGG ZEGARELLI,
Requester**

v.

**PENNSYLVANIA STATE POLICE,
Respondent**

:
:
:
:
:
:
:
:
:
:

Docket No.: AP 2021-0277

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.110l(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before April 9, 2021.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

Devenyi, Dylan

From: no-reply@openrecordspennsylvania.com
Sent: Monday, February 8, 2021 2:14 PM
To: mailroom.grz@zegarelli.com
Subject: [External] PA Office of Open Records - Appeal Confirmation

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Gregg Zegarelli
Company:	TEV Law Group
Address 1:	2585 Washington Road
Address 2:	Suite 134
City:	Pittsburgh
State:	Pennsylvania
Zip:	15241
Phone:	412-833-0600
Email:	mailroom.grz@zegarelli.com
Agency (typed):	PA State Police
Agency Address 1:	1800 Elmerton Avenue
Agency Address 2:	
Agency City:	Harrisburg
Agency State:	Pennsylvania
Agency Zip:	17110
Agency Phone:	877-785-7771
Agency Email:	RA-psprighttoknow@pa.gov

Records at Issue in this Appeal:	All records requested. There is no way that the agency can have seized property without any portion of the seizure being a public record, including, but not limited to reports or inventories regarding, eg, the location and identity of property seized. There may be an investigation, but the subject of the investigation relates to seizures of property, and the property and circumstances of the seizure must be public by Constitutional due process. An entire objection is not Constitutionally proper.
Request Submitted to Agency Via:	e-mail
Request Date:	12/11/2020
Response Date:	01/19/2021
Deemed Denied:	No
Agency Open Records Officer:	Rachel Zeltmann
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • State Police.pdf • PA State Police.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.



PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110

Mailing Date: January 19, 2021

Gregg R. Zegarelli, Esquire
TEV Law Group PC
PO Box 113345
Pittsburgh, Pennsylvania 15241

PSP/RTKL Request N° 2020-1648

Dear Attorney Zegarelli:

On December 11, 2020, the Pennsylvania State Police (PSP) received your request for information pursuant to Pennsylvania's Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 – 67.3104, wherein you requested:

All records regarding taking or seizure of amusement or other game devices from 322 Philipsburg Bigler Highway, Philipsburg, PA 16866 (Country Garden 6-Pack) within the last 7 years, including, but not limited to, so-call skill games by any manufacturer and/or Pace-O-Matic games of any nature.

A copy of your request is enclosed for your reference. By letter dated December 18, 2020, you were notified in accordance with RTKL section 67.902 (b)(2) that the PSP required an additional thirty days, to respond to your request.

Your request is denied because the responsive PSP Administrative Investigation Reports PA 2019-449748, PA 2019-1662933, PA 2020-142953 and pending citation nos. 20-0685 and 20-0778 are records that are exempt under the RTKL as PSP records:

- "relating to a noncriminal investigation[.]" 65 P.S. § 67.708(b)(17);
- containing "[c]omplaints submitted to an agency[.]" *id.* § 67.708(b)(17)(i);
- comprising "investigative materials, notes, correspondence and reports[.]" *id.* § 67.708(b)(17)(ii);
- that, if disclosed, would "[r]eveal the institution, progress, or result of

an agency investigation," *id.* § 67.708(b)(17)(vi)(A);

- "A record that includes the identity of a confidential source..." 65 P.S. § 67.708(b)(17)(iii).

Please be advised that PSP Administrative Investigation Reports PA 2019-1662933 and PA 2020-142953 are **open and ongoing** investigations and supplements will be added as the investigation continues.

To the extent that your request seeks or may be construed to seek records involving covert law enforcement investigations, including, intelligence gathering and analysis, PSP can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. Under No Circumstances, therefore, should this final response be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the RTKL and CHRIA.

In closing, you have a right to appeal this response in writing to, the Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17126-0333. The pertinent OOR appeal form is available for your use at <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>. If you choose to appeal, you must do so within 15 business days of the mailing date of this response and send to the OOR: 1) this response; 2) your request; 3) the reason or reasons why you think PSP wrongfully responded to your request. If you have any questions, please feel free to contact our office at the number listed below.

Sincerely yours,



Rachel Zeltmann
Deputy Agency Open Records Officer
Pennsylvania State Police
Bureau of Records & Identification
Right-to-Know Office
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110
RA-psprighttoknow@pa.gov
1.877.785.7771 (Main) | 717.525.5795 (Fax)

Enclosures: PSP/RTKL Request N° 2020-1648
Zeltmann Verification

PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS

VERIFICATION OF
RACHEL ZELTMANN
DEPUTY AGENCY OPEN RECORDS OFFICER

I, Rachel Zeltmann, Deputy Agency Open Records Officer of the Pennsylvania State Police (variously, PSP or Department), am authorized to prepare this verification in response to PSP/RTKL Request N° 2020-1648. Accordingly, on this 19th day of January, 2021, I verify the following facts to be true and correct, to the best of my knowledge or information and belief:

1. I am familiar with PSP/RTKL Request N° 2020-1648, which is attached to this verification.
2. Utilizing the information contained in the request, I searched all Department databases to which I have access for evidence of any PSP records that may respond to the request.
3. As a result of my searches, I have located and retrieved the PSP Administrative Investigative Reports Nos. 2019-449748, PA 2019-1662933, PA 2020-142953 and pending citation nos. 20-0685 and 20-0778.
4. Upon reviewing the reports I have found the investigations of these incidents wholly exempt from public disclosure because the results are:
 - "A record of an agency relating to or resulting in a non criminal investigation," 65 P.S. § 67.708(b)(17);
 - "A record containing complaints submitted to an agency." 65 P.S. § 67.708(b)(17)(i);
 - "Investigative materials, notes, correspondence and reports." 65 P.S. § 67.708(b)(17)(ii); and/or
 - "A record that includes the identity of a confidential source..." 65 P.S. § 67.708(b)(17)(iii).

5. Therefore, I determined PSP Administrative Investigative Report Nos. 2019-449748, PA 2019-1662933, PA 2020-142953 and pending citation nos. 20-0685 and 20-0778 are not "public records," and not subject to access by a requestor under the RTKL.
6. The requestor was advised that PSP Administrative Investigation Reports PA 2019-1662933 and PA 2020-142953 are **open and ongoing** investigations and supplements will be added as the investigation continues.

I understand that false statements made in this verification are subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



Rachel Zeltmann
Deputy Agency Open Records Officer
Pennsylvania State Police



PENNSYLVANIA STATE POLICE
RIGHT-TO-KNOW LAW REQUEST

1-877-RTK-PSP1 (1-877-785-7771)

2020-1648
12-18-2020

REQUEST DATE: 12/11/2020

NAME OF REQUESTER: TEV Law Group PC by Gregg Zegarelli, Esq.
(Please Print Legibly) (Last) (First) (MI)

MAILING ADDRESS: PO Box 113345
(Street/PO Box)
Pittsburgh, PA 15241
(City) (State) (Zip Code)

TELEPHONE (Optional): 412-833-0600 FAX (Optional): 412-833-0601

EMAIL (Optional): mailroom.grz@zegarelli.com

RECORDS REQUESTED: Please identify each of the documents that are subject to this request with sufficient specificity so we can ascertain whether we have these documents and how to locate them.

All records regarding taking or seizure of amusement or other game devices from 322 Philipsburg Bigler Highway, Philipsburg, PA 16866 (Country Garden 6-Pack) within the last 7 years, including, but not limited to, so-called skill games by any manufacturer and/or Pace-O-Matic games of any nature.

To the extent that this request seeks or may be construed to seek Pennsylvania State Police records involving covert law enforcement investigations, including intelligence gathering and analysis, the Department can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should the Department's response to this request be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, and the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101-9183.

Production of requested public records is subject to prepayment of all RTKL fees. For security purposes, this agency will only produce public records in paper format, unless the records exclusively exist in another medium.

PLEASE MAIL, DELIVER IN PERSON, FAX, OR EMAIL YOUR REQUEST TO:

Pennsylvania State Police
Bureau of Records & Identification
ATTN: AGENCY OPEN RECORDS OFFICER
1800 Elmerton Avenue
Harrisburg, PA 17110-9758

RECEIVED
RIGHT-TO-KNOW LAW OFFICE
DEC 11 P 3:52

FAX: 717-525-5795

EMAIL: (RA-psprighttoknow@pa.gov)

PSP/RTKL TRACKING NO.: _____

AORO RECEIPT DATE-STAMP: _____

FINAL RESPONSE DATE: _____

CALCULATED RESPONSE DUE DATE: _____

FINAL RESPONSE DUE DATE: _____

Gaul, Candace M

From: Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>
Sent: Friday, December 11, 2020 3:48 PM
To: SP, PSP RIGHT TO KNOW
Subject: [External] Right to Know Request
Attachments: PA State 20201211 RTK_Request_Form filed.pdf

Importance: High

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Please see attached. Thank you.

Gregg R. Zegarelli
v.412.559.5262 | s.gregg.zegarelli
gregg.zegarelli@zegarelli.com
www.zegarelli.com/staff/grz | [in](#) | [qr](#) | [vcf](#)

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PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110

Mailing Date: December 18, 2020

Gregg Zegarelli, Esquire
TEV Law Group PC
PO Box 113345
Pittsburgh, Pennsylvania 15241

PSP/RTKL Request N° 2020-1648

Dear Attorney Zegarelli:

On December 11, 2020, the Pennsylvania State Police (PSP) received your request for information pursuant to the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 - 3104, wherein you state:

All records regarding taking or seizure of amusement or other game devices from 322 Philipsburg Bigler Highway, Philipsburg, PA 16866 (Country Garden 6-Oack) within the last 7 years, including, but not limited to, so-called skill games by any manufacturer and/or Pace-O-Matic games of any nature.

Under the RTKL, a written response to your request is due on or before December 18, 2020.

Under the provisions RTKL section § 67.902(b)(2), you are hereby notified that your request is being reviewed and the PSP will require up to an additional 30 days, i.e., until January 19, 2021, in which to respond to your request. Should your request be granted, the total for the estimated or actual fees owed, if any, will be included in our subsequent response. The reason for requiring additional time for a final response is checked below:

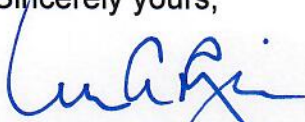
- Compliance with your request may require the redaction of certain information that is not subject to access under RTKL.
- Your request requires retrieval of one or more records that are stored at a remote location.
- A response by the mailing date of this letter could not be accomplished due to bona fide staffing limitations. In particular, _____.

- Your request is under legal review, which is necessary to determine whether a requested record is a "public record" for purposes of the RTKL.
- Your compliance with the following agency policies is required for access to the record(s): _____
- You must pay the applicable fees authorized by the RTKL.

X The extent or nature of the request precludes a response within the required time period.

Should you have any questions regarding this letter, please contact the undersigned.

Sincerely yours,



William A. Rozier, J.D.
Agency Open Records Officer
Pennsylvania State Police
Bureau of Records and Identification
Right-to-Know Law/Subpoena Section
1800 Elmerton Ave.
Harrisburg, PA 17110
RA-psprighttoknow@pa.gov
Office: 1.877.785.7771 Fax: 717.525.5795

Enclosure: Request 2020-1648



PENNSYLVANIA STATE POLICE
RIGHT-TO-KNOW LAW REQUEST

1-877-RTK-PSP1 (1-877-785-7771)

2020-1648
12-18-2020

REQUEST DATE: 12/11/2020

NAME OF REQUESTER: TEV Law Group PC by Gregg Zegarelli, Esq.
(Please Print Legibly) (Last) (First) (MI)
MAILING ADDRESS: PO Box 113345
(Street/PO Box)
Pittsburgh, PA 15241
(City) (State) (Zip Code)
TELEPHONE (Optional): 412-833-0600 FAX (Optional): 412-833-0601
EMAIL (Optional): mailroom.grz@zegarelli.com

RECORDS REQUESTED: Please identify each of the documents that are subject to this request with sufficient specificity so we can ascertain whether we have these documents and how to locate them.

All records regarding taking or seizure of amusement or other game devices from 322 Philipsburg Bigler Highway, Philipsburg, PA 16866 (Country Garden 6-Pack) within the last 7 years, including, but not limited to, so-called skill games by any manufacturer and/or Pace-O-Matic games of any nature.

To the extent that this request seeks or may be construed to seek Pennsylvania State Police records involving covert law enforcement investigations, including intelligence gathering and analysis, the Department can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should the Department's response to this request be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, and the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101-9183.

Production of requested public records is subject to prepayment of all RTKL fees. For security purposes, this agency will only produce public records in paper format, unless the records exclusively exist in another medium.

PLEASE MAIL, DELIVER IN PERSON, FAX, OR EMAIL YOUR REQUEST TO:

Pennsylvania State Police
Bureau of Records & Identification
ATTN: AGENCY OPEN RECORDS OFFICER
1800 Elmerton Avenue
Harrisburg, PA 17110-9758

FAX: 717-525-5795

EMAIL: RA-psprighttoknow@pa.gov

PSP/RTKL TRACKING NO.: _____

AORO RECEIPT DATE-STAMP: _____

FINAL RESPONSE DATE: _____

CALCULATED RESPONSE DUE DATE: _____

FINAL RESPONSE DUE DATE: _____

Gaul, Candace M

From: Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>
Sent: Friday, December 11, 2020 3:48 PM
To: SP, PSP RIGHT TO KNOW
Subject: [External] Right to Know Request
Attachments: PA State 20201211 RTK_Request_Form filed.pdf

Importance: High

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Please see attached. Thank you.

Gregg R. Zegarelli *
v.412.559.5262 | s.gregg.zegarelli@zegarelli.com
gregg.zegarelli@zegarelli.com
www.zegarelli.com/staff/grz | [in](#) | [qr](#) | [vcf](#)

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00R Exhibit 5

From: [Gregg R. Zegarelli](#)
To: [Rozier, William A](#); [Edris, Angela](#); [SP, PSP RIGHT TO KNOW](#)
Cc: [DG Core Zegarelli](#)
Subject: [External] OBJECTION RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested
Date: Friday, April 2, 2021 11:15:07 AM
Attachments: [image001.png](#)
[image002.png](#)

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Kindly take notice of the undersigned's objection of record to the unrequested extension. The date for the ruling is scheduled for next week, April 9, 2021. The February 8, 2021, communication from the OOR was clear as to the deadline for submissions to be on or before February 8, 2021. The PSP is the state agency with a designated expert. The public record indicates that the PSP is knowledgeable and sophisticated regarding the appeal process for an action by the PSP that is clear, simple and one regarding which the PSP is extremely experienced. The PSP duly received a copy of the Requestor's timely submission to the Board, which is even further notice of the submission obligations and timing. The systemically experienced PSP knowingly did not seek an extension of time to file after more than 7 weeks. The suggested filing date is more than 7 weeks overdue. The PSP has clearly waived its rights and objections. Respectfully, the prodding elicitation by the OOR to the PSP as state agency for a last-minute response is unfair and prejudicial to the undersigned and should not be considered.

Respectfully submitted,

s/Gregg Zegarelli

Gregg R. Zegarelli *
v.412.559.5262 | s.gregg.zegarelli
gregg.zegarelli@zegarelli.com
www.zegarelli.com/staff/grz | [in](#) | [qr](#) | [vcf](#)

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301 Grant Street, Suite 4300 • One Oxford Centre
Pittsburgh, PA 15219-1407 USA
f.412.833.0601 | www.zegarelli.com

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From: Rozier, William A <wrozier@pa.gov>
Sent: Friday, April 2, 2021 10:14 AM
To: Edris, Angela <aedris@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Cc: DG Core Zegarelli <CoreAdmin@zegarelli.com>
Subject: RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

Appeals Officer Edris,

PSP will submit a response to this appeal. PSP's response will be submitted by COB Monday, April 5, 2021.

Respectfully,

William A. Rozier, J.D.
Agency Open Records Officer
Pennsylvania State Police

From: Edris, Angela <aedris@pa.gov>
Sent: Friday, April 2, 2021 9:50 AM
To: Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Cc: mailroom.grz@zegarelli.com
Subject: FW: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

Dear Mr. Rozier,

To date, the OOR has not received any submissions from the PSP concerning the above-referenced appeal. Does PSP intend to respond to Mr.

OOB Exhibit 6

From: [Rozier, William A](#)
To: [Edris, Angela](#)
Cc: mailroom.grz@zegarelli.com; [Meeks, Nolan](#)
Subject: RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested
Date: Monday, April 5, 2021 3:43:04 PM
Attachments: [image004.png](#)
[image003.png](#)

Appeals Officer Edris:

Please be advised that PSP will rely on its Final Response in support of its request that the appeal be denied. The responsive records at issue are non-criminal PSP Administrative Investigative Reports and accompanying pending administrative citations, components of these reports. The reports are documentation of a non-criminal investigations conducted by Pennsylvania State Police Bureau of Liquor Control Enforcement. The responsive records of the non-criminal PSP Administrative Investigative Reports and the components are exempted from disclosure pursuant to section 708(b)(17) of the Right to Know Law.

Respectfully,

William A. Rozier, J.D.
Agency Open Records Officer
Pennsylvania State Police

From: Edris, Angela <aedris@pa.gov>
Sent: Friday, April 2, 2021 9:50 AM
To: Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Cc: mailroom.grz@zegarelli.com
Subject: FW: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

Dear Mr. Rozier,

To date, the OOR has not received any submissions from the PSP concerning the above-referenced appeal. Does PSP intend to respond to Mr. Zegarelli's appeal?

Please respond to this email today. Thank you.

Sincerely,



Angela Edris
Attorney
Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | Fax (717) 425-5343
<https://openrecords.pa.gov>
[@OpenRecordsPA](#)

From: DC, OpenRecords <RA-OpenRecords@pa.gov>
Sent: Monday, February 8, 2021 5:16 PM
To: mailroom.grz@zegarelli.com; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>; Rozier, William A <wrozier@pa.gov>
Cc: Edris, Angela <aedris@pa.gov>
Subject: Zegarelli v. PSP: AP 2021-0277

Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records. The above mentioned matter has been assigned to Appeals Officer Angela Edris (refer to the attachment for contact information). Please forward all future correspondence directly to the Appeals Officer (cc'd on this email) and all other parties.

Sincerely,



Dylan Devenyi
Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

00R Exhibit 7

From: [Gregg R. Zegarelli](#)
To: [Rozier, William A](#); [Edris, Angela](#)
Cc: [DG Core Zegarelli](#); [Meeks, Nolan](#)
Subject: [External] RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested
Date: Wednesday, April 7, 2021 2:59:29 PM
Attachments: [image001.png](#)
[image002.png](#)
[PSP Org Chart.pdf](#)

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In response:

1. There is no evidence submitted in the record that suggests that the Pennsylvania State Police is charged to conduct civil non-criminal investigations. <https://www.psp.pa.gov/About-PSP/Documents/PSP%20Org%20Chart.pdf> is attached, regarding which there is no "non-criminal" investigation bureau, and this matter is not internal affairs.
2. The withheld records must be reviewed by the OOR, as the determinations by the agency are self-serving and conclusory; no records whatsoever were even produced with statutorily required redaction. The request for some data does not excuse production of any data.
3. The request regards an admitted seizure by the Pennsylvania State Police, made in public, which must, by due process, have some public record component to prevent secret police action and to afford the public the right to participate in the legal process related to the seizure. The Pennsylvania State Police asserts its power without public scrutiny, directly contrary to the purposes of the RTK Act.
4. Attorneys' fee are requested.

Respectfully submitted,
/Gregg Zegarelli/

Gregg R. Zegarelli
Z E G A R E L L I

Technology & Entrepreneurial

Ventures Law Group, PC

v.412.559.5262 | f.412.833.0601 | s.gregg.zegarelli

gregg.zegarelli@zegarelli.com

www.zegarelli.com/staff/grz | [in](#) | [qr](#) | [vcf](#)

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From: Rozier, William A <wrozier@pa.gov>
Sent: Monday, April 5, 2021 3:43 PM
To: Edris, Angela <aedris@pa.gov>
Cc: DG Core Zegarelli <CoreAdmin@zegarelli.com>; Meeks, Nolan <nomeeks@pa.gov>
Subject: RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

Appeals Officer Edris:

Please be advised that PSP will rely on its Final Response in support of its request that the appeal be denied. The responsive records at issue are non-criminal PSP Administrative Investigative Reports and accompanying pending administrative citations, components of these reports. The reports are documentation of a non-criminal investigations conducted by Pennsylvania State Police Bureau of Liquor Control Enforcement. The responsive records of the non-criminal PSP Administrative Investigative Reports and the components are exempted from disclosure pursuant to section 708(b)(17) of the Right to Know Law.

Respectfully,

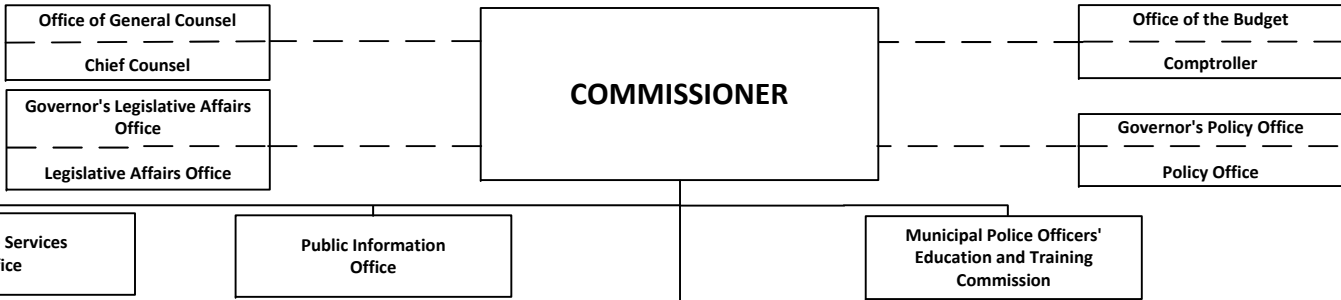
William A. Rozier, J.D.
Agency Open Records Officer
Pennsylvania State Police

From: Edris, Angela <aedris@pa.gov>
Sent: Friday, April 2, 2021 9:50 AM
To: Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Cc: mailroom.grz@zegarelli.com
Subject: FW: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

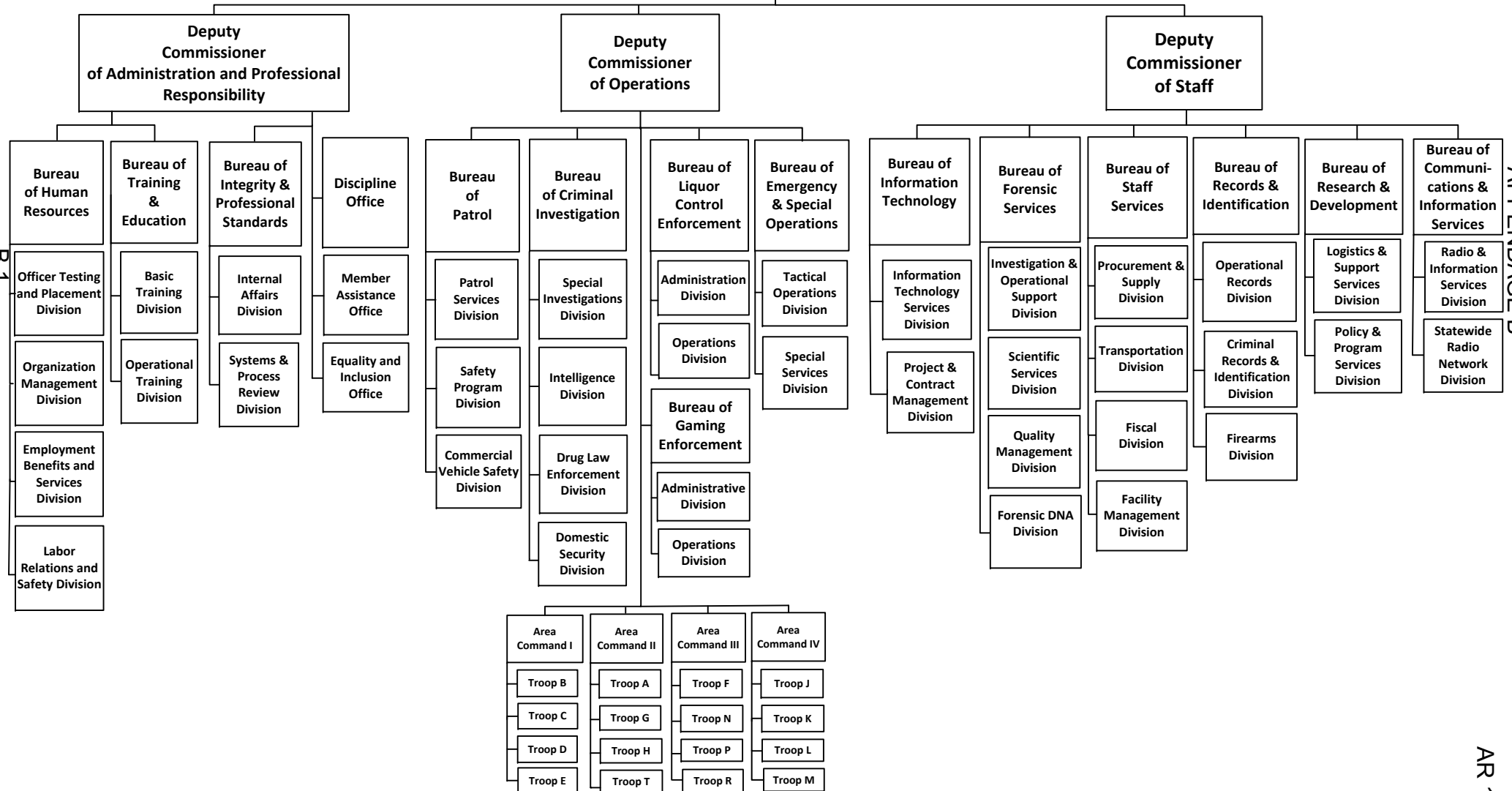
Dear Mr. Rozier,

PENNSYLVANIA STATE POLICE

OR-16-017
July 8, 2016



Office of
Homeland Security



APPENDAGE B

AR 1-1

00R Exhibit 8

From: [Edris, Angela](#)
To: [Gregg R. Zegarelli](#); [Rozier, William A](#); SP, PSP RIGHT TO KNOW
Subject: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested
Date: Thursday, April 8, 2021 11:09:00 AM
Attachments: [image005.png](#)
[image006.png](#)
[image002.png](#)

Attorney Zegarelli,

Thank you for your email.

Mr. Rozier,

The OOR requests that PSP please respond to the issues raised by Attorney Zegarelli. Statements of fact should be provided in an affidavit or sworn statement. Please respond by **11 am tomorrow, April 9, 2021.**

Sincerely,



Angela Edris
Attorney
Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | Fax (717) 425-5343
<https://openrecords.pa.gov>
[@OpenRecordsPA](#)

From: Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>
Sent: Wednesday, April 7, 2021 3:03 PM
To: Edris, Angela <aedris@pa.gov>
Cc: SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>; Rozier, William A <wrozier@pa.gov>
Subject: [External] FW: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

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Service upon the additional email address previously omitted.

From: Gregg R. Zegarelli
Sent: Wednesday, April 7, 2021 2:59 PM
To: Rozier, William A <wrozier@pa.gov>; Edris, Angela <aedris@pa.gov>
Cc: DG Core Zegarelli <CoreAdmin@zegarelli.com>; Meeks, Nolan <nomeeks@pa.gov>
Subject: RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

In response:

1. There is no evidence submitted in the record that suggests that the Pennsylvania State Police is charged to conduct civil non-criminal investigations. <https://www.psp.pa.gov/About-PSP/Documents/PSP%20Org%20Chart.pdf> is attached, regarding which there is no "non-criminal" investigation bureau, and this matter is not internal affairs.
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4. Attorneys' fee are requested.

Respectfully submitted,
/Gregg Zegarelli/

Gregg R. Zegarelli
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Technology & Entrepreneurial
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v.412.559.5262 | f.412.833.0601 | s.gregg.zegarelli@zegarelli.com
gregg.zegarelli@zegarelli.com
www.zegarelli.com/staff/grz | [in](#) | [qr](#) | [vcf](#)

00R Exhibit 9

From: [Meeks, Nolan](#)
To: [Edris, Angela](#)
Cc: [Rozier, William A](#); gregg.zegarelli@zegarelli.com
Subject: RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested
Date: Friday, April 9, 2021 9:09:33 AM
Attachments: [Zegarelli v. PSP Rozier Verification 2021-0277.pdf](#)
[image001.png](#)
[image002.png](#)

Appeals Officer Edris:

Please see the attached verification from PSP AORO, William A. Rozier.

Respectfully,

Nolan B. Meeks | Deputy Chief Counsel
Pennsylvania State Police
Governor's Office of General Counsel
1800 Elmerton Avenue
Harrisburg, PA 17110
Direct: (717) 346-1718 | Cell: (717) 409-2484 | Fax: (717) 772-2883
nomeeks@pa.gov | www.ogc.state.pa.us | www.psp.state.pa.us

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From: Edris, Angela <aedris@pa.gov>
Sent: Thursday, April 8, 2021 11:09 AM
To: Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>; Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Subject: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

Attorney Zegarelli,

Thank you for your email.

Mr. Rozier,

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Sincerely,



Angela Edris
Attorney
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<https://openrecords.pa.gov>
[@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

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Sent: Wednesday, April 7, 2021 3:03 PM
To: Edris, Angela <aedris@pa.gov>
Cc: SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>; Rozier, William A <wrozier@pa.gov>
Subject: [External] FW: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
RTKL OFFICE

VERIFICATION OF
WILLIAM A. ROZIER
AGENCY OPEN RECORDS OFFICER

1. My name is William A. Rozier. Being over eighteen years of age, I am fully competent to execute this affidavit, which avers as true and correct only the facts known to me personally and only such opinions as I am qualified to express.

2. I am an Administrative Officer 3 with the Pennsylvania State Police ("PSP" or "Department"), presently serving as the Agency Open Records Officer. In this capacity, I am authorized to make this statement on behalf of the Department and its Commissioner, Colonel Robert Evanchick, in the interests of the Commonwealth of Pennsylvania and its citizens.

3. I assumed the duties of my present position on November 15, 2011. My duties encompass the responsibilities specified in the RTKL for Agency Open Records Officers.

4. As the Agency Open Records Officer, I am respectful of the objectives embodied by RTKL and personally committed to their realization. Although I am very familiar with most aspects of the RTKL, I consult regularly with PSP legal counsel regarding those RTKL provisions that impact significantly upon my duties and responsibilities.

5. I have executed this affidavit in response to a RTKL appeal filed by Gregg Zegarelli ("Requester") with the Office of Open Records ("OOR"), which has been docketed by OOR as No. AP 2021-0277. I do so to clarify PSP's response to Mr. Zegarelli's request and subsequent appeal.

6. Requester filed an RTKL request with PSP, wherein he requested:

All records regarding taking or seizure of amusement or other game devices from 322 Philipsburg Bigler Highway, Philipsburg, PA 16866 (Country Garden 6-Pack) within the last 7 years, including, but not limited to,

so-call skill games by any manufacturer and/or Pace-O-Matic games of any nature.

7. The RTK office searched the Department databases to which it has access for evidence of any PSP records that may respond to the request. Additionally, the RTK Office contacted PSP's Bureau of Liquor Control Enforcement (BLCE) to determine if the Bureau is in possession of any responsive records.

8. The RTK office determined that the following records are responsive to the request:

PSP Administrative Investigation Reports

- PA 2019-449748
- PA 2019-1662933
- PA 2020-142953

Pending Citation nos. 20-0685 and 20-0778

9. Pursuant to 47 P.S. § 2-211(a), PSP BLCE is responsible for the enforcement of the Liquor Code and the regulations of the PA Liquor Control Board (PLCB), and may, after investigation, issue citations to licensees of the PLCB for violations of the law or any other sufficient cause shown pursuant to 47 P.S. § 4-471, including violations related to 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.), or the operation of another business without PLCB approval or allowing another entity to conduct another business on the licensed premises under 40 Pa. Code § 3.52.

10. I have reviewed the responsive record and found that they are related to BLCE's investigations into violations of 18 Pa.C.S. § 5513 and/or 40 Pa. Code § 3.52. As is evident from the blank forms, the completed forms contain information related to the particular investigation and information that was learned from further investigation and inspection of the machines.

11. Accordingly, any responsive records constitutes 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.

12. Additionally:

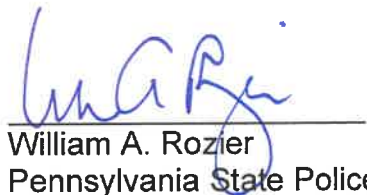
- The reports and citations reflect the findings and conclusions, as well as the actions, observations and notes of the investigating officer. As such, these records are "[i]nvestigative materials, notes, correspondence and reports," which are exempt from public disclosure under RTKL section 67.708(b)(17)(ii).

- Moreover, the reports and citations are "[a] record that, if disclosed, would . . . [r]eveal the institution, progress or result of an agency investigation," and, therefore, exempt from public disclosure under RTKL section 67.708(b)(17)(vi)(A).

13. Therefore, any responsive, completed forms are not subject to public disclosure.

14. Lastly, although a citation issued by BLCE after such an investigation may be predicated on a licensee's violation of unlawful gambling under the Crimes Code, PSP BLCE considers the investigations to be non-criminal and administrative in nature for the purposes of the RTKL, since the citation itself is filed against the license and is decided by the PLCB's Office of Administrative Law Judge (not a criminal court).

I, William A. Rozier, hereby verify that the facts set forth in this document are true and correct. I also understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



William A. Rozier
Pennsylvania State Police
Agency Open Records Officer

Date: April 9, 2021

OOB Exhibit 10

From: [Gregg R. Zegarelli](#)
To: [Meeks, Nolan](#); [Edris, Angela](#)
Cc: [Rozier, William A](#); [SP, PSP RIGHT TO KNOW](#)
Subject: [External] RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested
Date: Friday, April 9, 2021 9:35:39 AM
Attachments: [image001.png](#)
[image002.png](#)

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Requester responds that: a) No redacted records have been produced, but entire records entirely withheld; not even basic inventory data of seized property and core identifications of property seized from a public location has been provided. b) The Pennsylvania State Police conveniently asserts an entirely “non-criminal” basis, when, even by the PSP’s own admission, liquor enforcement ultimately has criminal violation implications, and citations derive from the Executive Police Power police agency, placing the subject into jeopardy of deprivation of life, liberty or property, clearly bearing ultimate criminal implications, see, e.g. 47 PS 4-471; [Com., Pennsylvania Liquor Control Bd. v. Luxury Enterprises, Inc.](#), 130 Pa.Cmwlt. 89, 566 A.2d 1288 (Commw. 1989); 18 Pa.C.S.A. § 5512. c) Public asset seizures require due process public notice and cannot be entirely made in secret. d) OOR review of records potentially responsive is requested. e) The withholding of all information is frivolous and violates the essential purpose of the RTK, and the PSP knows or should know of the same, intentionally withholding responsive records. f) The PSP knows better, having withheld records in the past with the OOR being sustained on appeal. g) Attorneys’ fees are requested.

Respectfully submitted

/Gregg Zegarelli/

Gregg R. Zegarelli

Z E G A R E L L I

Technology & Entrepreneurial

Ventures Law Group, PC

v.412.559.5262 | f.412.833.0601 | s.gregg.zegarelli

gregg.zegarelli@zegarelli.com

www.zegarelli.com/staff/grz | [in](#) | [qr](#) | [vcf](#)

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From: Meeks, Nolan <nomeeks@pa.gov>
Sent: Friday, April 9, 2021 9:10 AM
To: Edris, Angela <aedris@pa.gov>
Cc: Rozier, William A <wrozier@pa.gov>; Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>
Subject: RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

Appeals Officer Edris:

Please see the attached verification from PSP AORO, William A. Rozier.

Respectfully,

Nolan B. Meeks | Deputy Chief Counsel
Pennsylvania State Police
Governor's Office of General Counsel
1800 Elmerton Avenue
Harrisburg, PA 17110
Direct: (717) 346-1718 | Cell: (717) 409-2484 | Fax: (717) 772-2883
nomeeks@pa.gov | www.ogc.state.pa.us | www.psp.state.pa.us

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Sent: Thursday, April 8, 2021 11:09 AM
To: Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>; Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <psprighttoknow@pa.gov>
Subject: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

OOB Exhibit 11

From: [Edris, Angela](#)
To: [Gregg R. Zegarelli](#); [Meeks, Nolan](#)
Cc: [Rozier, William A](#); [SP, PSP RIGHT TO KNOW](#)
Subject: Zegarelli v. PSP: AP 2021-0277
Date: Friday, April 9, 2021 11:54:00 AM
Attachments: [image005.png](#)
[image006.png](#)
[image002.png](#)

Attorney Zegarelli and Attorney Meeks,

Thank you for the additional information and arguments.

Attorney Zegarelli, would you be agreeable to allowing the OOR a short extension until Wednesday, April 14, 2021 to further review the arguments and issue its Final Determination? Please advise.

Attorney Meeks, in Paragraph 10 of the affidavit provided by PSP, Mr. Rozier states, "[a]s is evident from the blank forms...." Could you please clarify what blank forms are being referenced? There do not appear to be any forms attached to the affidavit.

Thank you both for your time and attention in this regard.

Sincerely,



Angela Edris
Attorney
Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | Fax (717) 425-5343
<https://openrecords.pa.gov>
[@OpenRecordsPA](#)

From: Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>
Sent: Friday, April 9, 2021 9:35 AM
To: Meeks, Nolan <nomeeks@pa.gov>; Edris, Angela <aedris@pa.gov>
Cc: Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Subject: [External] RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

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Requester responds that: a) No redacted records have been produced, but entire records entirely withheld; not even basic inventory data of seized property and core identifications of property seized from a public location has been provided. b) The Pennsylvania State Police conveniently asserts an entirely "non-criminal" basis, when, even by the PSP's own admission, liquor enforcement ultimately has criminal violation implications, and citations derive from the Executive Police Power police agency, placing the subject into jeopardy of deprivation of life, liberty or property, clearly bearing ultimate criminal implications, see, e.g. 47 PS 4-471; [Com., Pennsylvania Liquor Control Bd. v. Luxury Enterprises, Inc.](#), 130 Pa.Cmwlth. 89, 566 A.2d 1288 (Commw. 1989); 18 Pa.C.S.A. § 5512. c) Public asset seizures require due process public notice and cannot be entirely made in secret. d) OOR review of records potentially responsive is requested. e) The withholding of all information is frivolous and violates the essential purpose of the RTK, and the PSP knows or should know of the same, intentionally withholding responsive records. f) The PSP knows better, having withheld records in the past with the OOR being sustained on appeal. g) Attorneys' fees are requested.

Respectfully submitted

/Gregg Zegarelli/
Gregg R. Zegarelli
Z E G A R E L L I

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From: Meeks, Nolan <nomeeks@pa.gov>
Sent: Friday, April 9, 2021 9:10 AM
To: Edris, Angela <aedris@pa.gov>

OOR Exhibit 12

From: [Meeks, Nolan](#)
To: [Edris, Angela](#); [Gregg R. Zegarelli](#)
Cc: [Rozier, William A](#); [SP, PSP RIGHT TO KNOW](#)
Subject: RE: Zegarelli v. PSP: AP 2021-0277
Date: Friday, April 9, 2021 2:13:55 PM
Attachments: [Zegarelli v. PSP Rozier Verification 2021-0277 revised.pdf](#)
[image001.png](#)
[image003.png](#)
[image004.png](#)

Appeals Officer Edris,

Attached is a revised verification removing the language in paragraph 10 concerning forms. You are correct, there were no forms attached to the verification nor did PSP intend there to be.

Respectfully,

Nolan B. Meeks | Deputy Chief Counsel
Pennsylvania State Police
Governor's Office of General Counsel
1800 Elmerton Avenue
Harrisburg, PA 17110
Direct: (717) 346-1718 | Cell: (717) 409-2484 | Fax: (717) 772-2883
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From: Edris, Angela
Sent: Friday, April 9, 2021 11:54 AM
To: Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>; Meeks, Nolan <nomeeks@pa.gov>
Cc: Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Subject: Zegarelli v. PSP: AP 2021-0277

Attorney Zegarelli and Attorney Meeks,

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Subject: [External] RE: Zegarelli v. PSP: AP 2021-0277 - A response from PSP is requested

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
RTKL OFFICE

VERIFICATION OF
WILLIAM A. ROZIER
AGENCY OPEN RECORDS OFFICER

1. My name is William A. Rozier. Being over eighteen years of age, I am fully competent to execute this affidavit, which avers as true and correct only the facts known to me personally and only such opinions as I am qualified to express.

2. I am an Administrative Officer 3 with the Pennsylvania State Police ("PSP" or "Department"), presently serving as the Agency Open Records Officer. In this capacity, I am authorized to make this statement on behalf of the Department and its Commissioner, Colonel Robert Evanchick, in the interests of the Commonwealth of Pennsylvania and its citizens.

3. I assumed the duties of my present position on November 15, 2011. My duties encompass the responsibilities specified in the RTKL for Agency Open Records Officers.

4. As the Agency Open Records Officer, I am respectful of the objectives embodied by RTKL and personally committed to their realization. Although I am very familiar with most aspects of the RTKL, I consult regularly with PSP legal counsel regarding those RTKL provisions that impact significantly upon my duties and responsibilities.

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9. Pursuant to 47 P.S. § 2-211(a), PSP BLCE is responsible for the enforcement of the Liquor Code and the regulations of the PA Liquor Control Board (PLCB), and may, after investigation, issue citations to licensees of the PLCB for violations of the law or any other sufficient cause shown pursuant to 47 P.S. § 4-471, including violations related to 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.), or the operation of another business without PLCB approval or allowing another entity to conduct another business on the licensed premises under 40 Pa. Code § 3.52.

10. I have reviewed the responsive record and found that they are related to BLCE's investigations into violations of 18 Pa.C.S. § 5513 and/or 40 Pa. Code § 3.52.

11. Accordingly, any responsive records constitutes 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.

12. Additionally:

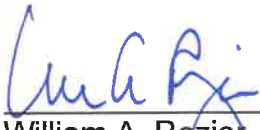
- The reports and citations reflect the findings and conclusions, as well as the actions, observations and notes of the investigating officer. As such, these records are "[i]nvestigative materials, notes, correspondence and reports," which are exempt from public disclosure under RTKL section 67.708(b)(17)(ii).
- Moreover, the reports and citations are "[a] record that, if disclosed, would . . . [r]eveal the institution, progress or result of an agency investigation," and, therefore, exempt

from public disclosure under RTKL section 67.708(b)(17)(vi)(A).

13. Therefore, any responsive, completed forms are not subject to public disclosure.

14. Lastly, although a citation issued by BLCE after such an investigation may be predicated on a licensee's violation of unlawful gambling under the Crimes Code, PSP BLCE considers the investigations to be non-criminal and administrative in nature for the purposes of the RTKL, since the citation itself is filed against the license and is decided by the PLCB's Office of Administrative Law Judge (not a criminal court).

I, William A. Rozier, hereby verify that the facts set forth in this document are true and correct. I also understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



William A. Rozier
Pennsylvania State Police
Agency Open Records Officer

Date: April 9, 2021

OOB Exhibit 13

From: [Gregg R. Zegarelli](#)
To: [Edris, Angela](#)
Cc: [Rozier, William A](#); [SP, PSP RIGHT TO KNOW](#)
Subject: [External] RE: Zegarelli v. PSP: AP 2021-0277
Date: Friday, April 9, 2021 2:49:54 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[7. Noonan Wikipedia.pdf](#)
[1. www.mielemf.comlegal-team Team w Noonan.pdf](#)
[2. www.mielemf.com-directorv.pdf](#)
[3. www.mielemf.com-compliance.pdf](#)
[4. Botchie.pdf](#)
[5. Goodling.pdf](#)
[6. Langan.pdf](#)

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1. I have no objection to the extension.
2. Under penalty of perjury, I hereby declare that I obtained the attachments from public sources as indicated. The OOR will note that prominent gaming companies are hiring former Pennsylvania State Police officers post-retirement, including the former Pennsylvania State Police Commissioner, Mr. Noonan's consulting group. The PSP arbitrary refusal to produce any records implicates a process that may involve a corruption of duties to seize, on the one hand, and also to keep it a secret from publicity, on the other hand, in light of the potential for post-retirement employment with the gaming companies. Based upon information and belief, all of the referenced persons in Ex. 2 and 3 are former Pennsylvania State Police/Commissioner (Ex. 1) and reference material is included to evidence the point. It is imperative that the Pennsylvania State Police be subject to public scrutiny regarding the public seizure of publicly used property.

/Gregg Zegarelli/

Gregg R. Zegarelli
Z E G A R E L L I
Technology & Entrepreneurial
Ventures Law Group, PC
v.412.559.5262 | f.412.833.0601 | s.gregg.zegarelli
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From: Meeks, Nolan <nomeeks@pa.gov>
Sent: Friday, April 9, 2021 2:14 PM
To: Edris, Angela <aedris@pa.gov>; Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>
Cc: Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Subject: RE: Zegarelli v. PSP: AP 2021-0277

Appeals Officer Edris,

Attached is a revised verification removing the language in paragraph 10 concerning forms. You are correct, there were no forms attached to the verification nor did PSP intend there to be.

Respectfully,

Nolan B. Meeks | Deputy Chief Counsel
Pennsylvania State Police
Governor's Office of General Counsel
1800 Elmerton Avenue
Harrisburg, PA 17110
Direct: (717) 346-1718 | Cell: (717) 409-2484 | Fax: (717) 772-2883
nomeeks@pa.gov | www.ogc.state.pa.us | www.psp.state.pa.us

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From: Edris, Angela
Sent: Friday, April 9, 2021 11:54 AM

Pennsylvania SKILL

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LEGAL UPDATES: 2019

If law enforcement or a regulatory agency takes action against you, or tells you that a Pennsylvania Skill device is illegal, contact the Pennsylvania Skill Compliance Team immediately. We stand ready to help operators, locations, and to protect our legal devices and your businesses. For the truth about Pennsylvania Skill Games, call us at 570-244-3123.

Legal updates in 2019 were provided by Matt Haverstick of Kleinbard LLC.

OCTOBER 2019

It is critical to remember that Pace-O-Matic's Pennsylvania Skill amusement device is one of only two games to be adjudicated as games of Dominant Skill by courts in the Commonwealth. The other game is manufactured by Red, White and Blue.

Recently, a competitor went to a Court of Common Pleas in which it was declared their machines games of skill and their case was dismissed. Want to feel comfortable that you are not putting yourself, your company or your customers in jeopardy with law enforcement? It's easy, operate Pace-O-Matic's Pennsylvania Skill amusement devices.

As we reported last month, we have taken action against an Operator, PA Coin, for distributing equipment from Banilla which we argue infringes on Pace-O-Matic's patented technology.

We also are taking additional measures to end harassment by the Pennsylvania State Police, Lottery and Liquor Control Board of Pennsylvania Skill Operators.

SEPTEMBER AND AUGUST 2019

We are awaiting a decision in the Commonwealth Court lawsuit we argued in May 2019. Last year, we sued the Pennsylvania State Police and the City of Philadelphia in Commonwealth Court. The decisions in this court are valid across Pennsylvania. We are taking additional measures to end Pennsylvania State Police harassment of Pennsylvania Skill operators. A favorable decision in Commonwealth Court will further cement our legal status.

We have taken action against an operator, PA Coin, for distributing equipment from Banilla which we believe infringes on Pace-O-Matic's patented technology.

Working with Tom Marino and our compliance team, we have been filing nuisance suits against locations across the state. These locations are operating equipment that has been ruled illegal gambling equipment, particularly from Gracie Technologies. We are cracking down on businesses that are operating as casinos. We are also filing lawsuits against locations that breach their contracts and commingle our skill game with illegal games of chance.

JULY 2019

We are working to address the issues that have resulted from the false email and letter sent by the Pennsylvania Liquor Control Board (PLCB). We also are aware that the Pennsylvania Lottery and LCE have been intimidating and harassing operators and location owners. We are exploring all legal options to ensure this type of behavior stops.

The Court of Common Pleas in Dauphin County ruled that Pong machines are illegal gambling devices. The Court rejected the argument that our devices are covered by the Gaming Act and ruled games of predominant skill are not slot machines.

Over the last few weeks, Courts around the Commonwealth have cracked down on illegal gambling devices, issuing rulings against machines manufactured by Gracie Technologies and Pong. The courts have also ruled that machines manufactured by Banilla are not games of predominant skill.

Pace-O-Matic and Miele Manufacturing launched a Patent Lawsuit against those trying to steal our technology. This lawsuit is critical to protecting our market and ensuring that our devices and our marketplace is protected.

We are awaiting a decision in the Commonwealth Court lawsuit we argued in May. Last year, we sued the Pennsylvania State Police and the City of Philadelphia in Commonwealth Court.

LEGAL TEAM



MATT HAVERSTICK
Kleinbard LLC



WAYNE V. DeLUCA



JULIAN E. NEISER
Spilman, Thomas & Battle

CONSULTANTS



FRANK NOONAN

THE NOONAN GROUP, LLC

we sued the Pennsylvania State Police and the City of Philadelphia in Commonwealth Court. The decisions in this court are valid across Pennsylvania. We are taking additional measures to end PSP harassment of Pennsylvania Skill Operators. A favorable decision in Commonwealth Court will further cement our legal status.

Letter to PLCB
Pong Machines
Gracie Ruling
Banilla Ruling

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MCM ELEMENTS

Compliance: (570) 244-3123

Customer Service: (570) 323-1434



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504 CD 2021 OOR Exhibit 13 Page 005

MANUFACTURING

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MCM ELEMENTS



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RICK GOODLING

rick.goodling@paceomatic.com



THOMAS WEAVER

tom.weaver@paceomatic.com

Contact the PA Skill Compliance Team from Pace-O-Matic

For prompt handling of compliance issues, operators should call the Compliance hotline at (570) 244-3123 Ext. 5 or email Rick Goodling, rick.goodling@paceomatic.com, or Brian Langan, blangan@mielefmfg.com.

Complaints called to Lou Miele, Jeff Millay, or other sales team member will cause a delay. For a violation to be handled, you'll need to make an official complaint using the proper channels. All compliance issues go through the PA Skill Compliance and Consumer Affairs Team.

First Name *

Last Name *

Phone

Email

Business Name

Business Address

How can our compliance team assist you?

[Submit](#)

2019 UPDATES

The Pennsylvania Skill Compliance and Consumer Affairs Team works to ensure operators and locations are compliant so Pennsylvania Skill amusement devices are not commingling with illegal gambling devices.

AUGUST 2019

Pennsylvania Skill assisted Tom Marino's tour highlighting establishments who are advertising their businesses as mini-casinos or operating illegal gambling devices. Many locations with Gracie Technologies illegal gambling devices are transitioning to our legal amusement devices. Getting illegal gambling equipment off the streets helps us in our legislative efforts to pass meaningful regulations that help main a true skill game market.

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The Orchards Corp. v. PA State Police, Bur. of Liquor Control Enforcement (Majority Opinion)

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Orchards Corporation,	:	
Appellant	:	
v.	:	No. 1703 C.D. 2002
Pennsylvania State Police,	:	Submitted: December 6, 2002
Bureau of Liquor Control	:	
Enforcement	:	

BEFORE: HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JESS S. JULIANTE, Senior Judge

OPINION
BY JUDGE SIMPSON FILED: February 13, 2003

The Orchards Corporation (Licensee) appeals an order of the Court of Common Pleas of the 39th Judicial District (Franklin County Branch) (trial court) dismissing Licensee's appeal of the order of the Pennsylvania Liquor Control Board (Board), imposing a fine and sixteen day license suspension upon Licensee for Liquor Code¹ violations. We affirm.

On July 24, 1999, Officer Jerome T. Botchie of the Bureau of Liquor Control Enforcement (Bureau) was assigned to a group of state and local police officers conducting "bar sweeps" in Franklin County. In response to a noise complaint, officers proceeded to the Orchard Restaurant (Restaurant), Licensee's establishment. Officer Botchie heard loud music emanating from the Restaurant upon arrival. The officers entered the patio area of the Restaurant and observed a

¹ Act of April 12, 1951, P.L. 90, as amended, 47 P.S. §§1-101 – 9-902.

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Rick Goodling— Pace-O-Matic:

Thank you, Tom. Good Morning Chairman and members of the Committee. As Tom said, my name is Rick Goodling and I serve as the Compliance Supervisor for Pace-O-Matic in Pennsylvania. Prior to joining Pace-O-Matic, I served as a Pennsylvania State Trooper for nearly 28 years rising to the rank of Corporal, where I worked in patrol, as a supervisor in patrol, in criminal investigations, as a trooper attached to the bureau of Liquor Control Enforcement's C.A.G.E. Unit (Compliance, Auditing and Gambling Enforcement) and as the Supervisor of the C.A.G.E. Unit. There I was tasked with investigating large scale illegal gambling investigations, which included investigating gambling devices.

As part of my efforts with Pace-O-Matic, Miele Manufacturing and "Pennsylvania Skill", that is still one of our missions. We have a compliance team in Pennsylvania comprised of former Troopers and Liquor Enforcement Officers that is tasked with visiting our customers and we help to weed out illegal gaming machines that should not be in the marketplace. We have contacted the Pennsylvania State Police about illegal machines and often have been successful in getting small businesses, VFWs, American Legions, firehalls and other clubs to switch out their illegal games to Pennsylvania Skill amusement devices. Over last nine months alone, we can estimate that nearly 100 illegal machines have been taken off the streets by our compliance team and replaced with our legal amusement devices.

We currently have about 12,000 amusement devices in small businesses, VFWs, Legions, firehalls and other clubs across the Commonwealth. Only adults, 18 and over, may play our Pennsylvania Skill amusement devices. During my service with the State Police and as the Director of Compliance, I have never witnessed a minor playing a Pennsylvania Skill amusement device.

Many of our games are in locations where those customers must be 21 or over to enter the premises. We work with our Manufacturer, Operators and Locations to ensure they are compliant, and our amusement devices are being utilized properly as outlined in our service agreement and Code of Conduct.

We met with many of you individually, and nearly every one of you asked about the difference between a game of skill and a VGT or a game of chance. The main difference is that our devices require interaction and predominate skill to play. With a Pennsylvania Skill device, you must think and take action to win. On a VGT or slot machine, a player simply pushes the button and hopes that the machine will eventually pay out. A person with Patience and Skill can win at our game EVERYTIME.



With our Pennsylvania Skill amusement devices, our basic game is tic-tac-toe, where the player must select a wild or open spot in order to complete a line. You win points depending on the type of images you are able to line-up. If you are not successful, you get to play a "Follow Me" game. This is a memory game where the user must follow a series of colored balls in a specific order. Again, if you are good enough, you can win every time and win 105% of your game play every time.

Our amusement devices operate on fill license system and are not connected to the internet. When a device is empty and has no additional credits left, an operator must call up Miele Manufacturing and purchase a new fill license. Once purchased, an operator will enter a code and add more credit. This is a system we have set-up deliberately and allows us to track how each device is performing and ensure that we pay taxes on every dollar spent and collected.

As a former State Trooper, I have seen the bad actors and how they utilize illegal machines to take advantage of the system, avoid taxes and hurt the entire industry. That is one of the many reasons I believe in the Pennsylvania Skill product. We have a model that is transparent and really benefits the entire Commonwealth.

I would now like to turn this over to Dr. Pete Zaleski to discuss the economic study he is currently conducting for Pennsylvania Skill.



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Brian Langan · 3rd

Compliance Officer at Pace O Matic Inc

Shavertown, Pennsylvania, United States · 29 connections ·

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Pace O Matic Inc

Activity

29 followers



Semper Fi. Do or die!

Brian shared this



God Bless!

Brian commented

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Experience



Compliance Officer

Pace O Matic Inc · Full-time

Jan 2020 – Present · 1 yr 4 mos



Compliance Officer

Miele Mfg.

Jan 2018 – Jan 2020 · 2 yrs 1 mo

Williamsport, Pennsylvania Area



Enforcement Officer Supervisor

Pennsylvania State Police

Aug 1992 – Jan 2018 · 25 yrs 6 mos

retired

Skills & endorsements

Criminal Investigations · 2

Hank Buczynski and 1 connection have given endorsements for this skill

Criminal Justice · 1

Hank Buczynski has given an endorsement for this skill

Firearms · 1

Hank Buczynski has given an endorsement for this skill

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Frank Noonan

From Wikipedia, the free encyclopedia

Frank Noonan was formerly State Police Commissioner for the **Pennsylvania State Police**.^[1] Noonan began his career in 1971 as an agent for the **Federal Bureau of Investigation**. Following his retirement from the FBI in 1998, Noonan was appointed as Northeast Regional Director for the **Attorney General's Bureau of Narcotics Investigation**. After 11 years as Regional Director, Noonan was promoted to Chief of Criminal Investigations for the Office of Attorney General in July 2009.

Noonan was nominated by Governor **Tom Corbett** on January 18, 2011, to be Commissioner of Pennsylvania State Police and was confirmed by the **Pennsylvania State Senate** on April 12, 2011.

Noonan served as an officer in the **United States Marine Corps** during the **Vietnam War**. He was awarded a **Bronze Star** for his service.^[2]

He is a graduate of **West Chester University of Pennsylvania**.

Contents [hide]

- Military career
- Law enforcement career
 - Commissioner of the Pennsylvania State Police
 - 2014 barracks attack
- Awards and honors
 - Military citations
 - Civilian/law enforcement awards
- References

Military career [edit]

Noonan served in the **United States Marine Corps** during the **Vietnam War**.

Law enforcement career [edit]

Commissioner of the Pennsylvania State Police [edit]

On January 20, 2011 Noonan was appointed as the commissioner of the **Pennsylvania State Police** by Governor **Tom Corbett**.^[3]

2014 barracks attack [edit]





See also: 2014 Pennsylvania State Police barracks attack

Noonan and the state police were thrown into the international spot-light after two Troopers were shot outside a State Police barracks in **Pike County**. Noonan became a national household name after speaking at daily press conferences after the shooting and during the subsequent man hunt for **Eric Frein**. On September 14, two days after the attack Noonan asked for additions man power and assets from state police agencies in **New York** and **New Jersey**. By mid-day on the 15th Noonan had been in touch with numerous federal police agencies and had been talking with high ranking officials within the **United States Marshals Service** and the **Federal Bureau of Investigation**.^{[4][5]}

Noonan continued his media appearing focusing on the suspect, his motive, the state polices response and information on the families involved to national and international media.

Awards and honors [edit]

Military citations [edit]

-  **Bronze Star**
-  **Combat Action Ribbon**
-  **Navy Unit Commendation**
-  **Vietnam Service Medal**

Civilian/law enforcement awards [edit]

- PNOA Linda E. Richardson Commitment to Excellence Award
- Pennsylvania Narcotics Officer's Association Agent of the Year

References [edit]

- ↑ "Colonel Frank Noonan- Commissioner Pennsylvania State Police". Commonwealth of Pennsylvania. Archived from the original on 2014-12-23. Retrieved 2014-12-09.
- ↑ Governor Corbett Picks Noonan as New Commissioner of PSP MPOETC Newsletter, Volume 34, Issue 1, March 2011. Retrieved 12-08-2014.
- ↑ JACKSON, PETER. "4 Pa. troopers receive highest state police honor". *The Times Herald*. Associated Press. Retrieved 2020-04-19.
- ↑ Ed Payne; Joshua Berlinger. "Pennsylvania trooper dies in shooting; one wounded". *CNN*. Retrieved 2020-04-19.
- ↑ "Ambush of Pennsylvania state troopers leaves one dead, one injured". *The Guardian*. Associated Press. 2014-09-13. ISSN 0261-3077. Retrieved 2020-04-19.

<div>V T E</div> <div>Superintendents and Police Commissioners of the Pennsylvania State Police (Since 1905)</div>	[show]
<div>V T E</div> <div>Cabinet of Governor Tom Corbett (2011–15)</div>	[show]

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Categories: Pennsylvania State Police | Living people | American state police officers | State cabinet secretaries of Pennsylvania | West Chester University alumni | Pennsylvania politician stubs

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00R Exhibit 14

From: [Edris, Angela](#)
To: [Gregg R. Zegarelli](#); [Meeks, Nolan](#)
Cc: [Rozier, William A](#)
Subject: Zegarelli v. PSP: AP 2021-0277
Date: Friday, April 9, 2021 3:14:00 PM
Attachments: [image008.png](#)
[image009.png](#)
[image001.png](#)
[image002.png](#)

Attorney Zegarelli and Attorney Meeks,

Thank you for your emails.

Per Attorney Zegarelli's agreement, the Final Determination in this matter will be issued on or before Wednesday, April 14, 2021.

Sincerely,



Angela Edris
Attorney
Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | Fax (717) 425-5343
<https://openrecords.pa.gov>
[@OpenRecordsPA](#)

From: Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>
Sent: Friday, April 9, 2021 2:48 PM
To: Edris, Angela <aedris@pa.gov>
Cc: Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Subject: [External] RE: Zegarelli v. PSP: AP 2021-0277

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

1. I have no objection to the extension.
2. Under penalty of perjury, I hereby declare that I obtained the attachments from public sources as indicated. The OOR will note that prominent gaming companies are hiring former Pennsylvania State Police officers post-retirement, including the former Pennsylvania State Police Commissioner, Mr. Noonan's consulting group. The PSP arbitrary refusal to produce any records implicates a process that may involve a corruption of duties to seize, on the one hand, and also to keep it a secret from publicity, on the other hand, in light of the potential for post-retirement employment with the gaming companies. Based upon information and belief, all of the referenced persons in Ex. 2 and 3 are former Pennsylvania State Police/Commissioner (Ex. 1) and reference material is included to evidence the point. It is imperative that the Pennsylvania State Police be subject to public scrutiny regarding the public seizure of publicly used property.

/Gregg Zegarelli/

Gregg R. Zegarelli
Z E G A R E L L I
Technology & Entrepreneurial
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From: Meeks, Nolan <nomeeks@pa.gov>
Sent: Friday, April 9, 2021 2:14 PM
To: Edris, Angela <aedris@pa.gov>; Gregg R. Zegarelli <gregg.zegarelli@zegarelli.com>
Cc: Rozier, William A <wrozier@pa.gov>; SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>
Subject: RE: Zegarelli v. PSP: AP 2021-0277

Appeals Officer Edris,

Attached is a revised verification removing the language in paragraph 10 concerning forms. You are correct, there were no forms attached to the

00R Exhibit 15

From: [Edris, Angela](#)
To: [Gregg R. Zegarelli](#); [Meeks, Nolan](#)
Cc: [Rozier, William A](#)
Subject: Zegarelli v. PSP: AP 2021-0277 - Final Determination
Date: Wednesday, April 14, 2021 3:45:00 PM
Attachments: [2021-0277_Zegarelli-PSP_FD.pdf](#)
[image001.png](#)

Dear Parties,

Attached is the Final Determination issued today in the above-referenced appeal.

Thank you for your time and attention in this regard.

Sincerely,



Angela Edris
Attorney
Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | **Fax** (717) 425-5343
<https://openrecords.pa.gov>
[@OpenRecordsPA](#)



FINAL DETERMINATION

IN THE MATTER OF

**GREGG ZEGARELLI,
Requester**

v.

**PENNSYLVANIA STATE POLICE,
Respondent**

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Docket No: AP 2021-0277

INTRODUCTION

Gregg Zegarelli, Esq. (“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 records related to the seizure of certain game devices at a particular address. The PSP denied the Request, arguing that records responsive to the Request 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 11, 2020, the Request was filed, seeking “[a]ll records regarding taking or seizure of amusement or other game devices from 322 Philipsburg Bigler Highway, Philipsburg, PA 16866 (Country Garden 6-Pack) within the last 7 years, including, but not limited to, so-called skill games by any manufacturer and/or Pace-O-Matic games of any nature.” On January 19, 2021,

after invoking an extension of time to respond to the Request, 65 P.S. § 67.902(b), the PSP denied the Request, arguing that the records it identified – three PSP Administrative Investigation Reports and two pending citations - were exempt from public disclosure under the RTKL because they relate to a noncriminal investigation. 65 P.S. §§ 67.708(b)(17)(i), (ii), (iii) and (vi)(A). The PSP also asserted that the responsive records were confidential under Pennsylvania’s Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101-9183. Along with its denial letter and in support of its determination, the PSP included a verification, made under the penalty of perjury, from Rachel Zeltman, PSP’s Deputy Agency Open Records Officer.

On February 8, 2021, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. In his appeal, the Requester argues that there must be some information which is accessible, for example, reports or inventories regarding the location and identity of the property seized. The Requester further contends that public access to the information sought is constitutionally required. 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 February 18, 2021, the Requester submitted a position statement reiterating his argument that there must be certain information or records that are publicly accessible given the nature of the information sought. The PSP did not submit any argument or evidence prior to the established submission deadline. As a result, the OOR reached out to the PSP on April 2, 2021 to see if it intended to respond to the instant appeal.¹ On April 5, 2021, the PSP submitted correspondence indicating that it intended to rely on its final response to the Request in support of

¹ The Requester raised an objection to permitting the PSP to file any submission or evidence. However, under Section 1102 of the RTKL, the OOR has broad discretion when ruling on procedural matters and also maintains the discretion to allow into the record any evidence believed to be reasonably probative and relevant. *See* 65 P.S. § 67.1102.

its position that the appeal be denied, noting that the responsive reports are documentation of non-criminal investigations conducted by the PSP's Bureau of Liquor Control Enforcement ("BLCE"). The Requester filed additional argument on April 7, 2021. The OOR subsequently requested for the PSP to address the Requester's arguments. On April 9, 2021, the PSP submitted a supplemental affidavit from William Rozier, the PSP's Open Records Officer.² On that same date, the Requester filed a response to the PSP's supplemental affidavit.³

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, neither party requested a hearing. Although the Requester seeks *in camera* review of the responsive

² The supplemental affidavit was subsequently revised to remove language concerning a reference to certain forms.

³ The Requester provided additional time for the OOR to issue a Final Determination in this matter. 65 P.S. § 67.1101(b)(1).

records, the OOR has determined that, based on the evidence presented, such review is not necessary here.

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 asserts that the records responsive to the Request are exempt from disclosure under the RTKL’s noncriminal investigation exemption, 65 P.S. § 67.708(b)(17), and CHRIA. Section 708(b)(17) of the RTKL exempts from disclosure “[a] record of an agency relating to a noncriminal investigation, including:

- (i) Complaints submitted to an agency.
- (ii) Investigative materials, notes, correspondence and reports.

- (iii) A record that includes the identity of a confidential source... [and]
- (vi) A record that, if disclosed, would ... reveal the institution, progress or result of a agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement...

65 P.S. § 67.708(b)(17). To successfully assert the exemption, an 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. Additionally, the investigation must specifically involve the agency’s 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). To hold otherwise would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” *Chawaga*, 91 A.3d at 259.

In support of the PSP’s position, Ms. Zeltman’s verification provides the following:

1. I am familiar with [the] Request No. 2020-1648, which is attached to this verification.
2. Utilizing the information contained in the [R]equest, I searched all [the PSP’s] databases to which I have access for evidence of any PSP records that may respond to the [R]equest.
3. As a result of my searches, I have located and retrieved the PSP Administrative Investigative Reports Nos. PA 2019-449748, PA 2019-1662933, PA 2020-142953 and pending citation [N]os. 20-0685 and 20-0778.
4. Upon reviewing the reports I have found the investigations of these incidents wholly exempt from public disclosure because the results are:
 - “A record of an agency relating to or resulting in a noncriminal investigation,” 65 P.S. § 67.708(b)(17);

- “A record containing complaints submitted to an agency.” 65 P.S. § 67.708(b)(17)(i);
- “Investigative materials, notes, correspondence and reports.” 65 P.S. § 67.708(b)(17)(il); and/or
- “A record that includes the identity of a confidential source...” 65 P.S. § 67.708(b)(17)(iii).

5. Therefore, I determined PSP Administrative Investigative Report Nos. [PA] 2019-449748, PA 2019-1662933, PA 2020-142953 and pending citation [N]os. 20-0685 and 20-0778 are not “public records,” and not subject to access by a requester under the RTKL.

6. The [R]equester was advised that PSP Administrative Investigation Reports PA 2019-1662933 and PA 2020-142953 are open and ongoing investigations and supplements will be added as the investigation continues.

The supplemental affidavit provided by the PSP set forth the following additional information:

9. Pursuant to 47 P.S. § 2-211(a), PSP BLCE is responsible for the enforcement of the Liquor Code and the regulations of the PA Liquor Control Board (PLCB), and may, after investigation, issue citations to licensees of the PLCB for violations of the law or any other sufficient cause shown pursuant to 47 P.S. § 4-471, including violations related to 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.), or the operation of another business without PLCB approval or allowing another entity to conduct another business on the licensed premises under 40 Pa. Code § 3.52.

10. I have reviewed the responsive record[s] and found that they are related to BLCE’s investigations into violations of 18 Pa.C.S. § 5513 and/or 40 Pa. Code § 3.52.

11. Accordingly, any responsive records 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.

12. Additionally:

- The reports and citations reflect the findings and conclusions, as well as the actions, observations and notes of the investigating officer. As such, these records are “[i]nvestigative materials, notes, correspondence and reports,” which are exempt from public disclosure under RTKL section 67.708(b)(17)(ii).

- Moreover, the reports and citations are “[a] record that, it disclosed, would... [r]eveal the institution, progress or result of an agency investigation,” and, therefore, exempt from public disclosure under RTKL section 67.708(b)(17)(vi)(A).

13. Therefore, any responsive, completed forms are not subject to public disclosure.

14. Lastly, although a citation issued by BLCE after such an investigation may be predicated on a licensee’s violation of unlawful gambling under the Crimes Code, PSP BLCE considers the investigations to be non-criminal and administrative in nature for the purposes of the RTKL, since the citation itself is filed against the license and is decided by the PLCB’s Office of Administrative Law Judge (not a criminal court).

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)).

As attested to by Mr. Rozier, the PSP’s BLCE is responsible for enforcing Pennsylvania’s Liquor Code⁴ and its corresponding regulations. *See* 47 P.S. § 2-211(a). Under 47 P.S. § 2-211(a)(1), the BLCE’s officers and investigators have the power and duty to “investigate whenever there are reasonable grounds to believe liquor, alcohol or malt or brewed beverages are being sold on premises not licensed under the provisions of this act.” Section 2-211(a)(4) also provides that officers and investigators of the BLCE have the power to “investigate and issue citations for any violations of this act or any laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, or any regulations of the board adopted pursuant to such laws...” 47 P.S. § 2-

⁴ *See* Act of April 12, 1951, P.L. 90, *as amended*, 47 P.S. §§1-101 *et seq.*

211(a)(4). Pursuant to 47 P.S. § 4-471(a), the BLCE may cite a licensee for a violation of the Code or any laws of the Commonwealth relating to liquor, alcohol or malt or brewed beverages, or of any regulations of the board adopted pursuant to such laws...*or upon any other sufficient cause shown...*” (emphasis added). “[V]iolations of criminal laws other than the Liquor Code may constitute *sufficient cause* for revocation or suspension of a liquor license.” *Pennsylvania Liquor Control Board v. TLK, Inc.*, 518 Pa. at 504, 544 A.2d at 933 (citations omitted). Further, “[c]ourts have interpreted Section 471 of the Liquor Code as providing similar authority for the imposition of penalties for a variety of conduct not expressly prohibited by the Liquor Code, but reasonably related to the sale and use of alcoholic beverages, including gambling.” *Pa. State Police v. Harrisburg Knights of Columbus Home Ass’n*, 989 A.2d 39, 44 (Pa. Commw. Ct. 2009). Here, Mr. Rozier explains that the responsive investigation reports and citations at issue relate to BLCE’s investigations under the Code into violations of 18 Pa.C.S. § 5513 (relating to gambling devices, etc.) and the Code’s corresponding regulations which prohibit a licensee from permitting other persons to operate another business on licensed premises. *See* 40 Pa. Code § 3.52. Thus, the PSP has shown that its investigations in this matter were conducted as part of its official duties pursuant to its legislatively granted investigatory and enforcement powers under the Liquor Code. *See Dep’t of Health, supra*.

As for the records themselves, Mr. Rozier attests that the contents of the investigation reports and the citations reflect the findings and conclusions, as well as the actions, observations and notes of the investigating officer. Moreover, we note that these types of records – investigatory reports and citations – are typically the sort of record which are considered ‘investigatory’ and/or arise out of an investigation. *Spina v. Pa. Liquor Control Board*, OOR Dkt. AP 2013-1583, 2013

PA O.O.R.D. LEXIS 917.⁵ Accordingly, the OOR finds that the PSP has sufficiently demonstrated that the records responsive to the Request are related to a noncriminal investigation and are not subject to public disclosure.⁶

The Requester argues that PSP has an obligation to redact responsive records “as necessary to disclose the inventory actually seized, documents provided to third parties, or other information not part of the deliberative investigation.” Here, however, the records identified by the PSP as responsive to the Request are PSP Administrative Investigative Reports and pending citations. Because those records fall under Section 708(b)(17) as noncriminal investigative records, they are not a public record as defined by the RTKL and the PSP is not required to redact them. *See Pa. State Police v. Office of Open Records*, 5 A.3d 473, 481 (Pa. Commw. Ct. 2010). The Requester also suggests that “as legal counsel, he has the right to determine if any client has an interest in the seized property for the purpose of further legal process.” But, a requester’s identity or motivation for making a request is not considered in determining whether a record is accessible to the public under the RTKL. *Padgett v. Pa. State Police*, 73 A.3d 644, 647 (Pa. Commw. Ct. 2013). 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 are unrelated to whether

⁵ While the PSP does not state explicitly that the responsive “citations” do not fall within the exception to Section 708(b)(17)(vi)(A), it is noted that it describes the citations as “pending.” As such, the status of the citations appears to be incomplete and thus inconclusive, at least presently, as to “the imposition of a fine or civil penalty, [or] the suspension, modification or revocation of a license” etc.

⁶ The Requester seems to suggest that the PSP’s reliance on Section 708(b)(17) is improper because liquor enforcement ultimately has criminal implications. While it is true that criminal charges may ultimately arise from an investigation conducted under the Liquor Code, the evidence before us demonstrates that the BLCE’s investigations were performed under the Liquor Code and are thus administrative and noncriminal in nature. Whether or not criminal charges may ultimately be filed is irrelevant to our analysis here given the Code’s statutory construct. *See Matter of Marge & Jack, Inc.*, 32 Pa.Cmwlth. 398, 379 A.2d 900 (1977) (sanctions against license holders may be imposed by the Liquor Control Board where the underlying conduct does not produce any criminal charges); *Liquor License No. R-15524 v. Commonwealth*, 480 Pa. 322, 390 A.2d 163 (1978) (holding that the Liquor Control Board can fine a licensee for gambling that occurred on the premises even though criminal charges were dismissed).

a document must be made accessible under... [the RTKL].” *Hunsicker v. Pa. State Police*, 93 A.3d 911, 913 (Pa. Commw. Ct. 2014); *Cafoncelli v. Pa. State Police*, 2017 Pa. Commw. Unpub. LEXIS 405 (Pa. Commw. Ct. 2017) (citing *Hunsicker*).

The Requester further suggests that the PSP’s withholding of the requested information has certain constitutional implications as it relates to the government taking of property, due process and the deprivation of an individual’s life, liberty or property. While those arguments may be relevant to an individual licensee who is cited for a violation under the Liquor Code or an owner of game machines that are seized by law enforcement, those concepts are not necessarily relevant in the context the instant appeal. Again, information that is accessible under the RTKL is available to all citizens regardless of personal status or stake in the requested information.

Lastly, the Requester argues that the PSP’s response to the Request was frivolous and that because the PSP did not provide any records, it acted in bad faith. However, given the foregoing determination that the investigative reports and pending citations at issue are exempt under Section 708(b)(17) of the RTKL, there is no evidence before us to support such a conclusion. Moreover, the RTKL is clear that only a court may make a finding as to whether an agency acted in bad faith. *See* 65 P.S. §§ 67.1304 - 67.1305; *Mission Pa., LLC v. McKelvey*, 212 A.3d 119, 138 (Pa. Commw. Ct. 2019); *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 197 A.3d 825 (Pa. Commw. Ct. 2018); *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1175 (Pa. Commw. Ct. 2018).

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.⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 14, 2021

/s/ Angela Edris

APPEALS OFFICER
ANGELA EDRIS, ESQ.

Sent via email to: Gregg Zegarelli, Esq.;
Nolan Meeks, Esq.;
William A. Rozier, J.D., AORO

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).