

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

DANIEL SCHWARTZ,	)	
	)	
Petitioner,	)	Docket No. _____
	)	
v.	)	
	)	
PENNSYLVANIA STATE POLICE,	)	Office of Open Records
	)	Docket No. AP 2021-0916
Respondent.	)	

**PETITION FOR ENFORCEMENT OF FINAL DETERMINATION OF  
OFFICE OF OPEN RECORDS**

AND NOW comes the Petitioner, Daniel Schwartz, by and through his undersigned counsel and hereby submits this Petition for Enforcement of the Final Determination of the Office of Open Records (“OOR”), issued on June 22, 2021, as follows:

**I. INTRODUCTION**

1. Freelance investigative journalist Daniel Schwartz seeks intervention from this Court to enforce an OOR Final Determination ordering the Pennsylvania State Police to produce certain law enforcement officers’ emails, voicemails, and text messages related to the Mariner East Pipeline protests. A true and correct copy of the OOR Final Determination is attached as **Exhibit A**.

2. The OOR Final Determination became final and enforceable on July 22, 2021, the last date on which the Pennsylvania State Police could appeal to this Court from the OOR Final Determination.

3. The Final Determination ordered that the PSP either produce all text messages, voicemails, and appropriately redacted emails responsive to the Petitioner's request or provide an affidavit describing its search and attesting that the voicemails and text messages do not exist.<sup>1</sup>

4. Despite the Order, Respondent willfully or with wanton disregard failed to produce the requested text messages and voicemails or, alternatively, provide the required affidavit.

5. The documents that Petitioner requested are subject to production as a matter of law and relate to a matter of significant public interest: the Mariner East pipeline protests and the interaction of police with such protests.

6. The Mariner East pipelines carry highly explosive natural-gas liquids across Pennsylvania to be shipped to Europe.<sup>2</sup> Mariner East 1 converted an existing pipeline built in the 1930's.<sup>3</sup> Mariner East 2 was designed to expand this capacity.<sup>4</sup> The

---

<sup>1</sup> See Ex. A at 8.

<sup>2</sup> Eliza Griswold, *A Pipeline, a Protest, and the Battle for Pennsylvania's Political Soul*, NEW YORKER, (Oct. 26, 2018), <https://www.newyorker.com/news/dispatch/a-pipeline-a-protest-and-the-battle-for-pennsylvanias-political-soul>.

<sup>3</sup> *Explainer: Mariner East: A Pipeline Project Plagued by Mishaps and Delays*, STATEIMPACT PENN., <https://stateimpact.npr.org/pennsylvania/tag/mariner-east-2/>.

<sup>4</sup> *Id.*

Commonwealth approved Mariner 2 in early 2017 despite notable “deficiencies” in the permit applications.<sup>5</sup>

7. After the Pennsylvania Attorney General opened an inquiry into the approval process, news outlets reported in 2019 that the FBI had opened a similar inquiry.<sup>6</sup> The Attorney General ultimately filed 48 criminal charges, mostly related to spilling industrial waste, against the owner of the Mariner East 2 Pipeline.<sup>7</sup>

8. In the wake of the pipeline’s approval, some Pennsylvania residents adapted to life with “spills of drilling mud,” like those identified by the Attorney General, “water contamination,” and “intimidating contractors.”<sup>8</sup> Others “live[d] in fear of” gas leak explosions and the sudden appearance of sinkholes.<sup>9</sup>

---

<sup>5</sup> *DEP Approved Mariner East 2 Permits Despite Deficiencies, Documents Show*, STATEIMPACT PENN., (Mar. 10, 2017), <https://stateimpact.npr.org/pennsylvania/2017/03/10/dep-approved-mariner-east-2-permits-despite-deficiencies-documents-show/>.

<sup>6</sup> *See, e.g.,* Marc Levy, *AP Exclusive: FBI Eyes How Pennsylvania Approved Pipeline*, ASSOCIATED PRESS, (Nov. 12, 2019), <https://apnews.com/article/ffd3c53d855445cebfd0d5148b3860fa>; Andrew Maykuth and Jeremy Roebuck, *FBI now investigating the way in which Pennsylvania approved Mariner East Pipeline*, The PHILADELPHIA INQUIRER, (Nov. 12, 2019), <https://www.inquirer.com/business/energy/mariner-east-pipeline-fbi-investigation-pennsylvania-governor-tom-wolf-20191113.html>.

<sup>7</sup> *See AG Shapiro Charges Mariner East Developer with Environmental Crimes*, OFF. ATT’Y GEN. JOSH SHAPIRO, (Oct. 5, 2021), <https://www.attorneygeneral.gov/taking-action/press-releases/ag-shapiro-charges-mariner-east-developer-with-environmental-crimes/>.

<sup>8</sup> Claire Sasko, *Should We Be Afraid of the Mariner East Pipeline?*, PHILA. MAG. (July 6, 2019), <https://www.phillymag.com/news/2019/07/06/mariner-east-pipeline-sunoco-pennsylvania/>.

<sup>9</sup> Claire Sasko, *Should We Be Afraid of the Mariner East Pipeline?*, PHILA. MAG. (July 6, 2019), <https://www.phillymag.com/news/2019/07/06/mariner-east-pipeline-sunoco-pennsylvania/>; Jon Hurdle, *‘It’s Crazy, Man’: Sinkholes, Sunoco’s Pipeline Inspection Stir Safety Fears in Chester County*, NAT’L PUB. RADIO: STATEIMPACT PENN., (Mar., 9, 2018), <https://stateimpact.npr.org/pennsylvania/2018/03/09/its-crazy-man-sinkholes-sunocos-pipeline-inspection-stir-safety-fears-in-chester-county/>.

9. After “a fortress-like metal barricade was erected” in one resident’s backyard, she demanded to exercise her “right to know what is going on back there[.]”<sup>10</sup> And others, while exercising their right to protest peacefully,<sup>11</sup> have been met with “repressive tactics.”<sup>12</sup> For example, criminal charges were filed against an employee of the Mariner 2 pipeline owner and security employees after the owner allegedly “bought . . . [State Constables’] badges and authority” through a “buy-a-badge” scheme “as a weapon to intimidate citizens.”<sup>13</sup> Two Constables were ultimately convicted of misdemeanor counts of failing to disclose money they earned as private security guards for the pipeline.<sup>14</sup>

10. Reporting on the pipelines can help hold elected officials like these State Constables accountable and keep residents informed about potential threats to their communities’ safety and wellbeing.

---

<sup>10</sup> Claire Sasko, *Should We Be Afraid of the Mariner East Pipeline?*, PHILA. MAG. (July, 6, 2019), <https://www.phillymag.com/news/2019/07/06/mariner-east-pipeline-sunoco-pennsylvania/>.

<sup>11</sup> Bill Rettew, *Demonstrators Rally Against Mariner East 2 Pipeline Outside Courthouse*, POTTSTOWN MERCURY, (June 14, 2017), <https://www.pottsmmerc.com/2017/06/14/demonstrators-rally-against-mariner-east-2-pipeline-outside-courthouse-2/> (last updated Sept. 23, 2021).

<sup>12</sup> Alleen Brown, Will Parrish & Alice Speri, *Dakota Access-Style Policing Moves to Pennsylvania’s Mariner East 2 Pipeline*, INTERCEPT, (June 21, 2017), <https://theintercept.com/2017/06/21/dakota-access-style-policing-moves-to-pennsylvanias-mariner-east-2-pipeline/>.

<sup>13</sup> Marc Levy, *Prosecutor: ‘Buy-a-Badge’ Pipeline Security Plan Was Illegal*, ASSOCIATED PRESS, (Dec. 3, 2019), <https://apnews.com/article/976b99d6288f4dbcb9553df8740d214b>.

<sup>14</sup> *Constables convicted on lesser count after charges dismissed*, ASSOCIATED PRESS, (July 17, 2021), <https://apnews.com/article/business-2251f6022acd4f686eafa8731555e741>.

11. Investigative journalists covering natural gas and oil pipeline projects, like Petitioner here, rely heavily on public records in their reporting. For example, investigative reporters have used public records to unearth inadequacies in pipeline safety measures and to shed light on an intelligence-sharing network between law enforcement and a private drilling agency.<sup>15</sup>

12. For the reasons stated herein, the Court should order Respondent to comply with Petitioner's request pursuant to the RTKL and the clear mandates of the OOR Final Determination by producing the remaining documents or affidavit as identified below; awarding attorney's fees and costs pursuant to the RTKL for having to bring this enforcement action; and paying other such penalties as are proper under the RTKL.

---

<sup>15</sup> Rebecca Moss, *Are We Prepared?*, SPOTLIGHT PA, (Oct. 15, 2020), <https://www.spotlightpa.org/news/2020/10/pa-mariner-east-pipeline-accident-emergency-plans-investigation/>; Adam Federman, *State Police Documents Show Intelligence-Sharing Network Between Law Enforcement and Marcellus Shale Drillers*, PITTSBURGH CITY PAPER, (Oct. 8, 2014), <https://www.pghcitypaper.com/pittsburgh/state-police-documents-show-intelligence-sharing-network-between-law-enforcement-and-marcellus-shale-drillers/Content?oid=1782447>.

## **II. THE PARTIES**

13. Petitioner Daniel Schwartz is an independent journalist based in Colorado. His work has appeared in news outlets with national and local circulation including *VICE*, *Type Investigations*, and *Vermont Digger*.

14. Respondent, the Pennsylvania State Police, is the chief law enforcement agency of the Commonwealth of Pennsylvania. Respondent's core purpose is "[t]o seek justice, preserve peace, and improve the quality of life for all."<sup>16</sup>

15. The PSP is a Commonwealth Agency pursuant to Section 102 of the Pennsylvania Right to Know Law ("RTKL"), *see* 65 P.S. § 67.102, that is required to disclose public records pursuant to Section 301 of the RTKL. *See* 65 P.S. § 67.301.

16. The PSP is headquartered at 1800 Elmerton Avenue, Harrisburg, Pennsylvania 17110.

## **III. JURISDICTION**

17. This Court has jurisdiction to enforce a Final Determination of the Pennsylvania Office of Open Records. *See* 42 PA. CONS. STAT. ANN. § 763; Pa.R.A.P. 3761.

---

<sup>16</sup> STRATEGIC PLAN 2019-2022, PA. STATE POLICE: BUREAU RSCH. DEV. 5 (2019), <https://www.psp.pa.gov/About-PSP/Documents/Strategic%20Plan.pdf>.

#### **IV. FACTUAL AND PROCEDURAL HISTORY**

##### **A. Petitioner's Initial RTKL Request and the PSP's Response.**

18. On March 24, 2021, Mr. Schwartz made a request to the PSP pursuant to the RTKL. A true and correct copy of the request and the PSP's initial response attaching an extension letter is attached as **Exhibit B**. The first part of the request sought the unredacted versions of certain correspondence and attachments of Lt. James Hennigan that had been previously produced to Petitioner. The documents Petitioner had already received were "seemingly indiscriminately redacted, and [in his] opinion, [] the redactions [we]re unlawful."<sup>17</sup>

19. The second part requested certain text messages and voice messages and respective attachments received by the work-issued cell phones of Lt. James Hennigan and Lt. Stephen J. U'Selis III pertaining to the "Mariner East pipeline or the activities of state residents as they may relate to the pipeline or its construction." Petitioner provided the following search terms: "Sunoco," "Energy Transfer," "Mariner," "suspicious activity," "protesters," "pipeline," and "construction."<sup>18</sup>

20. On April 30, 2021, the PSP partially denied the Request. A true and correct copy of the PSP's denial is attached as **Exhibit C**. The PSP rejected the first part of the request concerning certain reports about the activities surrounding the Mariner

---

<sup>17</sup> Ex. B at 1.

<sup>18</sup> *Id.*

East pipeline and relied on a prior response it had provided to Mr. Schwartz.<sup>19</sup> The PSP then claimed with respect to the second part of the request that no text messages exist, certain emails were appropriately redacted, and other records were criminal investigative records and subject to Pennsylvania’s Criminal History Record Information Act, 18 PA. C.S. §§ 9101-9183.<sup>20</sup>

21. Notably, the OOR in May 2021 requested an affidavit from Respondent describing its search and supporting its position that certain records were exempt and others did not exist.<sup>21</sup> But Respondent never provided the requested affidavit.<sup>22</sup> Respondent instead submitted a “verification”<sup>23</sup> that contained insufficient evidence to sustain either of the PSP’s positions.<sup>24</sup> The OOR described the “verification” as providing mere “conclusory statements,” without enough “factual evidence regarding how the records [] are exempt” in Part I to sustain its burden of proof.<sup>25</sup> The “verification” also failed to “sufficiently describe the search for” the voicemails and text messages requested in Part 2.<sup>26</sup>

---

<sup>19</sup> See Ex. C at 5.

<sup>20</sup> Ex. C at 5 (citing 65 P.S. §67.708(b)(16)(ii)).

<sup>21</sup> Ex. A at 6–7.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 6–7.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.*



## **B. Petitioner's Appeal and OOR Final Determination.**

22. Petitioner timely appealed the PSP's denial to the Pennsylvania Office of Open Records on or about May 7, 2021.<sup>27</sup>

23. The Office of Open Records considered the PSP's response, rejected its alleged defenses to disclosure except as to personal identification information, and issued the OOR Final Determination on June 22, 2021, requiring Respondent to "provide unredacted emails responsive to Part 1 and text messages or voicemails responsive to Part 2 or provide the Requester with a statement describing the search and affirming that no responsive records exist within 30 days."<sup>28</sup>

## **C. The PSP Failed to Comply with the Clear Terms of the Final Determination and Petitioner's RTKL Request.**

24. The PSP failed to appeal the Final Determination within thirty days as required by 65 P.S. § 67.1301(a) and, therefore, the Final Determination became binding on both parties.

25. With respect to Part 1 of the request, the PSP produced two batches of emails totaling 350 pages, which were largely unredacted, aside from certain e-mail addresses.

---

<sup>27</sup> *Id.* at 3, 5.

<sup>28</sup> *See* Ex. A at 5–8 (rejecting PSP's alleged defenses).

26. With respect to Part 2 of the request, Respondent failed to produce the text messages and voice mails, or, alternatively, the requested affidavit as required by the Final Determination.

27. Petitioner has a clear legal right to the documents or, alternatively, the affidavit. Respondent violated its mandatory statutory obligation by failing to comply with the Final Determination.

**D. The PSP Operated in Bad Faith and Willfully or Wantonly Disregarded Petitioner's Rights Pursuant to the RTKL and the Clear Mandates of the OOR Final Determination.**

28. Not only did the PSP fail to comply with Petitioner's RTKL Request, but it also refused in bad faith to comply with the OOR's order in the Final Determination to produce the text messages and voice mails or, alternatively, an affidavit. This refusal came in the wake of the OOR's prior unsuccessful "attempts to develop the record" after the PSP claimed that no text messages exist.<sup>29</sup>

29. In response to the OOR's invitation to supplement the record in May 2021, the PSP merely provided a conclusory verification that failed to sufficiently describe the search for records.<sup>30</sup> But, as the OOR correctly determined, the verification's unsworn testimony cannot serve as sufficient evidence that the records in fact do not exist.<sup>31</sup>

---

<sup>29</sup> See Ex. A at 3, 5.

<sup>30</sup> See *id.* at 7.

<sup>31</sup> See *id.* at 5-7.

30. When an agency, such as the PSP, willfully or with wanton disregard deprives a requester of access to public records, the requester is entitled to reimbursement of its costs and attorneys' fees. *See* 65 P.S. § 67.1304(a)(1).

31. Moreover, an agency's bad faith refusal to grant access to public records permits the imposition of civil penalties against the entity. *See* 65 P.S. § 67.1305(a).

32. Because the PSP in bad faith refused to comply with the Final Determination, this Court should award Petitioner his reasonable costs and attorney's fees and impose civil penalties against the agency.

## **V. Conclusion**

33. For the reasons set forth above, the PSP violated the provisions of the RTKL, thereby depriving Petitioner of his right to access public records. The PSP acted willfully, with wanton disregard, and in bad faith in failing to comply with an OOR order to produce text messages and voicemails or a statement affirming the records do not exist and a description of the search.

34. Petitioner is therefore entitled to all relief available under the RTKL, including immediate access to the information requested from the PSP; reimbursement for his costs and attorneys' fees; and the imposition of civil penalties against the PSP.

WHEREFORE, Petitioner Daniel Schwartz respectfully requests that this Court enter an Order providing the following relief:

1. Directing the Pennsylvania State Police to produce all documents required to be produced in the Final Determination, or, alternatively, the affidavit, within seven days of issuance of the Order of the Court;
2. Awarding Petitioner reasonable attorneys' fees and costs incurred in this matter pursuant to Section 1304 of the RTKL;
3. Imposing an appropriate civil penalty; and
4. Granting any further relief that this Court deems appropriate.

Dated: December 20, 2021

Respectfully submitted,

By: /s/Paula Knudsen Burke

Paula Knudsen Burke  
REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS  
PA ID: 87607  
PO Box 1328  
Lancaster, PA 17608  
pknudsen@rcfp.org  
(717) 370-6884

Heather E. Murray (*pro hac vice*  
forthcoming)  
Jared K. Carter (*pro hac vice*  
forthcoming)  
CORNELL LAW SCHOOL  
FIRST AMENDMENT CLINIC<sup>32</sup>  
Myron Taylor Hall  
Ithaca, NY 14853  
hem58@cornell.edu  
(607) 255-8518

*Attorneys for Daniel Schwartz*

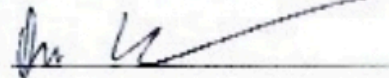
---

<sup>32</sup> Cornell student Steven Marzagalli drafted portions of the Petition. The Cornell Clinic is housed within Cornell Law School and Cornell University. Nothing in this Petition should be construed to represent the views of these institutions, if any.

**VERIFICATION**

I, Daniel Schwartz, hereby state that the facts above set forth in the Petition for Enforcement of Final Determination of Office of Open Records are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904

(relating to unsworn falsification to authorities).

A handwritten signature in dark ink, appearing to read 'Daniel Schwartz', is written over a horizontal line.

(signature)

Date: 12/17/2021

**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Paula Knudsen Burke  
Signature: /s/*Paula Knudsen Burke*  
PA Attorney ID: 87607

December 20, 2021

# **EXHIBIT A**



### FINAL DETERMINATION

IN THE MATTER OF

DAN SCHWARTZ AND TYPE  
INVESTIGATIONS,  
Requester

v.

PENNSYLVANIA STATE POLICE,  
Respondent

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Docket No: AP 2021-0916

### INTRODUCTION

Dan Schwartz and Type Investigations (collectively “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 correspondence and text messages. The PSP partially denied the Request, redacting some records, arguing they are criminal investigative records and subject to the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101-9183. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**, and the PSP is required to take additional action as directed.



## **FACTUAL BACKGROUND**

On March 24, 2021, the Request was filed, stating:

### **PART ONE:**

In October, I submitted a request for correspondences, which met a certain criteria, that went to and came from Lt. James Hennigan of the state police. The records request number is 2020-1105. I was provided two batches of emails, one of which was seemingly indiscriminately redacted, and it is my opinion that the redactions are unlawful. This batch of PDFs was given the name "email N Redacted RELEASEABLE.pdf" and it is 263 pages long. Many of the records redacted are inherently public, such as waiver requests and non-exempt emails between public officials. Others have already been released to the public. I am now asking for these records to be release to me without redactions.

In my request, I had also asked for a Vaughn Index, which seems to have been ignored. Please provide me justification for the redactions in the documents "email N\_Redacted RELEASEABLE.pdf." For your convenience, I have attached the document to this email.

I had also asked for any and all documents associated with the correspondences, namely email attachments, and this request seems to have been ignored. Please provide me any and all associated attachments.

### **PART TWO:**

Please provide any and all text messages and voice messages received by the work-issued cell phones of Lt. James Hennigan as well as Lt. Stephen J. U'Selis III about the Mariner East pipeline or the activities of state residents as they may related to the pipeline or its construction. Please limit your search to the timeframe of February 2017 to the date this request is completed. These search terms may help: "Sunoco," "Energy Transfer," "Mariner," "suspicious activity," "protesters," "pipeline," "construction." For text messages, please also include any and all attachments.

Finally, I am requesting emails between Lt. U'Selis and Sunoco, Energy Transfer, and associates of those groups, such as Tiger Swan, Zorion, or Hillard Heintze, as well as emails that concern the Mariner East Pipeline. To this end, please conduct a keyword search of Mr. U'Selis email account for the words or phrases "Sunoco" and "Energy Transfer" and "Mariner" and within the timeframe of February 2017 to the date this request is completed. Please be sure to also provide any and all associated records, such as email attachments, as well as a Vaughn Index justify any redactions your office may deem necessary.

On April 30, 2021, following a thirty-day extension to respond, 65 P.S. § 67.902(b), the PSP partially denied the Request, arguing that for Part 1, the PSP would rely on the final response sent to the prior request date October 1, 2020. In response to Part 2, the PSP argued that no text messages exist and that certain emails were redacted of personal identification information, 65 P.S. § 67.708(b)(6) and some records are criminal investigative records, 65 P.S. § 67.708(b)(16) and subject to CHRIA.

On May 7, 2021, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.<sup>1</sup> 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 May 14, 2021, the Requester provided a second set of records, the final response of the PSP and the final response of the PSP to records request 2020-1073, which is unrelated to the Request at issue.

On May 28, 2021, the PSP submitted a position statement seeking dismissal of the appeal as premature and reiterating its grounds for denial. The PSP claims that Part 1 of the Request was identical to a prior request where the PSP provided redacted records and required no supplementation so the request as to Part 1 was denied. The PSP also asserted that no records exist as to Part 2 of the Request and noted that a verification to this assertion accompanied the final response. Despite the OOR seeking an affidavit in support of the PSP's submission, as of the date of this final determination, no affidavit has been provided.

---

<sup>1</sup> By OOR Order issued May 10, 2021, the Requester was required to file a complete copy of the agency's final response within seven days of the date of the Order. On May 14, 2021 the OOR received a copy of the final response from the Requester.

## 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.

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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

### **1. The appeal is not premature**

The PSP first asserts that the appeal is premature claiming that the Request was received on May 7, 2021 and a thirty-day extension was invoked on May 31, 2021. 65 P.S. § 67.902(b). The PSP then asserts that the final response was mailed on April 30, 2021. The PSP appears to have conflated the date of appeal with the Request date and further, acknowledges within its submission that the final response was mailed April 30, 2021. The appeal was filed on May 7, 2021 and is not premature.

### **2. The PSP has not met its burden of proof that records do not exist, are criminal investigative records or are protected by CHRIA**

The PSP has not provided sufficient evidence in support of its assertions. Despite the OOR’s attempts to develop the record, the PSP has not provided an affidavit. Courts interpreting the RTKL have held that testimonial affidavits may serve as sufficient evidentiary support of factual statements before the OOR. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. OOR*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). On the other hand, unsworn statements or statements of counsel, not supported by affidavit testimony, have

been held not to be competent evidence under the RTKL. *See Housing Auth. of the City of Pittsburgh v. Van Osdol*, No. 795 C.D. 2011, 2012 Pa. Commw. LEXIS 87 (Pa. Commw. Ct. 2012); *City of Philadelphia v. Juzang*, July Term 2010, No. 2048 (Phila. Com. Pl. June 28, 2011). As a result, the OOR is obligated to require that all factual statements be supported by a testimonial affidavit.

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort” as used in Section 901 of the RTKL, the Commonwealth Court outlined the elements of a good faith search in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018). The Court noted that an Agency Open Records Officer (AORO) has a duty to:

1. Advise all custodians of potentially responsive records about the request;
2. Obtain all potentially responsive records from those in possession of the potentially responsive records;
3. Contact agents within its control, including third party contractors; and
4. Review the records and assess their public nature.

*Id.* In sum, an agency must show that it has conducted a search reasonably calculated to uncover all relevant documents; an agency may do so by providing relatively detailed and non-conclusory affidavits submitted in good faith by officials or employees with knowledge of the records and the search for the records. *See Burr v. Pa. Dep’t of Health*, OOR Dkt. AP 2021-0747; 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011); *In Re Silberstein*, 11 A.3d 629, 634 (Pa. Commw. Ct. 2011) (holding that it is “the open-records officer's duty and responsibility” to both send an inquiry to agency personnel concerning a request and to determine whether to deny access). Here, the OOR does not have sufficient evidentiary support for any assertion. While the final response does include a verification, the

verification does not sufficiently describe the search for records such that the OOR can determine that no text messages or voicemails exist.

The OOR is mindful that an agency “shall not be required to create a record which does not currently exist...” 65 P.S. § 67.705. However, agencies have the burden of proving that a record does not exist, *Hodges*, 29 A.3d at 1192, and the PSP has not met its burden of proof with respect to Part 2 of the Request. The PSP is therefore directed to conduct a good faith search for records as set forth in 65 P.S. § 67.901 and provide any records discovered as a result of that search. If no records are located as a result of this search, the PSP shall inform the Requester of such in writing.

The verification also does not provide factual evidence regarding how the records for Part 1 are exempt and an agency cannot rely on conclusory statements to sustain its burden of proof. *See Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa Commw. Ct. 2013) (“[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records”); *see also Office of the District Attorney of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (Pa. Commw. Ct. 2017) (“Relevant and credible testimonial affidavits may provide sufficient evidence in support of a claimed exemption; however, conclusory affidavits, standing alone, will not satisfy the burden of proof an agency must sustain to show that a requester may be denied access to records under the RTKL”) (citations omitted).

In his appeal, the Requester provided records showing extensive redactions, “email N\_Redacted RELEASABLE,” and later supplemented the record by providing a second set of records, titled “email Y\_Redacted RELEASABLE” showing redactions of email addresses. Section 708(b)(6)(i)(A) of the RTKL exempts personal identification information, including “personal financial information, home, cellular or personal telephone numbers, [and] personal e-

mail addresses....” 65 P.S. § 67.708(b)(6)(i)(A). As personal identification information is facially exempt from disclosure, the PSP has appropriately redacted the email addresses. *See, e.g., Vinovskis v. Allentown City*, OOR Dkt. AP 2020-1391, 2020 PA O.O.R.D. LEXIS 2790. The PSP has not met its burden as it relates to any other redactions or withheld records.

## CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the PSP is required to provide unredacted emails responsive to Part 1 and text messages or voicemails responsive to Part 2 or provide the Requester with a statement describing the search and that no responsive records exist within thirty days. 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.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: June 22, 2021**

*/s/ Erin Burlew*

---

ERIN BURLEW, ESQ.  
APPEALS OFFICER

Sent to: Dan Schwartz (via email only);  
Kathryn Daczka, Esq. (via email only);  
William Rozier (via email only)

---

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

# **EXHIBIT B**





Dan Schwartz &lt;danschwartz300@gmail.com&gt;

---

**RTK Request 2021-0422**

---

**SP, PSP RIGHT TO KNOW** <RA-psprighttoknow@pa.gov>  
To: Dan Schwartz <danschwartz300@gmail.com>

Wed, Mar 31, 2021 at 5:00 AM

Mr. Schwartz,

Attached is an initial response to your Right to Know Law request 2021-0422  
If you have any questions, please contact the Right to Know Law/Subpoena Section  
office toll free at 1-877-785-7771.

Thank you,

KIM GRANT | LEGAL ASSISTANT II | DEPUTY AORO

Right to Know Law/ Subpoena Section

Pennsylvania State Police DHQ | Bureau of Records and Identification

1800 Elmerton Avenue Hbg | PA 17110

Phone: RTK 1-877-785-7771

[www.psp.pa.gov](http://www.psp.pa.gov)

**PRIVILEGED AND CONFIDENTIAL COMMUNICATION**

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.

---

**From:** Dan Schwartz <danschwartz300@gmail.com>  
**Sent:** Wednesday, March 24, 2021 2:36 PM  
**To:** SP, PSP RIGHT TO KNOW <RA-psprighttoknow@pa.gov>  
**Subject:** [External] Public records request: ME2

**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](mailto:CWOPA_SPAM@pa.gov).

Hello.

I am a journalist working with Type Investigations and am submitting the following, two-part records request through the Pennsylvania Right-To-Know Law (65 P.S. § 67.101 et seq.).

**PART ONE:**

In October, I submitted a request for correspondences, which met a certain criteria, that went to and came from Lt. James Hennigan of the state police. The records request number is 2020-1105. I was provided two batches of emails, one of which was seemingly indiscriminately redacted, and it is my opinion that the redactions are unlawful. This batch of PDFs was given the file name "email N\_Redacted RELEASABLE.pdf" and it is 263 pages long. Many of the records redacted are inherently public, such as waiver requests and non-exempt emails between public officials. Others have already been released to the public. I am now asking for these records to be released to me without redactions.

In my request, I had also asked for a Vaughn Index, which seems to have been ignored. Please provide me justification for the redactions in the document "email N\_Redacted RELEASABLE.pdf." For your convenience, I have attached the document to this email.

I had also asked for any and all documents associated with the correspondances, namely email attachments, and this request seems to also have been ignored. Please provide me any and all associated attachments.

**PART TWO:**

Please provide any and all text messages and voice messages received by the work-issued cell phones of Lt. James Hennigan as well as Lt. Stephen J. U'Selis III about the Mariner East pipeline or the activities of state residents as they may relate to the pipeline or its construction. Please limit your search to the timeframe of February 2017 to the date this request is completed. These search terms may help: "Sunoco," "Energy Transfer," "Marinier," "suspicious activity," "protesters," "pipeline," "construction." For text messages, please also include any and all attachments.

Finally, I am requesting emails between Lt. U'Selis and Sunoco, Energy Transfer, and associates of those groups, such as Tiger Swan, Zorion, or Hillard Heintze, as well as emails that concern the Mariner East pipeline. To this end, please conduct a keyword search of Mr. U'Selis' email account for the words or phrases "Sunoco" and "Energy Transfer" and "Mariner" and within the timeframe of February 2017 to the date this request is completed. Please be sure to also provide any and all associated records, such as email attachments, as well as a Vaughn Index justifying any redactions your office may deem necessary.

Should you have any questions or feel my request could be narrowed, please feel free to call me on my cell phone anytime: 774-644-2207.

Thank you.

Dan

--

Dan Schwartz | Journalist  
cell: 774-644-2207

[@COdanschwartz](#)

[danjschwartz.com](#)

National Writers Union member



**Signed 30 Day Extension Letter.pdf**

135K



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

Mailing Date: March 31, 2021

Dan Schwartz  
[Danschwarz300@gmail.com](mailto:Danschwarz300@gmail.com)

***SENT VIA ELECTRONIC TRANSMISSION ONLY***

PSP/RTKL Request N° 2021-0422

Dear Mr. Schwartz:

On March 24, 2021, 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:

I am a journalist working with Type Investigations and am submitting the following, two-part records request through the Pennsylvania Right-To-Know Law (65 P.S. § 67.101 et seq.)

**PART ONE:**

In October, I submitted a request for correspondences, which met a certain criteria, that went to and came from Lt. James Hennigan of the state police. The records request number is 2020-1105. I was provided two batches of emails, one of which was seemingly indiscriminately redacted, and it is my opinion that the redactions are unlawful. This batch of PDFs was given the name "email N\_Redacted RELEASEABLE.pdf" and it is 263 pages long. Many of the records redacted are inherently public, such as waiver requests and non-exempt emails between public officials. Others have already been released to the public. I am now asking for these records to be release to me without redactions.

In my request, I had also asked for a Vaughn Index, which seems to have been ignored. Please provide me justification for the redactions in the documents "email N\_Redacted RELEASEABLE.pdf." For your convenience, I have attached document to this email.

I had also asked for any and all documents associated with the correspondances, namely email attachments, and this request seems to have been ignored. Please provide me any and all associated attachments.

PART TWO:

Please provide any and all text messages and voice messages received by the work-issued cell phones of Lt. James Hennigan as well as Lt. Stephen J. U'Selis III about the Mariner East pipeline or the activities of state residents as they may related to the pipeline or its construction. Please limit your search to the timeframe of February 2017 to the date this request is completed. These search terms may help: "Sunoco," "Energy Transfer," "Marinier," "suspicious activity," "protesters," "pipeline," "construction." For text messages, please also include any and all attachments.

Finally, I am requesting emails between Lt. U'Selis and Sunoco, Energy Transfer, and associates of those groups, such as Tiger Swan, Zorion, or Hillard Heintze, as well as emails that concern the Mariner East Pipeline. To this end, please conduct a keyword search of Mr. U'Selis email account for the words or phrases "Sunoco" and "Energy Transfer" and "Mariner" and within the timeframe of February 2017 to the date this request is completed. Please be sure to also provide any and all associated records, such as email attachments, as well as a Vaughn Index justify any redactions your office may deem necessary.

Under the RTKL, a written response to your request is due on or before March 31, 2021.

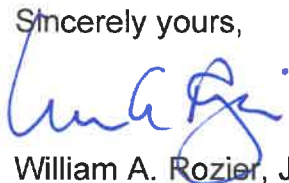
Under the provisions RTKL section § 67.902(b)(2), you are hereby notified that your request is being reviewed and the PSP will require up to an additional 30 days, i.e., until April 30, 2021, in which to respond to your request. Should your request be granted, the total for the estimated or actual fees 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,

A handwritten signature in blue ink, appearing to read 'W. A. Rozier', is written over the typed name.

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 2021-00422

# **EXHIBIT C**

Grant, Kimberly A

2021-0422  
3-31-2021

From: Dan Schwartz <danschwartz300@gmail.com>  
Sent: Wednesday, March 24, 2021 2:36 PM  
To: SP, PSP RIGHT TO KNOW  
Subject: [External] Public records request: ME2  
Attachments: email\_N\_Redacted RELEASABLE.pdf

RECEIVED  
RIGHT-TO-KNOW LAW OFFICE  
2021 MAR 24 P 1:44

**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](mailto:CWOPA_SPAM@pa.gov).

Hello.

I am a journalist working with Type Investigations and am submitting the following, two-part records request through the Pennsylvania Right-To-Know Law (65 P.S. § 67.101 et seq.).

**PART ONE:**

In October, I submitted a request for correspondences, which met a certain criteria, that went to and came from Lt. James Hennigan of the state police. The records request number is 2020-1105. I was provided two batches of emails, one of which was seemingly indiscriminately redacted, and it is my opinion that the redactions are unlawful. This batch of PDFs was given the file name "email\_N\_Redacted RELEASABLE.pdf" and it is 263 pages long. Many of the records redacted are inherently public, such as waiver requests and non-exempt emails between public officials. Others have already been released to the public. I am now asking for these records to be released to me without redactions.

In my request, I had also asked for a Vaughn Index, which seems to have been ignored. Please provide me justification for the redactions in the document "email\_N\_Redacted RELEASABLE.pdf." For your convenience, I have attached the document to this email.

I had also asked for any and all documents associated with the correspondances, namely email attachments, and this request seems to also have been ignored. Please provide me any and all associated attachments.

**PART TWO:**

Please provide any and all text messages and voice messages received by the work-issued cell phones of Lt. James Hennigan as well as Lt. Stephen J. U'Selis III about the Mariner East pipeline or the activities of state residents as they may relate to the pipeline or its construction. Please limit your search to the timeframe of February 2017 to the date this request is completed. These search terms may help: "Sunoco," "Energy Transfer," "Mariner," "suspicious activity," "protesters," "pipeline," "construction." For text messages, please also include any and all attachments.

Finally, I am requesting emails between Lt. U'Selis and Sunoco, Energy Transfer, and associates of those groups, such as Tiger Swan, Zorion, or Hillard Heintze, as well as emails that concern the Mariner East pipeline. To this end, please conduct a keyword search of Mr. U'Selis' email account for the words or phrases "Sunoco" and "Energy Transfer" and "Mariner" and within the timeframe of February 2017 to the date this request is completed. Please be sure to also provide any and all associated records, such as email attachments, as well as a Vaughn Index justifying any redactions your office may deem necessary.

Should you have any questions or feel my request could be narrowed, please feel free to call me on my cell phone anytime: 774-644-2207.

Thank you.



Dan

--  
Dan Schwartz | Journalist

cell: 774-644-2207

@COdanschwartz

[danschwartz.com](http://danschwartz.com)

National Writers Union member

RECEIVED  
RIGHT-TO-KNOW LAW OFFICE  
MARCH 24 2021

2021 MAR 24 P 1:44



**Pennsylvania State Police  
Bureau of Records & Identification  
Right-to-Know Office  
1800 Elmerton Avenue  
Harrisburg, Pennsylvania 17110**

Mailing Date: April 30, 2021

Dan Schwartz  
3838 South Road  
Williston, Vermont 05495

PSP/RTKL Request, N° 2021-0422

Dear Mr. Schwartz:

On March 24, 2021, the Pennsylvania State Police (PSP) received your request for information pursuant to the Pennsylvania Right-To-Know Law (RTKL), 65 P.S. §§ 67.101 – 67.3104, wherein you state:

I am a journalist working with Type Investigations and am submitting the following, two-part records request through the Pennsylvania Right-To-Know Law (65 P.S. § 67.101 et seq.)

**PART ONE:**

In October, I submitted a request for correspondences, which met a certain criteria, that went to and came from Lt. James Hennigan of the state police. The records request number is 2020-1105. I was provided two batches of emails, one of which was seemingly indiscriminately redacted, and it is my opinion that the redactions are unlawful. This batch of PDFs was given the name "email N Redacted RELEASEABLE.pdf" and it is 263 pages long. Many of the records redacted are inherently public, such as waiver requests and non-exempt emails between public officials. Others have already been released to the public. I am now asking for these records to be release to me without redactions.

In my request, I had also asked for a Vaughn Index, which seems to have been ignored. Please provide me justification for the redactions in the documents "email N\_Redacted RELEASEABLE.pdf." For your convenience, I have attached document to this email.

I had also asked for any and all documents associated with the correspondances, namely email attachments, and this request seems to have been ignored. Please provide me any and all associated attachments.

I am a journalist working with Type Investigations and am submitting the following, two-part records request through the Pennsylvania Right-To-Know



Law (65 P.S. § 67.101 et seq.)

PART ONE:

In October, I submitted a request for correspondences, which met a certain criteria, that went to and came from Lt. James Hennigan of the state police. The records request number is 2020-1105. I was provided two batches of emails, one of which was seemingly indiscriminately redacted, and it is my opinion that the redactions are unlawful. This batch of PDFs was given the name "email N\_Redacted RELEASEABLE.pdf" and it is 263 pages long. Many of the records redacted are inherently public, such as waiver requests and non-exempt emails between public officials. Others have already been released to the public. I am now asking for these records to be release to me without redactions.

In my request, I had also asked for a Vaughn Index, which seems to have been ignored. Please provide me justification for the redactions in the documents "email N\_Redacted RELEASEABLE.pdf." For your convenience, I have attached document to this email.

I had also asked for any and all documents associated with the correspondances, namely email attachments, and this request seems to have been ignored. Please provide me any and all associated attachments.

PART TWO:

Please provide any and all text messages and voice messages received by the work-issued cell phones of Lt. James Hennigan as well as Lt. Stephen J. U'Selis III about the Mariner East pipeline or the activities of state residents as they may related to the pipeline or its construction. Please limit your search to the timeframe of February 2017 to the date this request is completed. These search terms may help: "Sunoco," "Energy Transfer," "Marinier," "suspicious activity," "protesters," "pipeline," "construction." For test messages, please also include any and all attachments.

Finally, I am requesting emails between Lt. U'Selis and Sunoco, Energy Transfer, and associates of those groups, such as Tiger Swan, Zorion, or Hillard Heintze, as well as emails that concern the Mariner East Pipeline. To this end, please conduct a keyword search of Mr. U'Selis email account for the words or phrases "Sunoco" and "Energy Transfer" and "Mariner" and within the timeframe of February 2017 to the date this request is completed. Please be sure to also provide any and all associated records, such as email attachments, as well as a Vaughn Index justify any redactions your office may deem necessary.

A copy of your request is enclosed. By electronic response dated March 31, 2021, you were notified in accordance with RTKL section 67.902(b) that the PSP required an additional thirty days to prepare this final response.



In response to PART 1, PSP will rely on the final response you received for Right to Know Request 2020-1105 dated October 1, 2020.

In response to PART 2, "requesting emails between Lt. U'Selis and Sunoco, Energy Transfer, and associates of those groups, such as Tiger Swan, Zorion, or Hillard Heintze, as well as emails that concern the Mariner East Pipeline. To this end, please conduct a keyword search of Mr. U'Selis email account for the words or phrases "Sunoco" and "Energy Transfer" and "Mariner" and within the timeframe of February 2017 to the date this request is completed," your request is granted in part and denied in part.

Your request is granted insofar as the enclosed compact disc which contains emails between retired Lt. U'Selis and Sunoco, Energy Transfer, and associates of those groups within the timeframe of February 2017 to the date this request is completed (marked for identification as PSP/RTK000001).

However, your request is denied to the extent that these records contain personal identification information. Such information is exempt under RTKL and is therefore exempt from public disclosure. Accordingly, PSP has redacted (obliterated) this non-public information from the requested records. A supporting verification to this effect accompanies this letter.

In addition, the responsive records are exempt from public disclosure based on the following:

- as records containing "[i]nvestigative materials, notes, correspondence, . . . and reports," all of which are exempt from public disclosure under RTKL section 67.708(b)(16)(ii).

Lastly, disclosing these records to you would violate Pennsylvania's Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §§ 9101-9183, which prohibits criminal justice agencies from disseminating investigative information, except to other criminal justice agencies. 18 Pa.C.S. § 9106(c)(4). CHRIA defines "investigative information" as "[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing." Id. § 9102. Therefore, PSP is barred by CHRIA from providing you with access to the records you have requested. See *McGarvey v. Pa. State Police*, Dkt. AP 2009-0522 (Glinn) (CHRIA section 9106 protects criminal investigation report, in its entirety, from public disclosure).

In response to PART TWO: "Please provide any and all text messages and voice messages received by the work-issued cell phones of Lt. James Hennigan as well as Lt. Stephen J. U'Selis III about the Mariner East pipeline or the activities of state residents as they may related to the pipeline or its construction." the PSP determined it does not have any records in its possession, custody, or control that respond to your request. A supporting verification confirming this assertion accompanies this final response letter. Pursuant to the decision in *Jenkins vs. Pennsylvania Department of*

State, "It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them (see, e.g. section 67.506 (d)(1)." Jenkins vs. Pa. Dep't of State, Docket No. AP 2009-065 (available at, <http://openrecords.pa.gov>)."

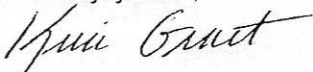
To the extent that your request seeks or may be construed to seek records involving covert law enforcement investigations, including intelligence gathering and analysis, PSP can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals.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

You have a right to appeal this denial of information in writing to the Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17126. If you choose to file an 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; and
- 3) the reason why you think the agency is incorrect in its response.

Also, the OOR has an appeal form available on the OOR website at: <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.

Sincerely yours,



Kim Grant  
Deputy Agency Open Records Officer  
Pennsylvania State Police  
Bureau of Records & Identification  
Right-to-Know Office  
1800 Elmerton Avenue  
Harrisburg, Pennsylvania 17110  
1.877.785.7771 (Main) | 717.525.5795 (Fax)

Enclosures: PSP/RTKL Request N° 2021-0422  
Granted, "public record" (CD-R) PSP/RTK000001  
Grant Verification



PENNSYLVANIA STATE POLICE  
DEPARTMENT HEADQUARTERS

VERIFICATION OF  
KIM GRANT  
DEPUTY AGENCY OPEN RECORDS OFFICER

I, Kim Grant, Deputy Agency Open Records Officer of the Pennsylvania State Police (PSP or Department), am authorized to prepare this verification on the Department's behalf in response to PSP/RTKL Request N° 2021-0422. Accordingly, on this 30th day of April, 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° 2021-0422, which is attached to this verification.
2. In response to PART 1, PSP will rely on the final response the requestor received for Right to Know Request 2020-1105 dated October 1, 2020.
3. In response to PART 2, "requesting emails between Lt. U'Selis and Sunoco, Energy Transfer, and associates of those groups, such as Tiger Swan, Zorion, or Hillard Heintze, as well as emails that concern the Mariner East Pipeline. To this end, please conduct a keyword search of Mr. U'Selis email account for the words or phrases "Sunoco" and "Energy Transfer" and "Mariner" and within the timeframe of February 2017 to the date this request is completed," I searched all Department databases to which I have access for evidence of any PSP records that may respond. My searches revealed:
  - the enclosed compact disc which contains emails between retired Lt. U'Selis and Sunoco, Energy Transfer, and associates of those groups within the timeframe of February 2017 to the date this request is completed (marked for identification as PSP/RTK000001).

4. These documents been determined to be public information and have been provided to the requestor with redactions pursuant to RTKL708(B)(6)(i). Accordingly, this information has been redacted (obliterated) from the requested public record.
5. Furthermore, the responsive records are exempt from public disclosure based on the following:
  - as records containing “[i]nvestigative materials, notes, correspondence, . . . and reports,” all of which are exempt from public disclosure under RTKL section 67.708(b)(16)(ii).
6. Lastly, disclosing these records to would violate Pennsylvania’s Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §§ 9101-9183, which prohibits criminal justice agencies from disseminating investigative information, except to other criminal justice agencies. 18 Pa.C.S. § 9106(c)(4). CHRIA defines “investigative information” as “[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing.” Id. § 9102. Therefore, PSP is barred by CHRIA from providing access to the records. See *McGarvey v. Pa. State Police*, Dkt. AP 2009-0522 (Glinn) (CHRIA section 9106 protects criminal investigation report, in its entirety, from public disclosure).
7. In response to PART TWO: “Please provide any and all text messages and voice messages received by the work-issued cell phones of Lt. James Hennigan as well as Lt. Stephen J. U’Selis III about the Mariner East pipeline or the activities of state residents as they may related to the pipeline or its construction.” the PSP determined it does not have any records in its possession, custody, or control that respond to this request.

**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.**



---

Kim Grant  
Deputy Agency Open Records Officer  
Pennsylvania State Police



**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Schwartz, Daniel, Petitioner v. Pennsylvania State                                 :  
Police, Headquarters   :  
   :

AP 2021-0916

**PROOF OF SERVICE**

I hereby certify that this 20th day of December, 2021, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

**Service**

Served: Daniel Canton Beck  
Service Method: eService  
Email: daniebeck@pa.gov  
Service Date: 12/20/2021  
Address: PA State Police  
1800 Elmerton Avenue  
Harrisburg, PA 17110  
Phone: 717--78-3-5568  
Representing: Respondent Pennsylvania State Police, Headquarters

Served: Office of Open Records  
Service Method: eService  
Service Date: 12/20/2021  
Address: 333 Market St.  
16th Floor  
Harrisburg, PA 17101-2234  
Phone: 717--42-5-5991

/s/ Paula Knudsen Burke

*(Signature of Person Serving)*

Person Serving: Knudsen Burke, Paula  
Attorney Registration No: 087607  
Law Firm: Reporters Committee for Freedom of the Press  
Address: Po Box 1328  
101 N Queen St  
Lancaster, PA 17608  
Representing: Petitioner Schwartz, Daniel

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**