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IN THE MATTER OF	:	DISTRICT ATTORNEY'S OFFICE
	:	
STEVE CAMBURN,	:	CHESTER COUNTY, PENNSYLVANIA
Requester	:	
	:	RIGHT TO KNOW APPEAL
v.	:	
	:	FINAL DETERMINATION
PHOENIXVILLE	:	
POLICE DEPARTMENT,	:	DA-RTKL-A NO. 2018-004
Respondent	:	

INTRODUCTION

On February 11, 2018, Requester filed a right-to-know request with the Respondent, pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et seq.* On February 15, 2018, the request was partially granted and partially denied by providing a redacted document. On February 16, 2018, Requester appealed to the Office of Open Records. On April 16, 2018, the Office of Open Records

transferred the appeal to the Chester County District Attorney's Office [AP 2018-0294], which was received on April 20, 2018.

For the reasons set forth in this Final Determination, the appeal is **DENIED** and the Respondent is not required to take any further action.

FACTUAL BACKGROUND

On February 11, 2018, Requester, Steve Camburn, filed a right-to-know request with the Respondent, the Phoenixville Police Department, pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, et. seq.. Requester sought the following records: "Copies of any and all citations for Jamielee Watkins from 6/1/2017 - 2/11/18."

On February 15, 2018, the request was partially granted and partially denied by providing a redacted document. The Respondent provided a copy of a Traffic Citation date January 28, 2018. However, the Respondent redacted personal identification information from the Traffic Citation.

On February 16, 2018, Requester appealed to the Office of Open Records. On April 16, 2018, the Office of Open Records transferred the appeal to the Chester County District Attorney's Office, which was received on April 20, 2018. In this appeal, the Requester requested: "The records requested were redacted. I would like the record with all the information unredacted and visible."

On April 20, 2018, this Appeals Officer for the Chester County District Attorney's Office gave Notice to the parties of the following:

On February 11, 2018, Requester filed a right-to-know request with the Respondent, pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*. On February 15, 2018, the request was partially denied by providing a redacted document. On February 16, 2018, Requester appealed to the Office of Open Records. On April 16, 2018, the Office of Open Records transferred the appeal to the Chester County District Attorney's Office [AP 2018-0294], which was received on April 20, 2018.

Unless the Requester agrees otherwise, as the appeals officer, I shall make a final determination, which shall be mailed to the Requester and the Respondent, within 30 days of April 20, 2018, which is May 20, 2018. 65 P.S. § 67.1101(b)(1). As May 20, 2018, falls on a Sunday, the 30th day becomes May 21, 2018. *See* 1 Pa.C.S.A. § 1908. If a final determination is not made within 30 days, the appeal is deemed denied by operation of law. 65 P.S. § 67.1101(b)(2). Prior to issuing a final determination, a hearing may be conducted. However, a hearing is generally not needed to make a final determination. The final determination shall be a final appealable order, and shall include a written explanation of the reason for the decision. 65 P.S. § 67.1101(b)(3).

The Respondent should submit its response, if any, on or before May 4, 2018.

The Supreme Court of Pennsylvania has held that a Respondent is permitted to assert exemptions on appeal, even if the agency did not assert them when the request was originally denied. Levy v. Senate of Pennsylvania, 619 Pa. 586, 65 A.3d 361 (2013). Merely citing exceptions to the required disclosure of public records or conclusory statements are not sufficient to justify the exemption of public records. Office of the Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Cmwlth. 2013).

The Requester Must Notify Third Parties: If records affect a legal or security interest of any person; contain confidential, proprietary, or trademarked records, of a person or business entity; the agency must notify such parties of this appeal immediately and provide proof of that notice. Such notice must advise that the interested person may request to participate in this appeal. *See* 65 P.S. § 67.1101(c).

The Requester should submit its response, if any, on or before May 11, 2018.

The Commonwealth Court of Pennsylvania has held that, pursuant to 65 P.S. § 67.1101(a), the appeal shall state the grounds upon which the Requester asserts that the record is a public record and shall address any grounds stated by the agency for denying the request. When a Requester fails to state the records sought are public, or fails to address an agency's grounds for denial, the appeal may be dismissed. Padgett v. Pennsylvania State Police, 73 A.3d 644 (Pa. Cmwlth. 2013); Saunders v. Department of Correction, 48 A. 3d 540 (Pa. Cmwlth. 2012); Department of Corrections v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011).

Any statements of fact must be supported by an Affidavit made under penalty of perjury by a person with actual knowledge. However, legal arguments and citation to authority do not require Affidavits. All parties must be served with a copy of any responses submitted to this appeal officer.

April 20, 2018 Letter of Chief Deputy District Attorney Nicholas J. Casenta, Jr.

Neither party submitted an additional response. Consequently, this decision is based on the initial request, response, and appeal filings with the Office of Open Records. As the requested documents were provided the only issue to be resolved is whether or not the redactions were appropriate.

LEGAL ANALYSIS

The Chester County District Attorney's Office is authorized to hear appeals relating to access to criminal investigative records in the possession of a local agency located within Chester County. 65 P.S. § 67.503(d)(2) ("The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.").

The Phoenixville Police Department ("Respondent") is a local agency subject to the RTKL that is required to disclose public documents. 65 P.S. § 67.302. Records of a local agency are presumed "public" unless the record: (1) is exempt under 65 P.S. § 67.708(b); (2) is protected by privilege; or (3) is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. § 67.305.

The Respondent bears the burden of proving, by a preponderance of the evidence, that the document requested is exempt from public access. 65 P.S. § 67.708(a)(1). A preponderance of the evidence standard is the lowest evidentiary standard. The preponderance of evidence standard is defined as the greater weight of the evidence, *i.e.*, to tip a scale slightly is the criteria or requirement for

preponderance of the evidence. Commonwealth v. Brown, 567 Pa. 272, 284, 786 A.2d 961, 968 (2001), *cert. denied*, 537 U.S. 1187, 123 S.Ct. 1351, 154 L.Ed.2d 1018 (2003). “A ‘preponderance of the evidence’ is defined as ‘the greater weight of the evidence ... evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other....’ Black’s Law Dictionary 1301 (9th ed. 2009).” Mitchell v. Office of Open Records, 997 A.2d 1262, 1264 n.3 (Pa. Cmwlth. 2010); *See also* Commonwealth v. Williams, 532 Pa. 265, 284-286, 615 A.2d 716, 726 (1992) (preponderance of the evidence in essence is proof that something is more likely than not).

The RTKL provides that records of an agency relating to or resulting in a criminal investigation, such as investigative materials, notes, correspondence, videos, reports, and records, may be withheld as exempt. 65 P.S. § 67.708(b), titled, “Exceptions for public records”, provides in part as follows:

(b) Exceptions. -- Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

...

(16) A record of an agency relating to or resulting in a criminal investigation, including:

(i) Complaints of potential criminal conduct other than a private criminal complaint.

(ii) Investigative materials, notes, correspondence, videos and reports.

(iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.

(iv) A record that includes information made confidential by law or court order.

(v) Victim information, including any information that would jeopardize the safety of the victim.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

(B) Deprive a person of the right to a fair trial or an impartial adjudication.

(C) Impair the ability to locate a defendant or codefendant.

(D) Hinder an agency's ability to secure an arrest, prosecution or conviction.

(E) Endanger the life or physical safety of an individual.

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. § 9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic

report except as provided under 75 Pa.C.S. § 3754(b)(relating to accident prevention investigations).

65 P.S. § 67.708(b).

18 Pa.C.S.A. § 9102 (relating to definitions) states in part: “**Police blotter.**’ A chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.”

18 Pa.C.S.A. § 9102 (relating to definitions) states in part: “**Investigative information.**’ Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.”

In Pennsylvania State Police v. Office of Open Records, 5 A.3d 473 (Pa. Cmwlth. 2010), the *en banc* Commonwealth Court found an incident report exempt from disclosure pursuant to 65 P.S. § 67.708(b)(16). The Court held that the incident report was not a public record because the incident report was not the equivalent of a police blotter under the RTKL and the Criminal History Records Information Act (“CHRIA”).

In this appeal, the request was partially granted and partially denied by providing a redacted document. The Respondent provided a copy of a Traffic Citation date January 28, 2018. However, the Respondent redacted personal identification information from the Traffic Citation. In this appeal, the Requester

requested: “The records requested were redacted. I would like the record with all the information unredacted and visable.”

65 P.S. § 67.706, titled, “Redaction”, provides:

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. [65 P.S. § 67.901 *et seq.*]

65 P.S. § 67.706. The redaction of personal identification information from the Traffic Citation was proper and appropriate.

65 P.S. § 67.708(b), titled, “Exceptions for public records”, also provides in part as follows:

(b) Exceptions. -- Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

...

(6)(i) The following personal identification information:

(A) A record containing all or part of a person's Social Security number, driver's license number, personal

financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number.

65 P.S. § 67.708(b).

65 P.S. § 67.302. Records of a local agency are presumed “public” unless the record: (1) is exempt under 65 P.S. § 67.708(b); (2) is protected by privilege; or (3) is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. § 67.305. “Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.306.

Also under federal law, the Drivers’ Privacy Protection Act (DPPA), 18 U.S.C. §§ 2721-2725, prohibits release of the requested information. DDPA protects the release of personal information obtained from any motor vehicle record from disclosure. The DPPA defines “personal information” as any information “that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address, telephone number and medical or disability information ...” 18 U.S.C. § 2725(3).

CONCLUSION

For the foregoing reasons, the appeal is **DENIED**, and the Respondent is not required to take any further action. This Final Determination is binding on all

parties. Within thirty (30) days of the mailing date of this Final Determination, any party may petition for review, to the Chester County Court of Common Pleas, pursuant to 65 P.S. § 67.1302(a). All parties must be served with a copy of the petition. The Chester County District Attorney's Office shall also be served with a copy of the petition, pursuant to 65 P.S. § 67.1303(a), for the purpose of transmitting the record to the reviewing court. *See* East Stroudsburg University Foundation v. Office of Open Records, 995 A.2d 496, 507 (Pa. Cmwlth. 2010).

FINAL DETERMINATION ISSUED AND MAILED ON: May 17, 2018

APPEALS OFFICER:

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INDEX OF APPENDICES

APPENDIX “A” Appeal Documents

APPENDIX “B” 04/20/2018 Letter of CDDA Nicholas J. Casenta, Jr., Esquire
Appeals Officer for DA’s Office of Chester County