NORTHAMPTON COUNTY, PENNSYLVANIA
DISTRICT ATTORNEY’S OFFICE

FINAL DETERMINATION

DIANA CANADY,
Requester, : No. 5-ORA-2021

v.

CITY OF BETHLEHEM POLICE
DEPARTMENT,
Respondent.

BACKGROUND

On September 7, 2021, Diana Canady ("Requester") submitted a written request to the City of Bethlehem Police Department ("Respondent") pursuant to the Right to Know Law ("RTKL"), seeking the following: “I filed a report on October 17, 2019 with an Officer S. Conley, however, I do not have a report number. This report was the first report of the ones relating to 2021. A large white van, (like a painter’s van), darted immediately behind me from the Sunoco gas station, I was suspicious, so I turned into Elias . . . and it turned in with me at 6:00AM in the morning.” Exhibit “A.” The Requester also asked for four specific incident reports from 2016 and 2021. Id.

With respect to the 2019 incident report, the Respondent received the request on or about September 13, 2021, and notified the Requester that no responsive records could be found based upon the information given. See Exhibit “B” at 3. With respect to other requested incident reports, on October 5, 2021, the Respondent indicated that it was required to redact certain personal information, information relating to criminal investigations, and a record identifying a juvenile under the RTKL. Id. at 1. Further, the Respondent indicated that it was not permitted to disclose investigative information under the Criminal History Record Information Act ("CHRIA"), 18 Pa.C.S.A. § 9101, et seq. Id.
On October 22, 2021, the Requester appealed to Northampton County District Attorney’s Office, challenging the denial and stated grounds for disclosure. See Exhibit “C.” Further, the Requester is challenging the redaction for the records provided. Id. at 2. The Requester also contends that she is entitled to the non-redacted police incident reports because she is the person who initiated them. Id. This Officer received the appeal on October 25, 2021. Id. at 1.

LEGAL ANALYSIS

Under Section 102, a “public record” is defined as:

A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under 708; (2) is not exempt from being disclosed under any other Federal or State laws or regulation or judicial order or decree; or (3) is not protected by a privilege.

65 P.S. § 67.102. The burden of proving that the record is exempt rests with the public body by a preponderance of the evidence. Preponderance of the evidence requires proof “by a greater weight of the evidence.” Commonwealth v. Williams, 732 A.2d 1167, 1187 (Pa. 1999). In Commonwealth v. McJett, 811 A.2d 104, 110 (Pa. Commw. 2002), the Commonwealth Court explained that “preponderance of the evidence is tantamount to a ‘more likely than not’ standard.”

The Respondent contends that the requested records that could be identified are criminal investigative reports that are exempt from disclosure under 65 P.S. § 67.708(b)(16)(ii). In that Section, records of an agency relating to or resulting in a criminal investigation, “including . . . [i]nvestigative materials, notes, correspondence, videos and reports,” are exempt from disclosure. 65 P.S. § 67.708(b)(16)(ii). This Officer finds that the Respondent has proven that the requested records relate to criminal investigations and are exempt.

In Pennsylvania State Police v. Office of Open Records, 5 A.3d 473, 479 (Pa. Commw. 2010), the Commonwealth Court held that incident reports which contain investigative materials are exempt from the definition of a public record and are not subject to disclosure or redaction.
Further, Section 708 exempts release of “[a] record of an agency relating to or resulting in a criminal investigation.” 65 P.S. § 67.708(b)(16). The records at issue is a police incident report related to criminal investigations, as is admitted by the Requester. See Exhibits “A”; Exhibit “C.” Accordingly, it is clear that the requested material falls within the definition of items that are exempt from disclosure.¹

Additionally, CHRIA prohibits the disclosure of the information requested. This information is “investigative information” which is defined by CHRIA 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 and may include modus operandi information.” 18 Pa.C.S.A. § 9102. Importantly, 18 Pa.C.S.A. § 9106(c)(4) specifies that: “Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.” The Requester is not a “criminal justice agency” as defined by 18 Pa.C.S.A. § 9102. Therefore, the requested information cannot be disseminated to the Requester under CHRIA.

Finally, in Barros v. Martin, 92 A.3d 1243 (Pa. Commw. 2014), a prisoner who requested documents relating to the homicide investigation for which he was incarcerated was denied access because the documents were exempt under both the RTKL and CHRIA. The Commonwealth Court cited to Sullivan v. City of Pittsburgh, Dept. of Public Safety, 561 A.2d 863, 864-65 (Pa.

¹ In addition, information was also properly redacted involving the juvenile. See Exhibit “B.” The Juvenile Records Act provides that “records and files [concerning a child] shall not be open to public inspection or their contents disclosed to the public except as provided.” 42 Pa.C.S.A. § 6308(a).
Commw. 1989), and found that criminal investigative records remain exempt from disclosure even if the investigation is completed. *Barros*, 92 A.3d at 1250. The court held: “Thus, if a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii).” *Id.* (emphasis added) (citing *Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 697 (Pa. Commw. 2013); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1264 (Pa. Commw. 2010)). Here, the requested police incident reports at issue are, on their face, related to police investigations and are therefore exempt from disclosure.

Finally, with respect to the October 17, 2019 incident, the Respondent indicated that it was unable to find the record requested based upon the information provided, and that the Requester was unable to provide them with additional information. *See* Exhibit “B” at 3. The Requester submitted an Attestation made under penalty of perjury with respect to the nonexistence of any record that was responsive to the request. *Id.* “A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703. This Officer finds that the Respondent has met its burden of proving that it was unable to find responsive records and that the request was properly denied.
CONCLUSION

For the foregoing reasons, and because the Respondent has met its burden of proof by the preponderance in showing that the requested records are exempt from disclosure and/or do not exist, the Requester’s appeal is denied. This Final Determination is binding on the parties. Within thirty (30) days of the mailing of this determination, any party may appeal to the Northampton County Court of Common Pleas under 65 P.S. §67.1302(a). All parties must be served with the notice of the appeal.

KATHARINE R. KURNAS, ESQUIRE
Appeals Officer for Northampton County District Attorney’s Office

Date: November 22, 2021
RIGHT-TO-KNOW REQUEST FORM

Date Requested: 09-07-2021
Request Submitted By (check): E-mail □ U.S. Mail □ Fax □ In-Person ☑
Name of Requester: DIANA CANDY
Requester's Address: 2440 HENDERSON PLACE
City/State/County/ZIP Code: BETHLEHEM, PA 18017 - NORTHAMPTON COUNTY
Telephone (optional): 908-307-0976

*Provide as much specific detail as possible so the agency can identify the information sought. When possible, describe the range of documents, timeline and, if applicable, the event location if different from requester's address. For police reports, identify the county where the incident occurred. For law enforcement audio and/or video recordings, include the specific date and time of event, requester's relationship to event and, if inside a residence, the identity of all persons present, if known.

I filed a report on October 17, 2019 with an officer S. Conley, however, I do not have a report number. This was the first report of the ones relating to 2021. A large white van (like a painter's van), elected immediately behind me from the Econo gas station. I was surprised so I turned into Union Ave. and it turned in with me at 6:00 am in the morning.

Do you want an emailed response? Email address: NO
Do you want copies? (check) YES ☑ or NO □
Do you want to inspect the records? (check) YES ☑ or NO □
Do you want certified copies of records? (check) YES ☑ or NO □

For Internal use
Right to Know Officer: Ted J. Miller, Solicitor's Office, 10 East Church Street, Bethlehem, PA 18018.
Tel: (610) 865-7011; Fax: (610) 865-7205; righttoknowrequest@bethlehem-pa.gov

Date received by the agency: 9/7/21
Agency five (5)-day response due:

**Public bodies may fill anonymous verbal or written requests. If the requester wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)

(Revised 6/22/2018)

Exhibit "A"
October 5, 2021

Via Email: dlcanday01@aol.com
Ms. Diana Canady
2440 Henderson Place
Bethlehem, PA 18017

RE: Pennsylvania Right to Know Law ("RTKL") Request

Dear Ms. Canady:

As you know, your September 7, 2021 request under the Pennsylvania Right to Know Law was received by me on September 13. You seek Police Incident Reports 2016-31593, 2016-34340, an unspecified report from 2019, 2021-30165, and 2021-37725. On September 20, I advised you of the City’s need to invoke its right to a time extension of up to an additional 30 calendar days pursuant to 65 PS § 67.902. Thank you for your patience.

On September 20, I additionally advised you that requested report 2021-37725 was actually a supplement to 2021-30165 and would be included with the release of 2021-30165. I also advised you that no responsive report could be found for your request for a 2019 incident report. Since none could be found, no report could be produced unless you could offer additional details to identify with particularity the desired report. On the known record, no 2019 corresponding report can be found.

For the remaining reports, i.e., police Incident Reports 2016-31593, 2016-34340, and 2021-30165, your request is granted, but you will observe that substantial information has been covered or redacted pursuant to 65 P.S. § 67.708(b)(6)(i)(A), (16)(ii), and (30) of the RTKL:

(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 email addresses; employee number or other confidential personal identification number.

(16) A record of an agency relating to or resulting in a criminal investigation, including:
(ii) Investigative materials, notes, correspondence, videos and reports.

(30) A record identifying the name, home address or date of birth of a child 17 years of age or younger.

Nondisclosure is mandatory under the Criminal History Record Information Act ("CHRIA"), 18 Pa. C.S. § 9101 et seq. CHRIA states investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties . . . See Opitz v. Bowman 42 Pa D.&C. 4th 405, 407 (CCP-Pike 1999) ("CHRIA not only establishes and amplifies the government’s privilege against disclosure of investigatory information, it also mandates its assertion"). In this respect, CHRIA defines investigative information as “[i]nformation assembled as a result of the performance of an inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.” 18 Pa. C.S.A. § 9102. You seek information falling into the category of “investigative information” which is not accessible under CHRIA.

The City believes it has addressed your request; however, if you wish to appeal this decision, you must file a written appeal, within fifteen (15) business days of the date of this denial. The written appeal should be

Exhibit "B"
sent to District Attorney Terence Houck, District Attorney's Office, 669 Washington Street, Easton, PA 18042. In your written appeal you must:

- Include a copy of the RTK request
- Include a copy of the Agency's response
- State the grounds on which the you assert the item is a public record; and
- Address all grounds stated in this notice of denial.

If you have any questions, please feel free to contact my office at (610) 865-7011.

Very truly yours,

Tad J. Miller
Open Records Officer
Date: October 4, 2021
Agency: City of Bethlehem, Northampton County, Pennsylvania
Requester: Ms. Diana Canady
Records Requested: Requested police Incident Reports
Date of RTKL Request: September 7, 2021 (Received by AORO: September 13, 2021)

ATTESTATION

I, Captain Timothy Cooper, am the Acting Records Custodian for the Bethlehem Police Department. I make the following statements under penalty of a third-degree misdemeanor conviction as more fully set forth in 18 Pa.C.S. § 4904(b) (relating to unsworn falsification to authorities). After reasonable investigation of the City of Bethlehem’s Police Department files and to the best of my knowledge, information and belief, the following account is accurate concerning 2016-31593, 2016-34340, a 2019 report, 2021-30165, and 2021-37725:

1. A September 7, 2021 Right to Know records request was received September 13, 2021 by the Open Records Officer.
2. The City’s Records Bureau conducted a search for five requested reports.
3. Reports 2016-31593, 2016-34340, and 2021-30165 were located.
4. The requested 2021-37725 was found to be a supplemental report that was merged to become part of 2021-30165.
5. The Records Bureau advised that it conducted a search for the requested unspecified 2019 Incident Report using the requester’s name, incident type, and approximate location, among other elements, but without success. I also was advised that the requester was again asked whether she found the Incident Report number or could offer additional search details, but she could not.

My contact information, including telephone number, is: Captain Timothy Cooper, City of Bethlehem Police Department, City of Bethlehem, 10 East Church Street, Bethlehem, PA 18018-6025; 610-865-7187

By: Captain Timothy Cooper
City of Bethlehem Police Department
October 22, 2021

District Attorney Terence Houck
District Attorney's Office
669 Washington Street
Easton, PA 18042

Dear District Attorney Houck:

This is an appeal regarding the denial of my Right to Know requests submitted to the City of Bethlehem Police Department on September 7, 2021.

I requested all the reports I previously filed with the police department, including the initial report of when I observed a white cargo van following me on October 17, 2019 at 6:00AM in the morning. On a separate day, I noticed the same cargo van with the same driver visiting my neighbor. My life has been a living hell, because these people have been stalking me non-stop.

I visited the police department once again on July 17, 2021, after noticing I was followed to and from dropping off my son at Huntington Learning Center in Bethlehem on Nazareth Pike. After the July 17 incident, I kept visiting the police department for them to make contact with my neighbor to find out why they are persistently following me.

Eventually, two police officers made it to my home on September 1, 2021, and so I explained what was occurring. One of the officers indirectly addressed me as being neurotic, and to me, he was not being objective. He then visited the neighbor, came out, and in front of the neighbor’s door, said, “Ma’am, they’re a young couple,” and either he said that, they’re not following me, or no one is following me. I can’t remember his exact words. However, it’s all captured on video.

I went into the police department the next day, September 2 to report this officer, because I was very concerned that his demeanor may have put me further in danger. And I would say it has, because I am still being followed relentlessly. I do have some of these occurrences on my dash cam, but I am not comfortable dealing with the Bethlehem police department after my encounter with this particular officer, and with Captain Ben Hackett, #341, who contacted me the same day, (Sept. 2), responding to my complaint.

Exhibit "C"
We had a decent conversation, (of which he recorded), despite the fact that he asked me if I ever had a history of mental illness, and if I was familiar with a specific condition. He said the name of the condition, which was one I had never heard, and was not familiar, and based on the description, I really didn’t think it applied to my situation. He also ended our conversation stating that I should talk with a psychiatrist, and give them a history of what is happening with the stalking, to see what they have to say about it. He also said to make contact if I had anything on my dash cam. I am very much in danger, but I do not think that the police are taking my situation seriously, and because of this, I have not reached out to them.

With these unpleasant encounters, I decided to complete the Right to Know Forms; requesting all reports filed with the police department. Enclosed are copies of when a grown man was stalking my daughter, (who was a minor at the time), my reported incident on July 17, and a follow-up report. The department is not able to find my initial report filed with Officer S. Conley on October 17, 2019. This is of extreme concern to me, and even more why I would like to see the contents of my reports.

I do not think that the report 2021-00030165, and the supplement of the aforementioned report - 2021-037725 support the reasons provided for redacting. I shouldn’t even state redacting, because I am not able to view any of the comments of these reports. The reports I initiated do not include anyone’s social security number, personal, or financial information. The fact that I am not taken seriously, (they can’t even find my initial report), and I feel as if I was ridiculed with a serious issue, after reaching out to the department for some assistance from the individuals who have taken an oath to protect and serve. In addition, Captain Hackett is the last person I have been in contact with from the department, since September 2. So, I am not sure what investigation is being conducted.

I would definitely like to obtain for my records, 2021-00030165, and the follow-up to that report, 2021-037725, because, once again, I do not see where they meet the reasons outlined for redaction of the RTKL from Tad Miller’s letter, enclosed. If I am the individual who initiated the reports, I am still trying to understand why all the comments, and not even some are darkened out.

Any assistance you can offer with this matter will be greatly appreciated.

Sincerely,

Diana Canady
908-307-0976

Enclosures