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IN THE MATTER OF	:	DISTRICT ATTORNEY'S OFFICE
	:	
LYNN JUSINSKI,	:	CHESTER COUNTY, PENNSYLVANIA
Requester	:	
	:	RIGHT TO KNOW LAW - APPEAL
v.	:	
	:	FINAL DETERMINATION
PHOENIXVILLE	:	
POLICE DEPARTMENT,	:	DA-RTKL-A NO. 2012-001
Respondent	:	

**INTRODUCTION**

On February 22, 2012, Lynn Jusinski ("Requester") filed a right-to-know request with the Phoenixville Police Department ("Respondent"), pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*, seeking thirty-eight (38) "police dispatch / complaint forms". The Respondent denied the request *citing* 65 P.S. § 67.708(b)(16). The Requester filed a timely appeal with the Chester County District Attorney's Office, pursuant to 65 P.S. § 67.503(d) and 65 P.S. § 67.1101(a).<sup>1</sup>

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

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<sup>1</sup> The timeliness of this appeal will be discussed in the Factual Background section of this Final Determination.

## FACTUAL BACKGROUND

On February 22, 2012, Lynn Jusinski (“Requester”) submitted a right-to-know request to the Phoenixville Police Department (“Respondent”) seeking the “following police complaint / dispatch forms: 12-01670; 12-01697; 12-01703; 12-01714; 12-01722; 12-01728; 12-01747; 12-01754; 12-01766; 12-01770; 12-01781; 12-01791; 12-01817; 12-01822; 12-01824; 12-01828; 12-01832; 12-01833; 12-01838; 12-01851; 12-01859; 12-01873; 12-01875; 12-01884; 12-01897; 12-01901; 12-01905; 12-01908; 12-01910; 12-01917; 12-01919; 12-01935; 12-01952; 12-01956; 12-01969; 12-01939; 12-01984; 12-01991.”

On February 23, 2012, the Respondent the denied the request *citing* 65 P.S. § 67.708(b)(16). The Respondent stated the following:

February 23, 2012

Ms. Lynn Jusinski  
The Phoenixville Patch

Dear Ms. Jusinski,

All of the documents / reports that you requested are records relating to or resulting in a criminal investigation by the Phoenixville Police Department. As such they are exempt from otherwise “Public Records” as per Section 708(b)(16) of the Act and your request is denied.

Please feel free to review the Department’s “Reserve Report” which is akin to a “Police Blotter” as defined by 18 Pa.C.S. 9102.

For future reference, things like assaults, hit & run accident investigations, drug investigations, car break-ins, burglaries, sexual assaults or other official police investigations generate reports that are “relating to or resulting in a criminal investigation” which are exempt.

By reviewing the Reserve Report (Police Blotter), you will get a good idea if an incident is likely to generate a criminal investigative report which is exempt. By recognizing the exempt nature of the report, you may save yourself and the police department time from asking for and reviewing exempt reports.

Regards,

Wm. J. Mossman  
Chief of Police

February 23, 2012 Letter of Chief of Police William J. Mossman.

The Requester filed an appeal to the Pennsylvania Office of Open Records. The exact date of this appeal is not clear. However, it occurred between February 23, 2012, when the request was denied, and March 9, 2012, when the Pennsylvania Office of Open Records dismissed the appeal for lack of jurisdiction. The Pennsylvania Office of Open Records stated:

The Office of Open Records ("OOR") received the above-captioned appeal under the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, ("RTKL"). Upon review of the file, the appeal is dismissed for the following reasons:

Lynn Jusinski and *The Phoenixville Patch* (collectively the "Requester") directed its RTKL request to the Phoenixville Police Department ("Department"). In response, the Department cited an exemption for criminal investigative records (65 P.S. § 67.708(b)(16)). Pursuant to 65 P.S. § 67.503(d)(2), only the Chester County District Attorney's Office may "determine if the record requested is a criminal investigative record" for a local agency within Chester County. Accordingly, the OOR lacks jurisdiction to assess the merits of this appeal. Consequently, the appeal is *dismissed for lack of jurisdiction*. This Final Determination is without prejudice to Requester's ability to file an appeal of her request for records with the Chester County District Attorney's Office within the timeframe provided for within 65 P.S. § 67.1101(a)(1).

For the foregoing reasons, the appeal is dismissed for lack of jurisdiction and the agency 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 appeal or petition for review to the Chester County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303. This Final Determination shall be placed on the website at <http://openrecords.state.pa.us>.

Lynn Jusinski and Phoenixville Patch v. Phoenixville Police Department, OOR Dkt. AP 2012-0333 (emphasis in original).

On March 14, 2012, the Requester filed an appeal to the Chester County District Attorney's Office. Under the RTKL, an appeal must be filed within 15 days of a denied request. 65 P.S. § 67.1101(a)(1). On February 23, 2012, the request was denied, and a timely appeal had to be filed to the Chester County District Attorney's Office by March 9, 2012. Because this appeal was not filed with the proper office within fifteen days that the request was denied, it may be considered untimely. However, the RTKL does not address appeals filed with the wrong office. The rules governing appellate procedure allow an appeal that is erroneously filed to be transferred to the proper tribunal, and treated as timely. Pa.R.A.P. 751; 42 Pa.C.S.A. § 5103. The RTKL also states that: "In the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on the procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute." 65 P.S. § 67.1102(b)(3). Moreover, the RTKL states that: "If an agency's response is a denial ..., the denial shall be issued in writing and shall included: ... (5) The procedure to appeal the denial of access under this act."

65 P.S. § 67.903(5). The written notice of the denial in this case did not include the required procedure to appeal the denial. Therefore, this appeal will be treated as timely; “on the basis of justice, fairness and the expeditious resolution of the dispute.”

### 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 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 denied the request *citing* 65 P.S. § 67.708(b)(16).

The Requester asserts that the documents requested (“police complaint / dispatch forms”) are the equivalent of a police blotter. The Respondent asserts that the documents requested are criminal investigative records. Pursuant to 65 P.S. § 67.708(a)(1), the Respondent bears the burden of proving, by a preponderance of the evidence, that the documents requested are exempt from public access. A preponderance of the evidence, means is, by a greater weight of the evidence. Commonwealth v. Brown, 567 Pa. 272, 284, 786 A.2d 961, 968 (2001).

In this case, there is sufficient evidence to support the determination that the documents requested are criminal investigative records that are exempt from disclosure. 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) also 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 pursuant to 65 P.S. § 67.708(b)(16). The Commonwealth Court stated in part:

Before this Court, PSP argues that the OOR erred in holding that the Incident Report was a public record because police incident reports are not equivalent to police blotters under the RTKL and

the Criminal History Records Information Act (CHRIA).<sup>FN5</sup> The PSP asserts that the Incident Report is wholly exempt from disclosure because it is a criminal investigative record, which contains investigative materials and victim information. We agree.

We begin by examining the statutory language of the RTKL. Section 301(a) of the RTKL directs that “a Commonwealth agency shall provide public records in accordance with this act.” 65 P.S. § 67.301(a). Section 305 of the RTKL provides, in pertinent part, that “a record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record,” unless “the record is exempt under Section 708.” 65 P.S. § 67.305. Similarly, Section 102 of the RTKL defines a “public record,” in part, as “a record ... of a Commonwealth or local agency that: (1) is not exempt under Section 708.” 65 P.S. § 67.102. Section 708(b)(16) states that records “exempt from access by a requester under” the RTKL include:

(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)(16) (emphasis added).

This Court recently interpreted Section 708(b)(16) in Mitchell v. Office of Open Records, 997 A.2d 1262 (Pa. Cmwlth. 2010). In Mitchell, the requester (Mitchell), an inmate, filed a RTKL "request with the PSP seeking copies of any documents showing the time the officers arrived and departed from Mitchell's residence ... in serving a search warrant." Id. at 1263. The PSP responded that it had found only one record relating to this request, and that this record was exempt from disclosure pursuant to Section 708(b)(16) of the RTKL and Section 9106(c)(4) of the CHRIA. Mitchell, 997 A.2d at 1263. Mitchell appealed to the OOR. In the course of the appeals process, the PSP described the document relevant to Mitchell's request as "a single-page Automated Incident Memo System (AIMS) query response," and explained that: (1) the AIMS record "manifestly pertained to a criminal investigation" and was therefore exempt under Section 708(b)(16)(ii); (2) the content of the AIMS record would "obviously reveal the institution, progress or result of a criminal investigation" and was therefore exempt from disclosure under Section 708(b)(16)(vi)(A); and (3) that the AIMS record constituted investigative information exempt from disclosure under the CHRIA because it was assembled as a result of

an inquiry into a criminal incident. *Id.* at 1263-64. The OOR determined that the AIMS record was exempt under Section 708(b)(16)(vi)(A) and denied Mitchell's appeal. *Id.* at 1264. Before this Court, Mitchell argued that the AIMS record was not exempt from disclosure under the RTKL or the CHRIA. This Court determined that the OOR properly relied on the affidavits submitted by the PSP in determining that the AIMS record was exempt from disclosure under Section 708(b)(16). *Id.* at 1265. Similar to this case, Mitchell also argued that the AIMS record was, in fact, an incident report equivalent to a police blotter and, therefore, a public record under the CHRIA. *Id.* at 1265. This Court noted that the "CHRIA concerns the collection, maintenance, dissemination and receipt of criminal history record information," and that Section 9102 of the CHRIA excludes investigative information from the definition of criminal history record information. *Id.* (citing 18 Pa.C.S. § 9102). Referring to Section 9102, this Court stated that "investigative information is defined as '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.'" *Id.* (quoting 18 Pa.C.S. § 9102). Applying this definition to the AIMS record, this Court determined that the AIMS record contained information assembled as part of a criminal investigation and, therefore, constituted investigative information and was not a public record pursuant to the CHRIA.

After reviewing the Incident Report in camera, this Court is convinced that it constitutes a criminal investigative report and is, therefore, not a public record per Section 708(b)(16)(ii). The Incident Report, itself, contains notes of interviews with the alleged victims/perpetrators, as well as another witness. The form on which the Incident Report is written contains checkboxes regarding whether certain investigative tasks have been carried out or whether certain information was discovered.<sup>FN6</sup> All of these boxes were checked in the Incident Report, either "yes" or "no." The above information was assembled as a result of an investigation into a criminal incident or an allegation of criminal wrongdoing. Therefore, the Incident Report is a report of a criminal investigation and contains investigative information, per Mitchell and Section 9102. Because the Incident Report is a criminal investigative report, it falls within the exemption at Section 708(b)(16)(ii) and is not a public record; therefore, it is not subject to disclosure.

The PSP, along with the Pennsylvania Coalition Against Domestic Violence and the Office of Victim Advocate (OVA), also argues that the Incident Report is exempt from disclosure pursuant to Section 708(b)(16)(v) because it contains victim information. After reviewing the Incident Report in camera, this Court notes that the Incident Report contains the victims' names and addresses. Section 708(b)(16)(v) exempts "victim information, *including* any information that would jeopardize the safety of the victim." 65 P.S. § 67.708(b)(16)(v) (emphasis added). The OOR contends that "the exemption for 'victim' information under the RTKL at 65 P.S. § 67.708(b)(16)(v) does not expressly include the victim's name. This provision simply states that 'victim information' includes 'any information that would jeopardize the safety of the victim.'" (OOR's Br. at 24 (*quoting* 65 P.S. § 67.708(b)(16)(v)).) However, we do not agree that the phrase "*including* any information that would jeopardize the safety of the victim," 65 P.S. § 67.708(b)(16)(v) (emphasis added), limits the meaning of the term "victim information"; rather, it expands the meaning of that term. As the OVA astutely states, the final phrase of this provision:

does not mean that for any material to be considered victim information one must always show that the release of the information jeopardizes the safety of the victim.... Instead, it is referencing a type of information that while on its face may not appear to be victim information it could be deemed victim information if it jeopardizes the safety of the victim....

(OVA's Br. at 14.) A victim's name is "victim information," *i.e.* information about the victim. Moreover, as the OVA points out, victims of crime do not choose to be victims of crime. (OVA's Br. at 15.) The unwanted disclosure of a victim's name may prove to be a second victimization, whether due to retaliation, the fear of retaliation, stigma, embarrassment, or other reasons. We note that, under the RTKL, it is not required that victims be notified that their information is going to be disclosed in advance of that disclosure; thus, it could be difficult or impossible to know in advance whether such disclosure would jeopardize the victim's safety. It appears that the Legislature balanced the need for public disclosure of victim information against the harm of such disclosure to victims, and exempted this information. For these reasons, we agree that the victims' names and addresses in this case are victim information and, thus, exempt from the definition of a public record pursuant to Section 708(b)(16)(v).

The OOR argues that its decision was proper because the RTKL Liaison Verification submitted by the PSP contained only broad, conclusory language stating that the Incident Report was not a police blotter and contained investigative information. Therefore, the OOR contends that its decision should not be reversed. The RTKL Liaison Verification stated that:

1. The Pennsylvania State Police does not create, maintain, or disseminate a “police blotter,” [as defined by 18 Pa.C.S. § 9102.]
2. In accordance with Department regulations, the Pennsylvania State Police utilizes one of several forms to record and retain confidential criminal investigation information, one of which is the Pennsylvania State Police Incident Report.
  - a. A Pennsylvania Sate [sic] Police Incident Report is created by the investigating officer and is used “to report **investigative actions** resulting from alleged criminal offenses or other police matters.” Pennsylvania State Police Operations Manual, 7-2, Chapter 7 (emphasis added).
  - b. An Incident Report does not provide a chronological listing of arrests, and therefore, is not a “police blotter” under 18 Pa.C.S. § 9102.

(RTKL Liaison Verification For PSP/RTKL Request No. 2009-0076, R.R. at 14a.) We need not determine whether the RTKL Liaison Verification alone would satisfy the PSP’s burden of proof here as we have concluded that the Incident Report falls within the criminal investigative record exemption at Section 708(b)(16)(ii). As noted above, this Court enjoys the broadest scope of review when considering final determinations of the OOR and may substitute our findings of fact for those of the OOR. Bowling, 990 A.2d at 818, 820. In addition, we may supplement the record by “an *in camera* review of the documents at issue.” Id. at 820. Here, our determination that the Incident Report falls within the exemption at Section 708(b)(16)(ii) is based on our *in camera* review of the Incident Report. Therefore, we reject the OOR’s argument on this point.

Requester argues that the OOR correctly held that the Incident Report was a police blotter, pursuant to Mines and Tapco, and is therefore not covered by the exemption at Section 708(b)(16), which explicitly excludes from the exemption police blotters as defined by Section 9102 of the CHRIA. In Mines, which considered an inmate's request for a broad array of police investigative information under the former Right-to-Know Law (Prior Law),<sup>FN7</sup> this Court stated that "A 'police blotter' is simply a chronological compilation of original records of entry. In other words, they are the equivalent of incident reports." Mines, 680 A.2d at 1229 (citation omitted) (*citing* Lebanon News Publishing Co. v. City of Lebanon, 69 Pa. Cmwlth. 337, 451 A.2d 266 (1982)). In Tapco, this Court characterized Mines as holding that "police blotter reports are equivalent to incident reports and subject to disclosure under the Prior Law" and, on that basis, held that municipal police incident reports were subject to disclosure under the Prior Law. Tapco, 695 A.2d at 464. We do not agree that these cases stand for the principle that any document entitled an "incident report" is the equivalent of a police blotter and, therefore, not subject to the criminal investigative record exemption at Section 708(b)(16)(ii).

In Mines, this Court was not actually considering an incident report, but merely stating that we generally believed an incident report to be "a chronological compilation of original records of entry." Mines, 680 A.2d at 1229. Moreover, Tapco did not disclose the nature of the municipal incident reports at issue in that case, nor did it disclose the kind of information contained in those incident reports. Therefore, we cannot say that those incident reports are the same as the PSP's Incident Report in this case. This Court cannot make determinations about whether a given document is a public record merely based on the name or title of the document; we must consider, instead, the content and nature of the document. To do otherwise would elevate form over substance. Section 9102 of the CHRIA defines a "police blotter" as "*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. § 9102 (emphasis added). Having examined the Incident Report in this case, we are convinced that the Incident Report is not a "chronological listing of arrests." 18 Pa.C.S. § 9102. Rather, it is a description of an investigation by the PSP into a complaint of criminal activity. In addition, we note that

a PSP incident report may be generated even in the absence of an arrest: the blank incident report form includes checkboxes indicating that an incident may be disposed of as “cleared by arrest,” “unfounded,” or “exceptionally cleared.” (PSP Incident Report form SP 7-0050 (4-2007), Requester’s Br. Ex. D.)

As part of Requester’s argument that the OOR properly determined that the Incident Report constitutes a police blotter pursuant to Mines and Tapco, Requester argues that the OOR was correct that “if the incident report contained investigative information, that information may be redacted pursuant to 708(b)(16).” (Final Determination at 6 (quoted in Requester’s Br. at 10).) First, we note that the Final Determination ordered the PSP to disclose the Incident Report “*without redaction.*” (Final Determination at 8 (emphasis in original).) Second, we note that, where a record falls within an exemption under Section 708(b), it is not a public record as defined by the RTKL and an agency is not *required* to redact the record. Department of Health v. Office of Open Records, 4 A.3d 803, 814-15 (Pa. Cmwlth. 2010). Therefore, any argument that the PSP *must* redact the Incident Report to provide the information that would be contained in a police blotter fails.

Underlying the arguments in the briefs of the OOR, the Requester, and the Pennsylvania Newspaper Association is a concern that the kind of information contained in police blotters should be accessible to the public so that the public can hold law enforcement agencies accountable in the execution of such agencies’ core functions. This Court agrees that both the CHRIA and the RTKL convey a strong public policy interest in maintaining the accessibility of police blotter information to the public. The CHRIA expressly states that police blotters are public records. Section 9104 of the CHRIA, 18 Pa.C.S. § 9104. Similarly, Section 708(b)(16) expressly excludes police blotters, as defined by Section 9102 of the CHRIA, from the criminal investigative record exemption. 65 P.S. § 67.708(b)(16). These provisions show a strong legislative intent that the public should have access to “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. § 9102.<sup>FN8</sup> In this case, the PSP has averred that it does not maintain a police blotter. (RTKL Liaison Verification For PSP/RTKL Request No. 2009-0073, R.R. at 13a (“The Pennsylvania State Police does not create, maintain, or disseminate a ‘police blotter’....”).) However, at

argument, when asked how the PSP kept track of a listing of arrests, counsel for PSP responded that such information was tracked electronically, but that individual stations do not maintain logs. We note that the definition of a “record” under the RTKL includes “information stored or maintained electronically.” 65 P.S. § 67.102. We further note that the Legislature has manifested a clear intent, as evidenced in the RTKL and the CHRIA, that police blotter information (i.e., chronological listings of arrests) be made available to the public.

However, as discussed above, after our examination of the Incident Report before us, we are convinced that it is a criminal investigative record, and not a public record. Therefore, it is not required to be disclosed under the RTKL, even in redacted form. Accordingly, we reverse the Final Determination of the OOR.

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FN5. 18 Pa.C.S. §§ 9101-9183.

FN6. A copy of the PSP’s incident report form is attached to Requester’s brief. This is the same form that comprises the first two pages of the Incident Report. As the form shows, the checkboxes include items such as: “can a suspect be named”; “evidence at scene to link offender”; “latent prints discovered”; “any witnesses located”; “unique unusual method of operation”; and “thought to be connected with known crime pattern.” (PSP Incident Report form SP 7-0050 (4-2007), Requester’s Br. Ex. D.) Whether these questions are answered yes or no, such answers would disclose information assembled as a result of an investigation into a criminal incident or an allegation of criminal wrongdoing, and modus operandi information.

FN7. Section 3102(2)(ii) of the RTKL repealed the former Right-to-Know Law, Act of June 21, 1957, P.L. 390, as amended, formerly 65 P.S. §§ 66.1-66.4. 65 P.S. § 67.3102(2)(ii).

FN8. We are aware that this Court has held that disclosure of police blotters must be sought through the RTKL and cannot be compelled through the CHRIA. Lebanon News Publishing Co., 451 A.2d at 268. In Lebanon News Publishing Co., this Court stated:

Section 9104 of the CHRIA, 18 Pa.C.S. § 9104, provides the following with regard to police blotters:

(a) *General rule.* - Except for the provisions of Subchapter B (relating to completeness and accuracy), Subchapter D (relating to security) and Subchapter F (relating to individual right of access and review), *nothing in this chapter shall be construed to apply to:*

(1) Original records of entry compiled chronologically, including, but not limited to, *police blotters.*

....

(b) *Court dockets and police blotters.* - Court dockets and police blotters and information contained therein shall, for the purpose of this chapter, be considered public records. (Emphasis added.)

Thus, we learn that only Subchapters B, D and F of the CHRIA apply to police blotters and that police blotters are deemed to be “public records” by the CHRIA. It is Subchapter C of the CHRIA, 18 Pa.C.S. §§ 9121-25, however, which applies to the dissemination of information under the CHRIA. Since Subchapter C does *not* apply to police blotters, we must conclude that their dissemination is not required by the CHRIA. This conclusion is buttressed by the fact that Subchapter C addresses only public access to “criminal history record information”, which term is defined so as to specifically *exclude* records such as police blotters. See Section 9102 of the CHRIA, 18 Pa.C.S. § 9102.

In view of our conclusion that the CHRIA does not require that police blotters be disseminated to the public, we also rule that the CHRIA does not provide sanctions or damages where access to such information is denied. This does not mean, however, that the public is not entitled to access to police blotters.

Although the CHRIA does not itself require that police blotters be made available to the public, it does provide that such information be considered “public records.” Thus, we think access to police blotters is controlled by the Prior Law.



Id. at 268 (emphasis and omission in original). Although the Prior Law has been repealed and replaced with the RTKL, the provisions of the CHRIA relied upon by this Court in Lebanon News Publishing Co. remain the same. Thus, disclosure of police blotters cannot be obtained through the enforcement provisions of the CHRIA but, instead, must be sought through the RTKL.

5 A.3d at 477-483 (footnotes in original) (emphasis in original).

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 Commonwealth Court held that the incident report was not 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”). The incident report contained notes of interviews with the alleged victims/perpetrators, as well as another witness. This information contained within the incident report was assembled as a result of an investigation into a criminal incident or an allegation of criminal wrongdoing. Consequently, the incident report was not a public record subject to disclosure.

The Commonwealth Court also held that a victim’s name and address is “victim information,” *i.e.* information about the victim, and that the unwanted disclosure of a victim’s name may prove to be a second victimization, whether due to retaliation, the fear of retaliation, stigma, embarrassment, or other reasons. For these reasons, the Commonwealth Court held that a victim’s name and address was not a public record subject to disclosure pursuant to 65 P.S. § 67.708(b)(16)(v).

The Commonwealth Court also held that prior decisions of the Commonwealth Court do not stand for the principle that any document entitled an “incident report” is the equivalent of a police blotter and, therefore, not subject to the criminal investigative record exemption at 65 P.S. § 67.708(b)(16). The Commonwealth Court stated that it could not make determinations about whether a given document is a public record merely based on the name or title of the document; it must consider, instead, the content and nature of the document. Having examined the incident report before it, the Commonwealth Court was convinced that the incident report was not a “chronological listing of arrests.” 18 Pa.C.S. § 9102. Rather, it was a description of an investigation by the Pennsylvania State Police into a complaint of criminal activity. In addition, the Commonwealth Court found it important that the incident report may be generated even in the absence of an arrest.

The Commonwealth Court agreed that both the CHRIA and the RTKL convey a strong public policy interest in maintaining the accessibility of police blotter information to the public. However, there is no requirement that police departments create or maintain a “police blotter”. “When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705. Moreover, where a record falls within an exemption under 67.708(b), it is not a public record as defined by the RTKL, and an agency is not required to redact the record and provide information that would be contained in a police blotter.

The Requester asserts that the documents requested (“police complaint / dispatch forms”) are the equivalent of a police blotter. The Respondent asserts that the documents requested are criminal investigative records. Guided by the principles set forth in Pennsylvania State Police v. Office of Open Records, 5 A.3d 473 (Pa. Cmwlth. 2010), in this case, after a review of the sample documents provided by the Request, there is sufficient evidence to support the determination that the documents requested (“police complaint / dispatch forms”) are criminal investigative records that are exempt from disclosure, and not a police blotter.

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.”

From this definition it is clear that a “police blotter” contains facts that occur only after an investigation has been completed and the decision to arrest an individual has been made. These facts by their very nature are public and are the culmination of an investigation. A “police blotter” is not chronological listing of investigations that have been initiated, or of investigations that have not resulted in arrests. In this case, the (“police complaint / dispatch forms”) are not the equivalent of a police blotter.

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.”

From this definition it is clear that the documents requested (“police complaint / dispatch forms”) are investigative information. The Requester has provided two samples of the (“police complaint / dispatch forms”). These forms have boxes for the following information: **(1)** How Dispatch/Complaint was Received - phone, walk in, on view, letter, other; **(2)** Complaint Number; **(3)** Complainant’s Information - name, date of birth, address, phone;<sup>2</sup> **(4)** Location of Complaint/Event; **(5)** Nature of Complaint/Event; **(6)** Date of Complaint/Event; **(7)** Time of Activities - Complaint Received, Unit Dispatched, Unit Arrived, Complaint Cleared, Report [yes or no]; **(8)** Officer Assigned; **(9)** Vehicle Involved - year, make, model, body, color, license; **(10)** Suspect Information - race, sex, date of birth, age, height, weight, hair, eyes, glasses, build, complexion, clothing; **(11)** Additional Details and Action Taken; **(12)** Assigned Officer Signature; **(13)** Badge Number; **(14)** Receiving Officer Signature; **(15)** Date.<sup>3</sup>

Pursuant to 65 P.S. § 67.708(b)(16), records of an agency are exempt from access by a requester if the records relate to or result in a criminal investigation, including,

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<sup>2</sup> In many cases the complainant would also be the victim of a crime.

<sup>3</sup> The information that is collected on this form goes beyond the simple arrest information of the “police blotter”. In addition, this form does not include a dedicated section for arrest information, which is the essential component of a “police blotter”, as an arrest does not necessarily result when this form is generated. 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: ... (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.” This form has dedicated sections for some of this information. One of the sample forms also includes the Social Security number and driver’s license number of an individual in the additional details section.

complaints of potential criminal conduct, investigative materials, notes, correspondence, videos, reports, victim information, and records that, if disclosed, would reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

The documents requested (“police complaint / dispatch forms”) fall within this exception and are exempt from access. Unlike a “police blotter” where the facts contained therein occur only after an investigation has been completed and the decision to arrest an individual has been made, the documents requested (“police complaint / dispatch forms”) are initiating documents which begins the process of a potential investigations, and does not necessarily result in arrests.

### 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 appeal or 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 notice of appeal. The Chester County District Attorney’s Office shall also be served with a copy of the notice of appeal, 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: April 12, 2012**

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