



**DISTRICT ATTORNEY'S OFFICE OF CHESTER COUNTY**  
201 WEST MARKET STREET, SUITE 4450  
POST OFFICE BOX 2746  
WEST CHESTER, PENNSYLVANIA 19380-0989

TELEPHONE: 610-344-6801  
FAX: 610-344-5905

IN THE MATTER OF	:	DISTRICT ATTORNEY'S OFFICE
	:	
PATRICK J. LOFTUS,	:	CHESTER COUNTY, PENNSYLVANIA
Requester	:	
	:	RIGHT TO KNOW APPEAL
v.	:	
	:	FINAL DETERMINATION
	:	
EAST GOSHEN TOWNSHIP,	:	DA-RTKL-A NO. 2018-001
Respondent	:	

**INTRODUCTION**

On November 2, 2017, 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 December 6, 2017, the request was denied. On December 21, 2017, Requester mailed an appeal to the Chester County District Attorney's Office and the Office of Open Records ("OOR"). The parties agreed to stay the appeal to the Chester County District Attorney's Office pending the appeal to the OOR.

On February 26, 2018, the OOR granted the appeal in part, denied the appeal in part, and transferred the appeal in part, to the Chester County District Attorney's Office [AP 2017-2407], which was received on March 12, 2018.

For the reasons set forth in this Final Determination, the appeal is **GRANTED** and the Respondent is required to take any further action as directed.

### **FACTUAL BACKGROUND**

On November 2, 2017, 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.* The OOR set forth the procedural history as follows:

Patrick Loftus ("Requester") submitted a request ("Request") to East Goshen Township ("Township") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking records relating to the Township's enforcement of its noise control ordinance. The Township partially denied the Request, claiming, in pertinent part, that the Request sought records of a criminal investigation. The Requester appealed the Township's response to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted in part, denied in part, and transferred in part**, and the Township is not required to take any further action.

### FACTUAL BACKGROUND

On November 2, 2017, the Request was filed, seeking, in pertinent part:

3. All documents relating to noise complaints (written or verbal) received by the NCO in the last five (5) years,

including from homeowners in Quaker Village adjacent to the drill site on Boot Road in East Goshen Township (as referenced in Rick Smith's October 5, 2017 letter to Matt Gordon).

4. All documents relating to investigations undertaken by the NCO in the last five (5) years....

7. All documents relating to enforcement of the Township Noise Control Ordinance No. 74 in the last five (5) years.

8. All citations issued by ... [the] Township for violation for violation of Noise Control Ordinance No. 74 in the last five (5) years.

9. All ... Township and third party sound reading data taken in the last five (5) years.

10. All documents relating to reports prepared by noise consultants in connection with investigations undertaken by the NCO in the last five (5) years....

27. All documents relating to Sunoco Pipeline, L.P.'s alleged violation of ... [the] Township Noise Control Ordinance No. 74.

On December 6, 2017, after extending the response period under Section 902 of the RTKL, the Township partially denied the Request, claiming that Items 3, 4, 7 to 10, and 27 of the Request sought records of a criminal investigation, 65 P.S. § 67.708(b)(16). With respect to Item 9 of the Request, the Township explained that, while the responsive reports are records of a criminal investigation, the records were previously provided to the Requester.<sup>1</sup>

On December 26, 2017, the Requester appealed to the OOR, challenging the denial, stating grounds for disclosure, and

limiting his appeal to the Township's response to Items 3, 4, 7 to 10, and 27 of the Request. The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On January 19, 2018, the Requester submitted a position statement stating that the Township failed to meet its burden to prove that all of the records responsive to Items 3, 4, 7 to 10, and 27 of the Request are exempt records of a criminal investigation.

The same day, the Township submitted a position statement. The Township clarified that it withheld records responsive to Items 4, 7 and 27 because they related to a criminal investigation. In addition, the Township claimed that it provided all records responsive to Items 3, 9 and 10 of the Request to the Requester and that it does not possess records responsive to Item 8 of the Request. Finally, the Township claimed that it withheld responsive records that were made confidential under the attorney-client privilege.<sup>2</sup> In support of its position, the Township submitted the affidavit of Louis Smith, the Township Manager and Open Records Officer.

---

<sup>1</sup> On appeal, the Requester limited his challenge to the Township's response to Items 3, 4, 7 to 10, and 27 of the Request. As a result, the Requester has waived any objections regarding the sufficiency of the Township's response to the remaining Items of the Request. *See Pa. Dep't of Corr. v. Office of Open Records*, 18 A.3d 429 (Pa. Commw. Ct. 2011).

<sup>2</sup> The Township is permitted to assert this new reason for denying access to records on appeal to the OOR. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

In the Matter of Patrick Loftus v. East Goshen Township, Docket No. AP 2017-2407, at 1-3 (footnotes in original).

On February 26, 2018, the OOR transferred the appeal, in part, to the Chester County District Attorney's Office [AP 2017-2407]. The OOR set forth the reasons for transferring part of the appeal to the Chester County District Attorney's Office as follows:

**3. The Township proved that Items 4, 7 and 27 of the Request seek records of a criminal investigation**

The Township claims that Items 4, 7 and 27 of the Request seek records of a criminal investigation, and that the OOR thus lacks jurisdiction over these records. *See* 65 P.S. § 67.708(b)(16); 65 P.S. § 67.503(d)(2). A local agency claiming that records are exempt under Section 708(b)(16) does not automatically divest the OOR of jurisdiction over an appeal. Section 503(d) creates a two-step analysis for determining when cases should be heard by the OOR and when they should be heard by the appeals officer appointed by a District Attorney. *See* 65 P.S. § 67.503(d)(2). First, jurisdiction is properly transferred from the OOR to the District Attorney's Office when an appeal on its face involves records that relate to a criminal investigation (e.g., search warrants, witness statements, etc.). *See Porter v. Allegheny County Sheriff's Office*, OOR Dkt. AP 2014-1910, 2014 PA O.O.R.D. LEXIS 1444 (appeal transferred to DA where the request for a search warrant was, on its face, related to a criminal investigation).

Second, when it is unclear whether the requested records relate to a criminal investigation, the local agency must provide some evidence showing how the records relate to a specific criminal investigation. While a very low threshold for transferring a case is needed, an agency must provide more than a conclusory affidavit that merely repeats the language of Sections 503(d) and 708(b)(16). *See Bush v. Westtown-East Goshen Police Dep't*, OOR Dkt. AP 2016-1869, 2016 PAO.O.R.D. LEXIS 1708 (Agency submitted affidavit demonstrating how the requested records related to a specific criminal investigation); *Burgess v. Willistown Twp. Police Dep't*, OOR Dkt. AP 2013-

1511, 2013 PA O.O.R.D. LEXIS 868 (holding that where a local agency made a preliminary showing that records relate to a criminal investigation, the OOR lacked jurisdiction to consider the merits of the appeal).

In support of its position, the Township argues that Items 4, 7 and 27 of the Request seek records of a criminal investigation on their face. The Township explains that:

33. The Township's Noise Ordinance, which serves as the basis of the Requester's Request, is codified at Chapter 156 of the Township's Code....

34. Section 8 of Chapter 156, entitled, "Violations and penalties" establishes that such noise standards are governed by the Pennsylvania Rules of Criminal ... Procedure. Specifically, Section 156-8 provides:

Any person who violates or permits the violation of any provision of this chapter shall, upon conviction thereof in a summary proceeding brought before a District Justice under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense, and shall be subject to the payment of a fine of not less than \$100 and not more than \$1,000, plus the costs of prosecution. In default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than 30 days. Each section of this chapter violated shall constitute a separate offense, and each day or portion thereof in which a violation of this chapter is found to exist shall constitute a separate offense, each of which violations shall be punishable by a separate fine imposed by the District Justice of not less than \$100 and not more than \$1,000, plus the costs of prosecution, or upon default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than 30 days. All fines and penalties collected for the violation of this chapter shall be paid to the Township Treasurer.

35. Request Nos. 4, 7 and 27 by their very nature expressly seek the disclosure of Agency records that relate to or resulted in a criminal investigation.

The Township is a local law enforcement agency.<sup>3</sup> Through the evidence submitted, the Township has demonstrated that the records responsive to the Request could relate to a criminal investigation. The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. *See* 65 P.S. § 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney. *See id.*

Here, the Township's noise control ordinance imposes criminal penalties for violations of its provisions. Township Noise Control Ordinance No. 74, Township Code §§ 156-1 – 156-9, available at <https://ecode360.com/7250333> (last accessed Feb. 20, 2018). Further, the plain language of Items 4, 7 and 27 of the Request seek information related to investigations conducted under the Township's Noise Control Ordinance No. 74: Item 4 of the Request seeks "all documents relating to investigations undertaken by the NCO in the last five (5) years"; Item 7 of the Request seeks "all documents relating to enforcement of the Noise Ordinance in the last five (5) years"; and Item 27 of the Request seeks "all documents relating to Sunoco Pipeline, L.P.'s alleged violation of ... the Township Noise Control Ordinance No. 74." As a result, any records responsive to these Items could potentially be related to a criminal investigation by the Township. Accordingly, the appeal is hereby transferred to the Appeals Officer for the Chester County District Attorney's Office. A copy of this final order and the appeal filed by the Requester will be sent to Appeals Officer for the Chester County District Attorney's Office.

3. See OOR Advisory Opinion issued Jan. 15, 2010, available at [http://www.openrecords.pa.gov/Documents/RTKL/Separate\\_ORO\\_appointment\\_for\\_PD.pdf](http://www.openrecords.pa.gov/Documents/RTKL/Separate_ORO_appointment_for_PD.pdf) (stating that a Borough police department is not necessarily a separate agency from a Borough).

In the Matter of Patrick Loftus v. East Goshen Township, Docket No. AP 2017-2407, at 7-10 (footnote in original).

The appeal concerning the following right-to-know requests have been transferred to this Appeal Officer:

4. All documents relating to investigations undertaken by the NCO in the last five (5) years....

7. All documents relating to enforcement of the Township Noise Control Ordinance No. 74 in the last five (5) years.

27. All documents relating to Sunoco Pipeline, L.P.'s alleged violation of ... the Township Noise Control Ordinance No. 74.

In the Matter of Patrick Loftus v. East Goshen Township, Docket No. AP 2017-2407, at 2, 7-10.

On March 12, 2018, this Appeals Officer for the Chester County District Attorney's Office gave Notice to the parties of the following:

On November 2, 2017, 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 December 6, 2017, the request was denied. On December 21, 2017, Requester mailed an appeal to the Chester County District Attorney's Office and the Office of Open Records. The parties agreed to stay the appeal to the Chester County District Attorney's Office pending the appeal to the Office of Open Records.

On February 26, 2018, the Office of Open Records granted the appeal in part, denied the appeal in part, and transferred the appeal in part, to the Chester County District Attorney's Office [AP 2017-2407], which was received on March 12, 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 March 12, 2018, which is April 11, 2018.** 65 P.S. § 67.1101(b)(1). Consequently, if a final determination is not made by April 11, 2018 the appeal is deemed denied by operation of law. 65 P.S. § 67.1101(b)(2).

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).

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).

If the Respondent wishes to submit a response, it must do so on or before **March 21, 2018.**

If the Requester wishes to submit a response, it must do so on or before **March 28, 2018.**

**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.

March 12, 2018 Letter of Chief Deputy District Attorney Nicholas J. Casenta, Jr.

On March 20, 2018, Respondent submitted a response. The position of Respondent is in part as follows:

33. No matter what is contained in an incident report, incident reports are considered investigative materials and are covered by the RTKL investigative exemption. *See Hunsicker v. Pennsylvania State Police*, 93 A.3d 911 (Pa. Cmwlth. 2014).

34. Witness statements compiled by the District Attorney's Office in the course of an investigation constitute "investigative materials," and public records, as such are exempt from disclosure under the RTKL. *See Coley v. Philadelphia Dist. Attorney's Office*, 77 A.3d 694 (Pa. Cmwlth. 2013).

35. The Agency's Noise Ordinance, which serves as the basis of Requester's Request, is codified at Chapter 156 of the Code of the Township of East Goshen.

36. Section 8 of Chapter 156, entitled, "Violations and penalties" establishes that such noise standards are governed by the Pennsylvania Rules of Criminal Procedure. Specifically, Section 156-8 provides:

Any person who violates or permits the violation of any provision of this chapter shall, upon conviction thereof in a summary proceeding brought before a District Justice under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense, and shall be subject to the payment of a fine of not less than \$100 and not more than \$1,000, plus the costs of prosecution. In default of payment thereof, the defendant may be sentenced to

imprisonment in the county prison for a term of not more than 30 days. Each section of this chapter violated shall constitute a separate offense, and each day or portion thereof in which a violation of this chapter is found to exist shall constitute a separate offense, each of which violations shall be punishable by a separate fine imposed by the District Justice of not less than \$100 and not more than \$1,000, plus the costs of prosecution, or upon default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than 30 days. All fines and penalties collected for the violation of this chapter shall be paid to the Township Treasurer.

37. Request Nos. 4, 7, and 27 by their very nature expressly seek the disclosure of Agency records that relate to or resulted in a criminal investigation.

38. For example, Request No. 4 plainly seeks “all documents relating to investigations undertaken by the NCO in the last five (5) years.”

39. Also, Request No. 7 plainly seeks “all documents relating to enforcement of the Noise Ordinance in the last five (5) years,” which obviously presupposes an investigation by the Agency.

40. Moreover, Request No. 27 does the same, in seeking “all documents relating to Sunoco Pipeline, LP’s alleged violation of East Goshen Township Noise Control Ordinance No. 74,” which too presupposes an investigation by the Agency related to its Noise Ordinance.

41. Accordingly, the Agency has appropriately withheld records relating to and / or resulting in a criminal investigation by the Agency.

March 20, 2018 Response of East Goshen Township (Respondent), at 7-9.

Respondent also provided the Affidavit of Louis F. “Rick” Smith, East Goshen Township Manager and Open Records Officer, which provided in part as follows: “12. The Agency maintains that any discovered records related to Request Nos. 4, 7, and 27 are related to or resulted in a criminal investigation.” Affidavit of Louis F. “Rick” Smith at ¶12.”

On March 28, 2018, Requester submitted a response. The position of Requester is in part as follows:

In the context of a claimed exception pursuant to Section 67.708(b)(16), the fact that the record has a connection to a criminal investigation does not mean that the record may be per se withheld from disclosure. *See, e.g., Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 698 (Pa. Cmwlth. Ct. 2013) (finding that immunity agreement was not per se investigative material, and thus was not exempt without further information provided by the withholding agency). For a document to be withheld, the record must sufficiently relate to a criminal investigation. *See, e.g., Pennsylvania State Police v. Grove*, 161 A.3d 877, 894 (Pa. 2017) (holding that video tape of car accident only showed bystanders, and thus did not relate significantly enough to the accident itself to be withheld from disclosure; potentially investigative material could be redacted). Additionally, records acquired from a third party during the course of a criminal investigation do not qualify as “exceptions” under the RTK Law. *See, e.g., Pennsylvania State Police v. Kim*, 150 A.3d 155, 157 (Pa. Cmwlth. Ct. 2016) (holding that video recording which originated from a third party, but became public record by virtue of being acquired during a police investigation, was not exempt).

There is no evidence to support that all of the requested records fall under this exception. The fact that a certain document may tangentially relate to a “criminal investigation” does not render it immune from disclosure under the RTK Law. In fact, the

exception expressly does not apply to private criminal complaints. Likewise, the exception expressly does not apply to records relating to the filing of criminal charges (Request No. 7 requests records relating to the enforcement of the ordinance.) The same reasoning applies to determining whether certain requested records that had been obtained through a third party, and thus do not qualify as being exempt under the Law. While it is certainly possible that some of the records requested may include documents relating to an investigation, the Township has not met its burden to demonstrate that all of the requested documents relate to an investigation as defined within the RTK statute.

Beyond using this blanket objection to the six (6) Requests identified above, the Township failed to provide any support for their conclusion that the records qualify as “exceptions” to the RTK Law. The Township’s letter (from Mr. Smith) does not sufficiently prove that all of the requested records are per se investigative materials, or that the requested records cannot be parsed out and/or redacted to remove materials that meet the Section 67.708(b)(16) standard. The RTK Law places the burden of proof on the agency withholding the requested records, and such agency must prove by a preponderance of the evidence that the requested records fall under one of the enumerated exceptions. *See* 65 P.S. § 67.708(a)(1). *See also Grove*, 161 A.3d at 894 (“[T]he RTKL specifically places the burden on PSP as the agency seeking an exemption to demonstrate a record falls within such exemption.”). Thus, East Goshen Township, as the withholding agency, has the burden of proving by a preponderance of evidence that all records requested in each category “relate to or resulted in a criminal investigation.” *See* 65 P.S. §§ 67.305, 67.708(b)(16).

First, the Township has failed to show that all documents “relating to” a particular category of records fall under the exception. For example, for Request No.7, the Township must prove by a preponderance of the evidence that each and every document “relating to” noise complaints received by the NCO, or “relating to” enforcing the Noise Ordinance, necessarily relates to or resulted in a criminal investigation. *See* 65 P.S. §§

67.708(a)(1), (b)(16). The Township has not proven that all citations issued by East Goshen Township eventually resulted in a criminal investigation. Because the Township has yet to provide any ample substantiation for withholding the documents pursuant to this exception, Loftus is unable to ascertain the degree to which the Township believes certain documents proximately “relate to” a criminal investigation. Surely, not all citations resulted in a full-blown criminal investigation.

Additionally, the Township has failed to demonstrate all documents “relating to” a record category necessarily resulted in a criminal investigation. The Township has not provided any evidence to support that all documents causally resulted in a criminal investigation; in fact, the Township has not established what it qualifies as a “criminal investigation,” or whether this definition comports with the meaning of a “criminal investigation” in the context of the RTK Law. For example, the Township has not shown how alleged violations of the Noise Ordinance “result[] in or relat[e] to a criminal investigation” (*see* Request No. 27). *See* 65 P.S. §§ 67.708(a)(1),(b)(16). Again, I was unable to address the sufficiency of the Township’s objections because the Township has yet to produce any support for its determination that it is rightfully withholding the requested documents pursuant to this exception.

As noted above, records relating to enforcement of the ordinance (Request No. 7) do not fall within the exception; and records obtained from third parties do not fall within the exception (Request 27). Because the Township has not met its burden of proof, the Township should be compelled to produce all of the requested documents.

March 28, 2018 Response of Patrick Loftus (Requester), at 3-5.

Requested, at 2, also withdrew Request #4, “All documents relating to investigations undertaken by the NCO in the last five (5) years.”

## 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 East Goshen Township ("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. "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.

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).

Initially it is important to note that a requester’s identity and motivation for making a request is not relevant, and his or her intended use for the information may not be grounds for granting or denying a request. *See* 65 P.S. § 67.301(b), 65 P.S. § 67.703. In DiMartino v. Pennsylvania State Police, 2011 WL 10841570 (Pa.

Cmwlth. 2011), the Commonwealth Court, in a memorandum opinion,<sup>1</sup> stated in pertinent part:

As a final point, we note that, the requester’s status as representative of Decedent’s family has no bearing on whether the requested records are accessible through a RTKL request. We agree with the OOR that the RTKL must be construed without regard to the requester’s identity. *See, e.g.*, Section 301(b) of the RTKL, 65 P.S. § 67.301(b) (stating that an agency “may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law”); Weaver v. Dep’t of Corr., 702 A.2d 370 (Pa. Cmwlth. 1997) (under the former Right-to-Know Act, the right to examine a public record is not based on whether the person requesting the disclosure is affected by the records or if her motives are pure in seeking them, but whether any person’s rights are fixed); Furin v. Pittsburgh Sch. Dist., OOR Dkt. No. AP 2010–0181, 2010 PA OORD LEXIS 212 (Pa. OOR 2010) (finding records exempt under Section 708(b) regardless of status of person requesting them); Wheelock v. Dep’t of Corr., OOR Dkt. No. AP 2009–0997, 2009 PA OORD LEXIS 725 (Pa. OOR 2009) (stating the only information available under the RTKL is a “public record” available to all citizens regardless of personal status or stake in requested information).

DiMartino at \*6 (footnote omitted). *See also* Mahoney v. Pennsylvania State Police, 339 C.D. 2011, 2011 WL 10841247 (Pa. Cmwlth. 2011); *see also* Hunsicker v. Pennsylvania State Police, 93 A.3d 911, 931-914 (Pa. Cmwlth. 2014).

---

<sup>1</sup> DiMartino v. Pennsylvania State Police, 340 C.D. 2011, 2011 WL 10841570 (Pa. Cmwlth. 2011) is an unreported panel decision of the Commonwealth Court. As such, it may be cited for its persuasive value, but not as binding precedent. *See* Section 414 of the Commonwealth Court’s Internal Operating Procedures.

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.”

A criminal investigative record is anything that contains information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing. 18 Pa.C.S.A. § 9102. The size, scope, or formality, of police inquiries are not relevant in determining if something is a criminal investigative record. Whether an arrest has occurred or whether a criminal investigation is ongoing or closed, are not relevant factors in determining if something is a criminal investigative record. Criminal investigative records remain exempt from disclosure under the RTKL even after the investigation is completed. Also, a record is not considered a public record if it is exempt under any other State or Federal Law, including the Criminal History Records Information Act.

In Barros v. Martin, 92 A.3d 1243 (Pa. Cmwlth. 2014), *appeal denied*, 626 Pa. 701, 97 A.3d 745 (2014), the Commonwealth Court stated in part:

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). See Coley v. Philadelphia Dist. Attorney's Office, 77 A.3d 694, 697 (Pa. Cmwlth. 2013); Mitchell v. Office of Open Records, 997 A.2d 1262, 1264 (Pa. Cmwlth. 2010). ***Criminal investigative records remain exempt from disclosure under the RTKL even after the investigation is completed.*** Sullivan v. City of Pittsburgh, Dep't of Pub. Safety, 127 Pa. Cmwlth. 339, 561 A.2d 863, 865 (1989).

***Also, a record is not considered a public record under Section 102 of the RTKL if it is "exempt under any other State or Federal Law," including the CHRIA.*** See Coley, 77 A.3d at 697. Section 9106(c)(4) of the CHRIA, 18 Pa.C.S. §

9106(c)(4), provides 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.” *The CHRIA defines “investigative information” 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.”* Section 9102 of the CHRIA, 18 Pa.C.S. § 9102.

Thus, the records requested by Barros - *i.e.*, the criminal complaint file, forensic lab reports, any confession and record of polygraph of Quinones, the “Communication Center Incident Review,” the “Internal Police Wanted Notice,” “Reports on individual mistakenly apprehended,” and three signed witness statements - are protected from disclosure under both the RTKL and the CHRIA as records “relating to ... a criminal investigation” and “investigative information,” respectively.

Barros v. Martin at 1250 (emphasis added).

In Padgett v. Pennsylvania State Police, 73 A.3d 644 (Pa. Cmwlth. 2013),

the Commonwealth Court stated in part:

Pursuant to Section 1101(a) of the RTKL, “[t]he 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 delaying or denying the request.” 65 P.S. § 67.1101(a). When a requester fails to state the records sought are public, or fails to address an agency’s grounds for denial, the OOR properly dismisses the appeal. *See Saunders v. Dep’t of Corr.*, 48 A. 3d 540 (Pa. Cmwlth. 2012) (affirming OOR dismissal); Dep’t of Corr. v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011) (holding an appeal that fails to sufficiently specify the reasons for appeal should be dismissed rather than addressed by OOR).

In Department of Corrections, we outlined the sufficiency requirements for an appeal under Section 1101(a) of the RTKL. At a minimum, a requester's appeal "must address any grounds stated by the agency ... for denying the request." Dep't of Corr., 18 A.3d at 434. We reasoned a minimally sufficient appeal is a condition precedent for OOR to consider a requester's challenge to an agency denial.

More recently, in Saunders, we explained Section 1101(a) of the RTKL requires a requester "to state why the records did not fall under the asserted exemptions and, thus, were public records subject to access." Id. at 543 (agency's citation to various subsections of the RTKL, without explanation or application of exceptions, triggers requester's burden to address exemption). Because Saunders failed to address the exemptions, we affirmed OOR's dismissal of the appeal.

In this case, Requester did not state the records are public, or address the exemptions PSP cited in its response and verification. Requester stated merely that the RTKL exceptions do not apply without further explication. That does not satisfy the requirements of Section 1101(a) as we interpret that provision. Id.

Requester also did not address the agency's cited exemptions pertaining to the police report. Most notably, Requester did not discuss CHRIA, which pertains to criminal records. In fact, when he explained the reason he sought the records, Requester described them as criminal investigation records.

Requester emphasized he is entitled to the records as a party involved in the criminal investigation to which his Request relates. However, a requester's motivation for making a request is not relevant, and his intended use for the information may not be grounds for denial. *See* Section 301(b) of the RTKL, 65 P.S. § 67.301(b); Section 703 of the RTKL, 65 P.S. § 67.703. An explanation of why a requester believes an agency should disclose records to him does not satisfy the requirement in Section 1101(a) to explain why the requested records are public and available to everyone. To the contrary, Requester's

explanation underscores PSP's criminal investigative defenses here.

We make no decision regarding Requester's alleged entitlement to the records under an alternate legal mechanism. Entitlement does not arise under the RTKL through which citizens have a right to access public records "open to the entire public at large." *See, e.g., Coulter v. Pa. Bd. of Prob. & Parole*, 48 A.3d 516, 519 (Pa. Cmwlth. 2012) ("home plans" of parolee requester are not accessible to her under RTKL though she is subject of records; to be accessible under the RTKL, identity of the requester is irrelevant).

Padgett at 647-648 (footnote omitted).

The issue in this appeal involves whether records concerning actions to enforce a municipal ordinance are criminal investigative records. In Pennsylvania State Police v. Grove, \_\_\_ Pa. \_\_\_, 161 A.3d 877 (2017), the Supreme Court discussed the definition of "criminal investigative records", in part, as follows:

The RTKL requires Commonwealth agencies to provide access to public records upon request. 65 P.S. § 67.301 ("A Commonwealth agency shall provide public records in accordance with this act."). Section 102 of the RTKL defines a "public record" as: "A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege." 65 P.S. § 67.102. A "record" is further defined under the RTKL as:

Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording,

information stored or maintained electronically and a data-processed or image-processed document.

Id. There is no dispute that MVRs are public records of an agency as defined in the RTKL and thus subject to public disclosure unless some exemption applies. We consider whether MVRs generally, and the video portions of Trooper Vanorden and Trooper Thomas’s MVRs in this matter specifically, qualify under an enumerated exemption to disclosure described in Section 708(b)(16) of the RTKL regarding “criminal investigative records.”

The RTKL provides, “the burden of proving that a record of a Commonwealth agency ... is exempt from public access shall be on the Commonwealth Agency ... receiving a request by the preponderance of the evidence.” 65 P.S. § 67.708(a)(1). The RTKL specifically exempts from disclosure to a requester such as Grove any agency record “relating to or resulting in a criminal investigation,” including “investigative materials, notes, correspondence, videos and reports.” 65 P.S. § 67.708(b)(16)(ii). We interpret these exemptions in a manner that comports with the statute’s objective, “which is to empower citizens by affording them access to information concerning the activities of their government.” SWB Yankees LLC v. Wintermantel, 615 Pa. 640, 45 A.3d 1029, 1042 (2012).

Moreover, when the General Assembly replaced the Right to Know Act in 2009 with the current RTKL, it “significantly expanded public access to governmental records ... with the goal of promoting government transparency.” Levy, 65 A.3d at 368 “Consistent with the RTKL’s goal of promoting government transparency and its remedial nature, the exceptions to disclosure of public records must be narrowly construed.” Office of Governor v. Davis, 122 A.3d 1185, 1191 (Pa. Cmwlth. 2015), *citing* McGill, 83 A.3d at 479.

Under the Statutory Construction Act, where the words or phrases at issue are undefined by the statute itself, we must construe the words and phrases according to their plain meaning and common usage. 1 Pa.C.S. § 1903(a). The RTKL

does not define the central phrase “criminal investigation” as used in Section 708(16)(b)(ii). *The plain meaning of a “criminal investigation” clearly and obviously refers to an official inquiry into a possible crime.* See, e.g., <https://www.merriamwebster.com/dictionary/criminal> (last visited Jan. 17, 2017) (“*relating to crime or to the prosecution of suspects in a crime*”); <https://www.merriamwebster.com/dictionary/investigation> (last visited Jan. 17, 2017) (“*to investigate*” is “*to observe or study by close examination and systematic inquiry,*” “*to make a systematic examination;*” or “*to conduct an official inquiry*”).

The Commonwealth Court has previously opined that material exempt from disclosure as “criminal investigative information” under the RTKL includes: statements compiled by district attorneys, forensic reports, and reports of police, including notes of interviews with victims, suspects and witnesses assembled for the specific purpose of investigation. See, e.g., Barros v. Martin, 92 A.3d 1243, 1250 (Pa. Cmwlth. 2014) (criminal complaint file, forensic lab reports, polygraph reports and witness statements rise to level of criminal investigative information exempt from disclosure); Coley, 77 A.3d at 697 (witness statements compiled by District Attorney’s office are criminal investigative records exempt from disclosure); Pennsylvania State Police v. Office of Open Records, 5 A.3d 473, 478–79 (Pa. Cmwlth. 2010) (incident report prepared by police with notes of interviews of alleged victims and perpetrators assembled during investigation exempt as criminal investigative information); Mitchell v. Office of Open Records, 997 A.2d 1262, 1265–66 (Pa. Cmwlth. 2010) (record pertaining to PSP’s execution of search warrant was criminal investigation exempt from disclosure under Section 708 of the RTKL). With regard to the MVRs requested by Grove in this case, we must determine whether the video aspects generally depict a systematic inquiry or examination into a potential crime.

Pennsylvania State Police v. Grove, \_\_\_ Pa. \_\_\_, 161 A.3d 877, 891–893 (2017)

(emphasis added).

The question of whether or not an action to enforce a municipal ordinance is civil or criminal in nature has evolved over the years. Pa.R.Crim.P. 103, titled, “Definitions”, provides in part as follows:

**Criminal Proceedings** include all actions for the enforcement of the Penal Laws.

...

**Ordinance** is a legislative enactment of a political subdivision.

**Penal Laws** include all statutes and embodiments of the common law which establish, create, or define crimes or offenses, including any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty.

...

**Political Subdivision** shall mean county, city, township, borough, or incorporated town or village having legislative authority.

Pa.R.Crim.P. 103 (emphasis in original).

In City of Philadelphia v. Pennrose Management Co., 142 Pa. Cmwlth. 627, 598 A.2d 105 (1991), the Commonwealth Court stated in part:

Prior to the adoption of the Pennsylvania Rules of Criminal Procedure herein relevant, case law unequivocally held that an action brought against a defendant for the violation of a municipal ordinance is a suit for the recovery of a penalty due the municipality and is a civil proceeding. Commonwealth v. Ashenfelder, 413 Pa. 517, 198 A.2d 514 (1964); City of Philadelphia v. Home Agency, Inc., 4 Pa. Commonwealth Ct. 174, 285 A.2d 196 (1971); York v. Baynes, 188 Pa. Superior Ct. 581, 149 A.2d 681 (1959). However, the Superior Court decided in Lower Merion Township v. Schenk, 247 Pa. Superior Ct. 494, 372 A.2d 934 (1977), that the Pennsylvania

Rules of Criminal Procedure overruled the common law holding that an action for violation of a municipal ordinance is a civil proceeding.

This issue was next considered by our Supreme Court in Borough of West Chester v. Lal, 493 Pa. 387, 426 A.2d 603 (1981). The facts in Lal involved a defendant found guilty for having violated a municipal ordinance which provided for imposition of fine or imprisonment in the county jail for a term not to exceed 30 days. Our Supreme Court held the following:

The Pennsylvania Rules of Criminal Procedure define “criminal proceedings” as including “all actions for the enforcement of the Penal Laws.” Pa.R.Crim.Pro. 3(g). The penal laws include “any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty.” Pa.R.Crim.Pro. 3(1). An ordinance is a “legislative enactment of a political subdivision.” Pa.R.Crim.Pro. 3(k). These definitions (which were in effect in 1976) remove any doubt as to the nature of the instant proceedings - they are criminal proceedings.

493 Pa. at 391, 426 A.2d at 605.

***Neither Lal, Schenk, nor the Pennsylvania Rules of Criminal Procedure pretend to assert that the violation of an ordinance for which imprisonment may be imposed upon conviction or upon failure to pay a fine or a penalty is a criminal offense.***

A review of the cases and the pertinent rules merely reveals that the procedure for the enforcement of such ordinances is to be according to provision of the Pennsylvania Rules of Criminal Procedure. This distinction was clarified by the Supreme Court nine months after deciding Lal, wherein it again addressed the issue of whether an action for violation of a municipal ordinance is civil in nature. In In Re Investigating Grand Jury, 496 Pa. 452, 437 A.2d 1128 (1981), the Supreme Court held as follows:

Nor can respondent prevail through its reliance upon Pa.R.Crim.P. 3. Under Rule 3, “criminal proceedings” include “all actions for the enforcement of the penal laws.” Pa.R.Crim.P. 3(g). “Penal laws” are defined as “all statutes and embodiments of the common law which establish, create or define crimes or offenses including any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty.” Pa.R.Crim.P. 3(1). *However, the inclusion of “ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty” within the definition of “penal laws” does not make violations of such ordinances “crimes.”* Rather, it merely reflects the established principle that, in a civil action whose object is to penalize a civil defendant for the commission of an offense against the law, protections available to defendants in traditional criminal prosecutions may attach. (Citations omitted.)

496 Pa. at 460–61, 437 A.2d at 1132.

*Although the Supreme Court held that a civil enforcement action may not be characterized as a prosecution of a crime, a person who violates an ordinance which provides for imprisonment upon conviction or failure to pay a fine or penalty is entitled to the same protections afforded in criminal proceedings.*

*The law as presently constituted holds that violation of a municipal ordinance is not a crime; however, the enforcement of such ordinances must follow the Pennsylvania Rules of Criminal Procedure. Criminal proceedings in summary cases are to be brought under the provisions of Chapter 50 of the Rules.*

City of Philadelphia v. Pennrose Management Co., 142 Pa. Cmwlth. 627, 632–634, 598 A.2d 105, 108–109 (1991) (emphasis added) (footnote omitted).

In Town of McCandless v. Bellisario, 551 Pa. 83, 86–87, 709 A.2d 379, 381

(1998), the Supreme Court stated in part:

In Pennrose, Commonwealth Court followed our Borough of West Chester and In re Investigating Grand Jury holdings, stating:

Although the Supreme Court held that a civil enforcement action may not be characterized as a prosecution of a crime, a person who violates an ordinance which provides for imprisonment upon conviction or failure to pay a fine or penalty is entitled to the same protections afforded in criminal proceedings.

598 A.2d at 109. Because the ordinance at issue in Pennrose provided for imprisonment for failure to pay the applicable fine within ninety days, Commonwealth Court correctly held that the Rules of Criminal Procedure applied. However, Commonwealth Court went on in Pennrose to state imprecisely that:

The law as presently constituted holds that violation of a municipal ordinance is not a crime; however, the enforcement of such ordinances must follow the Pennsylvania Rules of Criminal Procedure. Criminal proceedings in summary cases are to be brought under the provisions of Chapter 50 of the rules.

Id.

While the enforcement of municipal ordinances *that provide for imprisonment upon conviction or failure to pay a fine or penalty must follow the Rules of Criminal Procedure, the same is not true for municipal ordinances that do not provide for imprisonment upon conviction or failure to pay a fine or penalty*, which, by definition, are not Penal Laws, and are therefore not included in the definition of “criminal proceedings.” Pa.R.Crim.P. 3. The higher degree of protection provided by the Rules of Criminal Procedure does not apply to

municipal ordinance enforcement actions where imprisonment is not a remedy for a conviction or failure to pay a fine.

Town of McCandless v. Bellisario, 551 Pa. 83, 86–87, 709 A.2d 379, 381 (1998) (emphasis in original).

Although prosecutions for ordinance violations are criminal proceedings governed by the Pennsylvania Rules of Criminal Procedure where the ordinances provide for imprisonment upon conviction or upon failure to pay a fine or penalty, ordinance violations are not crimes. Consequently, those prosecuted for violating municipal ordinances that provide for criminal penalties are afforded basic protections available to criminal defendants generally, including those afforded by the Rules of Criminal Procedure and the Constitution. However, ordinance violations are not crimes.

The purpose and intent of the Right to Know Law, in contrast to the Rules of Criminal Procedure, is not to afford basic protections to criminal defendants. In Pennsylvania State Police v. Grove, \_\_\_ Pa. \_\_\_, 161 A.3d 877, 892 (2017), the Supreme Court stated in part:

The RTKL specifically exempts from disclosure to a requester such as Grove any agency record “relating to or resulting in a criminal investigation,” including “investigative materials, notes, correspondence, videos and reports.” 65 P.S. § 67.708(b)(16)(ii). We interpret these exemptions in a manner that comports with the statute’s objective, “which is to empower citizens by affording them access to information concerning the activities of their government.” SWB Yankees LLC v. Wintermantel, 615 Pa. 640, 45 A.3d 1029, 1042 (2012).

Moreover, when the General Assembly replaced the Right to Know Act in 2009 with the current RTKL, it “significantly expanded public access to governmental records ... with the goal of promoting government transparency.” Levy, 65 A.3d at 368. “Consistent with the RTKL’s goal of promoting government transparency and its remedial nature, the exceptions to disclosure of public records must be narrowly construed.” Office of Governor v. Davis, 122 A.3d 1185, 1191 (Pa. Cmwlth. 2015), *citing* McGill, 83 A.3d at 479.

Pennsylvania State Police v. Grove, \_\_\_ Pa. \_\_\_, 161 A.3d 877, 892 (2017).

65 P.S. § 67.708(b)(vi)(B) does provide an exception where disclosure would, “[d]eprive a person of the right to a fair trial or an impartial adjudication.” Arguably this exception could apply for ordinance violations as a basic protection available to criminal defendants generally. However, there is no factual support in this appeal for this exception. Although these records could arguably be “record[s] of an agency relating to a **noncriminal investigation**,” pursuant to 65 P.S. § 67.708(b)(17), this exception has not been alleged, and would be beyond the jurisdiction of this Appeals Officer to decide.

In addition, there is no factual support that the records in question are criminal investigative records. Under the RTKL, an affidavit may serve as sufficient evidence to support an appeals officer’s decision. Office of Governor v. Davis, 122 A.3d 1185, 1194 (Pa.Cmwlth. 2015); Sherry v. Radnor Twp. Sch. Dist., 20 A.3d 515, 520-21 (Pa. Cmwlth. 2011); Moore v. Office of Open Records, 992 A.2d 907, 909 (Pa. Cmwlth. 2010) (affidavit suffices to establish nonexistence of

records); Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Cmwlth. 2013) (in the absence of any evidence that a Respondent has acted in bad faith or that the records do, in fact, exist, the averments in an affidavit should be accepted as true).

In McGowan v. Pennsylvania Dep't of Env'tl. Prot., 103 A.3d 374, 381 (Pa. Cmwlth. 2014), the Commonwealth Court stated in part:

“Testimonial affidavits found to be relevant and credible may provide sufficient evidence in support of a claimed exemption.” Heavens v. Department of Environmental Protection, 65 A.3d 1069, 1073 (Pa. Cmwlth. 2013).

Affidavits are the means through which a governmental agency ... justifies nondisclosure of the requested documents under each exemption upon which it relied upon. The affidavits must be detailed, nonconclusory, and submitted in good faith.... Absent evidence of bad faith, the veracity of an agency's submissions explaining reasons for nondisclosure should not be questioned.

Office of the Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Cmwlth. 2013) (en banc) (citation omitted).

McGowan v. Pennsylvania Dep't of Env'tl. Prot., at 381.

Respondent also provided the Affidavit of Louis F. “Rick” Smith, East Goshen Township Manager and Open Records Officer, which provided in part as follows: “12. The Agency maintains that any discovered records related to Request Nos. 4, 7, and 27 are related to or resulted in a criminal investigation.” Affidavit of Louis F. “Rick” Smith at ¶12.” The Affidavit is not detailed and is purely conclusory; merely citing an exception to the required disclosure of public records.

“A generic determination 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 RTKL provides that records of an agency relating to or resulting in a criminal investigation may be withheld as exempt. 65 P.S. § 67.708(b). The Respondent bears the burden of proving, by a preponderance of the evidence, that the documents requested are exempt from public access. 65 P.S. § 67.708(a)(1). A criminal investigative record is anything that contains information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing. 18 Pa.C.S.A. § 9102. There is not sufficient evidence to support the determination that the documents requested are criminal investigative records and exempt from disclosure.

### **CONCLUSION**

For the foregoing reasons, the appeal is **GRANTED**, and the Respondent is required to provide the requested records within thirty (30) days. However, the Respondent can require the payment of any fees authorized by 65 P.S. § 67.1307 before the records are provided to Requester. 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 for review. The Chester County District Attorney's Office shall also be served with a copy of the petition for review, 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 9, 2018**

APPEALS OFFICER:

*Nicholas J. Casenta, Jr.*

---

Nicholas J. Casenta, Jr., Esquire  
Attorney I.D. No. 43844  
Chief Deputy District Attorney  
District Attorney's Office  
Chester County Justice Center  
201 West Market Street, P.O. Box 2746  
West Chester, PA 19380-0989  
(610) 344-6801

**FINAL DETERMINATION MAILED TO:**

Patrick J. Loftus, Esquire  
30 South 17th Street  
Philadelphia, PA 19103  
Loftus@duanemorris.com

Louis F. Smith Jr., Township Manager  
1580 Paoli Pike  
West Chester, PA 19380  
rsmith@eastgoshen.org

Ryan M. Jennings, Esquire  
118 West Market Street, Suite 300  
West Chester, PA 19382-2928  
rjennings@buckleyllp.com

## **INDEX OF APPENDICES**

**APPENDIX “A”** Appeal Documents

**APPENDIX “B”** 01/03/2018 Letter of CDDA Nicholas J. Casenta, Jr., Esquire  
Appeals Officer for DA’s Office of Chester County

**APPENDIX “C”** 02/26/2018 OOR Decision [AP 2017-2407]

**APPENDIX “D”** 03/12/2018 Letter of CDDA Nicholas J. Casenta, Jr., Esquire  
Appeals Officer for DA’s Office of Chester County

**APPENDIX “E”** 03/20/2018 Response of Respondent

**APPENDIX “F”** 03/28/2018 Response of Requester