



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
	:	
JONATHAN RICHES,	:	CHESTER COUNTY, PENNSYLVANIA
Requester	:	
	:	RIGHT TO KNOW APPEAL
v.	:	
	:	FINAL DETERMINATION
COATESVILLE	:	
POLICE DEPARTMENT,	:	DA-RTKL-A NO. 2015-010
Respondent	:	

INTRODUCTION

On October 29, 2015, Jonathan Riches ("Requester"), filed a right-to-know request with the Coatesville Police Department ("Respondent"), pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.* On November 5, 2015, the request was deemed denied. On November 13, 2015, the Requester appealed to the Office of Open Records. On December 9, 2015, Jill S. Wolfe, Esquire, issued a Final Determination denying the appeal in part, dismissing the appeal in part as moot, and transferring the

remainder of the appeal to the Chester County District Attorney's Office, which received the transfer December 15, 2015.

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

FACTUAL BACKGROUND

On October 29, 2015, Jonathan Riches ("Requester"), filed a right-to-know request with the Coatesville Police Department ("Respondent"), pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.* On November 5, 2015, the request was deemed denied. On November 13, 2015, the Requester appealed to the Office of Open Records. On December 1, 2015, the Respondent filed a response with the Office of Open Records. On December 9, 2015, Jill S. Wolfe, Esquire, issued a Final Determination denying the appeal in part, dismissing the appeal in part as moot, and transferring the remainder of the appeal to the Chester County District Attorney's Office, which received the transfer December 15, 2015.

On December 15, 2015, this Appeals Officer for the Chester County District Attorney's Office gave Notice to the parties of the following:

On October 29, 2015, Jonathan Riches ("Requester"), filed a right-to-know request with the Coatesville Police Department ("Respondent"), pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.* On November 5, 2015, the request was deemed denied. On November 13, 2015, the Requester appealed to the Office of Open Records. On December 9, 2015, Jill S. Wolfe, Esquire, issued a Final Determination denying the appeal in part, dismissing the appeal in part as moot, and transferring the

remainder of the appeal to the Chester County District Attorney's Office, which received the transfer December 15, 2015.

As the appeals officer, I shall make a final determination, which shall be mailed to the Requester and the Respondent, within 30 days of December 15, 2015, which is January 14, 2016. 65 P.S. § 67.1101(b)(1). If a final determination is not made within 30 days, the appeal is deemed denied by operation of law. 65 P.S. § 67.1101(b)(2). The final determination shall be a final appealable order, and shall include a written explanation of the reason for the decision. 65 P.S. § 67.1101(b)(3).

The 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 supplement the reasons for the denial of the Right to Know request it must do so on or before December 28, 2015.

If the Requester wishes to submit a response, it must do so on or before December 28, 2015.

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.

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 Coatesville 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.

"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). There is sufficient evidence to support the determination that the documents requested are criminal investigative records and 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).

On December 1, 2015, the Respondent filed a response with the Office of Open Records, which stated in part:

The City of Coatesville Police Department must deny your request for information in part. The requests that we must deny are as follows:

- Request #2 - Open records of time, date and type of charges your department arrested "Julian Sean Bulat."
- Request #3 - Open records of the names of your police officers/detectives that arrested "Anthony Boggs" for murder.

We cannot provide you information on the above two (2) requests as they are on-going "Criminal Investigations" and the records you are requesting are not available as a public record based on the Pennsylvania's New Right to Know Law signed by Gov. Edward G. Rendell on February 14, 2008, Effective January 1, 2009 based on Section 107 - "Exceptions for public records", as listed below:

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

(1) (ii) - would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

(6) (1) 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 address; employee number or other confidential personal identification number.

(C) The home address of a law enforcement officer or judge

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

(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.

(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.

December 1, 2015 Response of Respondent.

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

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

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

The records at issue here are closer to the information contained within a police blotter and not an incident report. Requester is seeking: “Request #2 - Open records of time, date and type of charges your department arrested ‘Julian Sean Bulat.’ Request #3 - Open records of the names of your police officers/detectives that arrested ‘Anthony Boggs’ for murder.” Moreover, arrest information is generally available to the public once an arrest is made. The Respondent has done nothing more than cite exceptions to disclosure without any type of factual averments, supported by an Affidavit made under penalty of perjury by a person, as to why these exception apply in this case.

CONCLUSION

For the foregoing reasons, the appeal is **GRANTED**, and the Respondent is required to provide Requests #2 and #3 within thirty (30) days. However, the Respondent can required the payment of any fees authorized by 65 P.S. § 67.1307 before the documents 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: January 11, 2016

Nicholas J. Casenta, Jr.

APPEALS OFFICER:

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:

Jonathan Riches
FCI - Fort Dix
P.O. Box 2000
Fort Dix, NJ 08640

Sandra Steen
Coatesville Police Department
One City Hall Place
Coatesville, PA 19320

INDEX OF APPENDICES

APPENDIX "A" Transferred Appeal Proceedings from Office of Open Records

APPENDIX "B" December 15, 2015 Letter of CDDA Nicholas J. Casenta, Jr., Esquire
Appeals Officer for District Attorney's Office of Chester County