

**DISTRICT ATTORNEY'S OFFICE
NORTHAMPTON COUNTY, PENNSYLVANIA**

**ANTONIO SAUNDERS,
Requester,**

NO: 1-ORA-2023

v.

**COLONIAL REGIONAL POLICE
DEPARTMENT,
Respondent.**

FINAL DETERMINATION

AND NOW, the Northampton County District Attorney's Office respectfully submits its Final Determination as to Antonio Saunder's ("Requester's") Right to Know Law ("RTKL") request.

Introduction

On February 16, 2023, the Colonial Regional Police Department ("Respondent") received a request from Requester seeking a copy of (i) a police investigative report, (ii) internal operating procedures for arrest evidence and chain of custody, and (iii) records regarding Chief DePalma's address to the internal affairs department and the head investigator. *See* Exhibit "A." On February 23, 2023, Respondent replied, noting that the request required legal review, and indicated that a response would follow within 30 days, i.e., by March 23, 2023, consistent with the provisions of Section 902 of the RTKL, 65 P.S. § 67.902. *See* Exhibit "B."

On March 22, 2023, Respondent provided a response to the February 16 request. *See* Exhibit "C." A copy of materials responsive to item (ii), *supra*, were provided (totaling three (3) pages). Respondent denied the request as to item (i) as a record of an agency relating to or resulting in a criminal investigation (Section 708(16) of the RTKL, 65 P.S. § 67.708(16)), and item (ii) as a

record of an agency relating to or resulting in a criminal investigation (*id.*) or a record of an agency relating to a noncriminal investigation (Section 708(17) of the RTKL, 65 P.S. § 67.708(17)).

On April 6, 2023, an appeal was received by the Northampton County District Attorney's Office Appeals Officer. *See* Exhibit "D." The appeal specifically requested all materials denied by Respondent, asserting those materials to be pretrial discovery materials (citing *Brady v. Maryland*, 373 U.S. 83 (1963)). This document is the Appeal's Officers final determination regarding the items denied by the Respondent.

Discussion

The records Requester seeks relate to a criminal investigation, and thus are exempt from access by the Requester under the RTKL. A public record is "[a] record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record. The presumption shall not apply if (1) the record is exempt under section 708 . . ." 65 P.S. §67.305(a)(1). The burden is on the responding agency to show by a preponderance of the evidence that the record is exempt from public disclosure. 65 P.S. §67.708(a)(1).

The Northampton County District Attorney's Officer Appeals Officer retains authority to determine whether a request under the RTKL seeks records related to a criminal investigation. 65 P.S. §67.503(d)(2). Under section 708(b)(16), "[a] record of an agency relating to or resulting in a criminal investigation" is exempt from disclosure. 65 P.S. §67.708(b)(16). A criminal investigation "refers to an official inquiry into a possible crime." *Pennsylvania State Police v. Grove*, 161 A.3d 877, 892-893 (Pa. 2017). This material typically 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." *Id.* (citing *Barros v. Martin*, 92 A.3d 1243, 1250 (Pa. Cmwlth. Ct. 2014)). *Brady v. Maryland* "no bearing or

relevance to whether the requested records are public records under the [RTKL].” *Polite v. Philadelphia Dist. Attorney's Office*, 548 C.D. 2019, 2019 WL 4594202, at *3 (Pa. Cmwlth. Ct. 2019).

In this case, Requester seeks information relating to the investigation and arrest of the Requester in docket CP-48-CR-0000538-2019. The Requester specifically alleges that the items sought were subject to disclosure pursuant to *Brady*. Since Requester seeks materials relating to his criminal investigation, this Appeals Officer finds that the Respondent properly denied the request. *See Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473, 479 (Pa. Comwlth. Ct. 2010, holding that incident reports that contain investigative materials are exempt from public disclosure under the RTKL).

Conclusion

For the foregoing reasons, Requester’s request is **DENIED**. This Final Determination is binding on the parties. Requester may file a petition for judicial review in the Northampton County Court of Common Pleas within 30 days. 65 P.S. § 67.1302.

Respectfully submitted,

Dated:

May 5, 2023

By:



Robert J. Duminiak, Assistant District Attorney
Appeals Officer
Northampton County District Attorney’s Office
669 Washington Street
Easton, PA 18042

(610) 829-6672
rduminiak@northamptoncounty.org

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cc: (via US First Class Mail)

Smart Communications/PADOC
Antonio Saunders / NX3319
SCI Dallas
PO Box 33028
St Petersburg, FL 33733

(via electronic mail)

Chief James DePalma
Colonial Regional Police Department

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Exhibit A

To: Open Office Records Office
Colonial Regional Police Department
248 Broad Heart Rd.
Bethlehem, Pa. 18017

Re: Commonwealth v. Antonio Saunders,
CR-538-2019; Right to know Request

Dear Sir/Mam

Pursuant to the Right to know
Laws and Rules I, Antonio Saunders,
respectfully request a true and correct
copy of the following records:

1. A copy of the Police Investigative
report in regards to the arrest of
Antonio Saunders, by Detectives Gary
Hammer and Michael Munch, on or
about January 28, 2019, inside BB&T
Bank, 3704 Easton Nazareth Highway,
Easton, Pa. 18045. Please send me

all investigative report records, arrest evidence records and chain of custody forms.

2. Please send me all Internal operation procedures for arrest evidence and it's chain of custody.

3. Finally, please send me the records in regards to your address to the Internal Appeals Department and the head investigator. Send me these records Pursuant to the Right to know Law and rules within 5 days of receiving this request. Thank you kindly.

2/6/2023

Respectfully,
Antonio Saunders
Antonio Saunders
F D No. NX3319
JCF Dallas
1000 Follies Road
Dallas, Pa. 18612

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Department
1-ORA-2023

Exhibit B



Colonial Regional Police Department

248 Brodhead Road, Suite 1
Bethlehem, Pennsylvania 18017
Phone (610) 861-4820 Fax (610) 861-4829
www.colonialregionalpd.org

James DePalma
Chief of Police

February 23, 2023

Smart Communications/ PA DOC
Antonio Saunders/ NX3319
SCI – Dallas
P.O. Box 33028
St. Petersburg, Florida 33733

Re: Right to Know Request

Dear Mr. Saunders:

Thank you for writing to Colonial Regional Police Department with your request for information pursuant to the Pennsylvania Right to Know Law.

On February 16, 2023, you requested the following documents:

- A copy of the police investigative report in regard to the arrest of Antonio Saunders by Detectives Gary Hammer and Michael Munch on or about January 28, 2019 inside BB&T Bank, including all investigative report records, arrest evidence records, and chain of custody forms;
- All internal operation procedures for arrest evidence and its chain of custody; and
- The records regarding Chief DePalma's address to the internal affairs department and the head investigator.

The Police Department is presently in the process of reviewing your request, but I note the Department will be unable to provide the requested materials within the five (5) day period prescribed by the Pennsylvania Right to Know Act, given that a legal review is necessary to determine whether the requested materials are subject to access under the Right to Know Act.

Pursuant to § 902 of the Open Records Act, please be advised that I will respond to your request on or before March 23, 2023.

Upon compiling the requested materials, I will advise you as to the cost of their production (\$0.25 per page), which must be paid prior to the Department forwarding the documents to you.

If you have further questions, please call my office or the Pennsylvania Office of Open Records.

Respectfully,

James DePalma, Chief of Police
Colonial Regional Police Department

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Department
1-ORA-2023

Exhibit C



Colonial Regional Police Department

248 Brodhead Road, Suite 1
Bethlehem, Pennsylvania 18017
Phone (610) 861-4820 Fax (610) 861-4829
www.colonialregionalpd.org

James DePalma
Chief of Police

March 22, 2023

Smart Communications/ PA.DOC
Antonio Saunders/ NX3319
SCI - Dallas
P.O. Box 33028
St. Petersburg, Florida 33733

Re: Right to Know Request/Response

Dear Mr. Saunders:

Please accept this in response to your February 16, 2023 Right to Know Request for police records.

Enclosed please find the Incident Report and Criminal Complaint (as redacted pursuant to §708(b)(16)(v) "Victim Information, including any information that would jeopardize the victim"; and §708(b)(6)(i) "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...". The redacted Police Report and Criminal Complaint consist of 11 pages. There is no cost for these pages.

Also enclosed is the Evidence Storage Policy of the Colonial Regional Police Department, consisting of three (3) pages, at a cost of Seventy-Five Cents (\$0.75).

The following requested criminal records are exempt from disclosure pursuant to the Right to Know Law

- A. **Police Investigative Report; including all investigative report records, arrest evidence records and chain of custody forms. (See, §708(16) "A record of an agency relating to or resulting in a criminal investigation..")**
- B. **Records regarding Chief DePalma's address to the Internal Affairs Department and head investigator (See, §708(16) "A record of an agency relating to or resulting in a criminal investigation..."; §708(17) "A record of an agency relating to a noncriminal investigation...")**

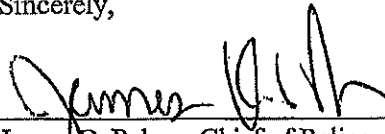
To the extent the records requested are for criminal records, you have a right to appeal this denial of information in writing to the District Attorney's office, 669 Washington Street, Easton, Pennsylvania 18042.

To the extent the records requested are not for criminal records, you have a right to appeal a denial, in writing, to:

Office of Open Records
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120-0225

If you choose to file an appeal, you must do so within fifteen (15) business days of the mailing date of this agency's response and in compliance with §1101 of the Right to Know Law.

Sincerely,

A handwritten signature in black ink, appearing to read "James DePalma", written over a horizontal line.

James DePalma, Chief of Police
Open Records Officer
Colonial Regional Police Department

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Exhibit D

To: Office of Open Records
District Attorney's Office
669 Washington Street
Easton, Pa. 18042

DISPATCHED
2023 03 31 11:56

Re: Right to know Request/Response and
Appeal in regards to case No. CP-48-CR-538-2019,

Dear Office of Open Records,

I, Antonio Saunders, am appealing
to you from the response from chief of
Police James Depalma, of the Colonial
Regional Police Department responses
in which was made on February 22, 2023
and received by me on March 31, 2023
in which stated as follow:

The following requested criminal records
are exempt from disclosure pursuant to
the Right to know Law:

1. Police Investigative Report, including
all investigative report records, arrest evidence
records and chain of custody arrest evidence

forms. (see SS 708 (16)) "A record of an agency relating to or resulting in a criminal investigation. According to the existing Pre-trial Discovery Law and Brady v. Maryland, the Commonwealth was suppose to disclose the Arrest Evidence / Property records and chain of custody information records to me prior to trial. Your office did not disclose this information to me prior to trial. Also all Police Investigative reports, including all investigative report records should of been given to me prior to trial. For this reason I respectfully request that you disclose THESE records over to me pursuant to the Right to know Law and Appeal Rules.

April 1, 2023

Antonio Saunders
Antonio Saunders
ID No. NX3319
501 Dallas
1000 Follies Road
Dallas, Pa. 18612