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R. SETH WILLIAMS  
District Attorney

May 31, 2016

*By post (Mr. Vazquez) & electronic mail (BJ Graham-Rubin)*

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**Re: Vazquez Appeal from the Philadelphia District Attorney's Office's Denial of Request for Criminal Investigative Files**

Dear Mr. Vazquez and Ms. Graham-Rubin:

This letter constitutes the final determination of the Appeals Officer for the Philadelphia District Attorney's Office (the DAO) concerning Mr. Vazquez's appeal from the denial by the DAO of his request for public records under Pennsylvania's Right-to-Know Law. For the reasons set forth below, the appeal is denied.

**BACKGROUND**

On March 30, 2016, Mr. Vazquez (the Requestor) submitted a request to the DAO under the Right-to-Know Law (the RTKL), 65 P.S. §§ 67.101-67.3104. His request was framed as a question:

"How many cases has Detective Hugh Davis Jr. Hugh, testified in for the Philadelphia District attorney office and what are the case numbers to those cases [(sic)]."

On April 1, 2016, the DAO sent its final response, denying the request. The DAO denied access on the grounds that the request was insufficiently specific, 65 P.S. § 67.703, and that the request was barred by both the criminal investigative file exemption of the RTKL, *id.* § 67.708(b)(16), and the Criminal History Record Information Act (CHRIA), 18 Pa.C.S. §§ 9101-9106.

The Requester's appeal was received by the Appeals Officer on May 2, 2016.

## LEGAL ANALYSIS

The RTKL grants the DAO Appeals Officer the exclusive jurisdiction to hear and decide appeals from denials to access to criminal investigative records. 65 P.S. §§ 503(d)(2), 1101(a)(1); *see Barros v. Martin*, 92 A.3d 1243, 1246 (Pa. Commw. 2014) (explaining that where “the appeal . . . relates to access to criminal investigative records, the appeal is heard by an appeals officer designated by the District Attorney and not OOR”). The DAO is a local agency subject to the RTKL and is required to disclose public records. 65 P.S. § 67.302. Records in its possession are presumed public unless exempt under the RTKL, a legal privilege, or other law. 65 P.S. § 67.305(a).

The DAO properly invoked the exemption for “criminal investigative records” under Section 708(b)(16). The RTKL contains a broad exemption for any records “relating to or resulting in a criminal investigation.” 65 P.S. § 67.708(b)(16); *see, e.g., Barros v. Martin*, 92 A.3d 1243, 1250 (Pa. Commw. 2014) (“[I]f a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii).”); *Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 697 (Pa. Commw. 2013) (“[C]riminal investigative records are still exempt from disclosure under the Right-to-Know Law after the investigation is completed[.]”); *Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473, 479 (Pa. Commw. 2010) (en banc) (holding that criminal-investigative-record exemption of RTKL exempts records of “whether certain investigative tasks have been carried out or whether certain information was discovered”). As the Requester acknowledges in his appellate submission, he is plainly looking for information relating to *criminal prosecutions* in which a “Detective Hugh Davis Jr. Hugh” would have testified, specifically identifying his own prosecution as of interest. *See Vazquez Notice of Appeal*, ¶ 5 (identifying criminal docket CP-51-CR-0010206-2015 for Joezial Vazquez). The Requester also maintains that the records could not be criminal investigative records because the DAO can go elsewhere, specifically the “Pennsylvania Unified Judicial System . . . , news archives, web searches, appeals records, [and] case laws,” *id.* ¶ 5, to retrieve the information. However, the RTKL does not require the agency to conduct research on behalf of a requester or to retrieve documents not in its possession from other entities. *See, e.g., Askew v. Pennsylvania Office of Governor*, 65 A.3d 989, 993 (Pa. Commw. 2013) (explaining that RTKL does not require agency to “conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request”); 65 P.S. § 67.506(d) (“A request for a public record in possession of a party other than the agency shall be submitted to the open records officer of the agency.”).

With respect to CHRIA, insofar as any such documents *relate to* a criminal prosecution, they would also, as a matter of logic, have been “assembled as a result of” a criminal investigation, 18 Pa.C.S. § 9102. Any such information is exempt from disclosure under CHRIA and therefore the RTKL. *See id.* § 9106(c)(4) (“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 . . . .”); *id.* § 9102 (defining “investigative information” as “[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing”); *Coley*, 77 A.3d at 697 (explaining that records barred from disclosure by CHRIA are “by definition” not public records under RTKL (citing 65 P.S. § 67.102)).

Finally, the Appeals Officer finds no error in the DAO's determination that the request was insufficiently specific. For an RTKL request to be viable, "[t]he request must 'identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.'" *Pennsylvania Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124 (Pa. Commw. 2015) (quoting 65 P.S. § 67.703). To be sufficiently specific, the request must identify "(1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought." *Id.* at 1124. Here, the Requester identifies neither the scope of the documents (*e.g.*, the type or category of record), nor the timeframe. Moreover, the Requester effectively concedes that the request is insufficiently specific insofar as he himself cannot identify the docket numbers for which he wants information; instead, he wants the DAO to figure out that information for him. Accordingly, the request does not meet the specificity test, and the DAO was permitted to deny it.

For the foregoing reasons, this appeal is denied. This final determination is binding on all parties. Within thirty days of the date of this letter, either party may appeal to the Philadelphia County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served notice of the appeal. The undersigned Appeals Officer also shall be served notice and have an opportunity to respond in accordance with applicable court rules. *Id.* § 67.1303.

Sincerely,

Douglas Weck  
*Appeals Officer*  
Office of the District Attorney of Philadelphia