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IN THE MATTER OF	:	DISTRICT ATTORNEY'S OFFICE
	:	
XIANGFEI ZENG,	:	CHESTER COUNTY, PENNSYLVANIA
Requester	:	
	:	RIGHT TO KNOW APPEAL
v.	:	
	:	FINAL DETERMINATION
COATESVILLE	:	
POLICE DEPARTMENT,	:	DA-RTKL-A NO. 2015-001
Respondent	:	

INTRODUCTION

Xiangfei Zeng ("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.*, seeking a copy of "all the police reports from the Coatesville Police Department on all charges they put on me since January of 2014." Respondent denied the request *citing* 65 P.S. § 67.708(b)(1)(ii), (6)(i)(A), and (16)(ii) and (v). Requester filed an appeal with the Office of Open Records. The Office of Open Records dismissed the appeal for lack of jurisdiction, "without prejudice to the Requester's ability to file an

appeal with the Appeals Officer for the Chester County District Attorney's Office within the timeframe provided for within 65 P.S. § 67.1101(a)(1)." Requester filed an appeal with the Chester County District Attorney's Office, pursuant to 65 P.S. § 67.503(d) and 65 P.S. § 67.1101(a). For the reasons set forth in this Final Determination, the appeal is **DENIED** and the Respondent is not required to take any further action.

FACTUAL BACKGROUND

On January 29, 2015, Xiangfei Zeng ("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.*, seeking a copy of "all the police reports from the Coatesville Police Department on all charges they put on me since January of 2014." On February 4, 2015, the Respondent denied the request *citing* 65 P.S. § 67.708(b)(1)(ii), (6)(i)(A), and (16)(ii) and (v).

On February 6, 2015, the Requester filed an appeal with the Office of Open Records. On March 9, 2015, the Office of Open Records dismissed the appeal for lack of jurisdiction, "without prejudice to the Requester's ability to file an appeal with the Appeals Officer for the Chester County District Attorney's Office within the timeframe provided for within 65 P.S. § 67.1101(a)(1)."

On March 18, 2015, Requester brought the March 9, 2015 decision of the Office of Open Records to the District Attorney's Office. However, Requester did not provide any other information including contact information. On April 13, 2015, Requester contacted the District Attorney's Office to inquire as to her appeal and was informed to

forward the information needed to proceed with the appeal. On April 14, 2015, the District Attorney's Office received from Requester the information needed to proceed with the appeal via email.¹

On April 14, 2015, this Appeals Officer for the Chester County District Attorney's Office gave Notice to the parties of the following:

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 April 14, 2015, which is May 14, 2015. 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). Prior to issuing a final determination, a hearing may be conducted. However, a hearing is generally not needed to make a final determination. 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

¹ Because this appeal was not filed with the proper office within fifteen days that the request was denied, it may be considered untimely. However, the RTKL does not address appeals filed with the wrong office. The rules governing appellate procedure allow an appeal that is erroneously filed to be transferred to the proper tribunal, and treated as timely. Pa.R.A.P. 751; 42 Pa.C.S.A. § 5103. The Office of Open Records dismissed the appeal for lack of jurisdiction, "without prejudice to the Requester's ability to file an appeal with the Appeals Officer for the Chester County District Attorney's Office within the timeframe provided for within 65 P.S. § 67.1101(a)(1)." However, because the Office of Open Records did not transfer the appeal or immediately dismiss it, it was impossible for the Requester to file an appeal with the Chester County District Attorney's Office within the timeframe provided for within 65 P.S. § 67.1101(a)(1). The RTKL states that: "In the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on the procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute." 65 P.S. § 67.1102(b)(3). Therefore, this appeal will be treated as timely based "on the basis of justice, fairness and the expeditious resolution of the dispute", and the principles set forth in Pa.R.A.P. 751 and 42 Pa.C.S.A. § 5103.

agency did not assert them when the request was originally denied. Levy v. Senate of Pennsylvania, 619 Pa. 586, 65 A.3d 361 (2013).

If the Respondent wishes to supplement the reasons for the denial of the Right to Know request it must do so on or before April 21, 2015. If the Requester wishes to submit a response, she may do so on or before April 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.

April 14, 2015 Letter of Chief Deputy District Attorney Nicholas J. Casenta, Jr.

On April 17, 2015, Sandra D. Steen, Right-To-Know Officer for Coatesville Police Department, submitted a Response on behalf of Respondent. On April 20, 2015, Sandra D. Steen submitted a notarized Revised Response. On April 17, 2015 and April 21, 2015, Requester, Xiangfei Zeng, sent Email Responses on her own behalf.

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.

On April 17, 2015, Sandra D. Steen, Right-To-Know Officer for Coatesville Police Department, submitted a Response on behalf of Respondent. This Response set forth the reasons for the request denial:

The City of Coatesville Police Department is responding to your letter dated April 14, 2015 regarding Xiangfei Zeng (Requester) v. Coatesville Police Department (Respondent) concerning her appeal to the District Attorney’s Office of Chester County dated April 14, 2015, as a result of denial of records by the City of Coatesville Police Department for the documents in the bolded paragraph below in Ms. Xiangfei Zeng’s original “Right-To-Know-Request.”

“I am requesting all the police reports from the Coatesville Police Department on all the charges they put on me since January of 2014. The charge on January 2014 was withdrawn, but I need the police report on that as well, as it definitely led to the charges that was filed again on July 2014 that resulted in an arrest warrant that I did not even know of. I am the person who the police put the charge on, but I am the real victim of the person who filed the police complaints against me.”

The City of Coatesville Police Department responded to numerous complaints regarding the conduct of Ms. Zeng and, as a result, the investigating officer prepared reports with notes which identify the time and location of the incidents, the name, phone number and

other information about the victim, the circumstances involved and other related investigative matters. Accordingly, the Coatesville Police Department has reports used to investigate criminal conduct. Additionally, as noted, these reports contain personal information - including the address, phone number, employer etc., of the victim and the various circumstances being investigated. These reports are believed to fall under the exceptions for public records under Section [708](b)(exceptions) of the Right to Know Law. More specifically, the Coatesville Police Department identifies the following subsections as controlling: (1)(ii) (protecting the personal security of an individual; (6)(l)(A) (personal information) and (16) (ii) and (v) (investigative materials and victim information). The safety of the victim may be compromised if this information is released. This is a concern as the conduct was ongoing and was conduct which was threatening to the victim.

It should be noted that a Final Determination was issued by the Office of Open Records dated March 9, 2015 and this Final Determination identified a thirty day appeal period from the date of mailing in which an appeal could be taken to the Court of Common Pleas. No timely appeal has been filed. Moreover, it is believed and therefore averred that Ms. Xiangfei Zeng, the Requester, has failed to apply to the Appeals Officer for the Chester County District Attorney's Office in a timely manner for a determination in accordance with the Final Determination as referenced previously. As a result, it is asserted that the instant request is time barred and that the requester is abusing the procedures under the Right to Know Law.

The City of Coatesville Police Department again denies the request for police reports by Ms. Xiangfei Zeng based on the Right To Know Laws which are noted in this response letter.

If we can be of any further assistance, please feel free to contact the City of Coatesville Police Department.

April 17, 2015 Letter of Respondent [Sandra D. Steen] (emphasis in original).

On April 17, 2015, Requester sent an email Response stating the following:

I am writing in response to the document attached by the Coatesville police department.

I did not abuse any procedure. I hope any public officer do not start accusing people before they listen to/investigate real information and real situation. If they practiced this last year, the entire mess / damage would not be there for the first place, and I don't need to write to you like this now. As to submitting an appeal to the appeal officer, I stopped by twice on the same day to file an appeal, waited for a long time to see the appeal officer but still was not able to, and was advised by your office to leave my document there on March 18. This is documented in letter by Esquire Casenta already.

I did not threaten this self proclaimed victim, it is the exact opposite and many more. And that is the reason why I am seeking the information / police report so I can find a place (I don't know where yet, but I will and I want to find out) where my information will be taken into consideration, and not just one-sided lies that were and still are used to punish innocent people.

This self proclaimed victim is a piano teacher for my daughter for 7-8 years, and my daughter had piano lessons at his house for first several years, and later on at West Chester University and this other self-proclaimed music school in Harverford. This self proclaimed victim, among many many other things that he turned totally up-side-down on, said many times that he would adopt my daughter and send her to all the famous international piano competitions. I am not interested in any personal / provide information as I already mentioned in the appeal. Certain information we already know about and they are really not a secret as the police department claimed in the attached document, yet this self-proclaimed victim seek / knew / had more about us. The police department should and can safe guard whatever personal information by blocking it out and still provide me the facts and complaints that was filed.

I clearly asked the coatesville police I talked to only once on the phone last January to hear my side of the story and show me the law of what was accused of me. But that was totally ignored / not followed through.

I can go on and on about the amount of damage this self-proclaimed victim did / does to me and my daughter, especially with the complaints he filed against me last year and all things stemmed from that and there on. Let me know what will help you

in making a determination that I should get the police report and I will provide the information in support of that.

I thought I was going to file police complaints against this self proclaimed victim last August (there were email exchange of me with police officer Lang that clearly indicated that) when the police arrested me. I am especially interested in knowing what information is filed on me to lead to that.

Please let me know what else you need. I am not a lawyer and I am the real victim that trying to make sense of what lead to senseless actions and damages and inhuman circumstances for me for way too long.

April 17, 2015 Email Response from Requester [Xiangfei Zeng].

On April 21, 2015, Requester sent another Email Response, supplementing her April 17, 2015 Email Response, stating the following:

May I humbly suggest that we have a hearing with both party involved?

The open record officer's ruling stated that the Police Department bear the burden of proving that records are not subject to public access. May I ask where is the prove? Please share that with me or point out the obvious for me since I don't see any right now.

Here are my response before that I copied below, adding some more information. If you want me to keep writing, I can write a lot more.

(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.

-- I am the real victim, not the other way around. I never caused any physical harm or any personal security of this other person; it is quite the other way around. And this is the reason I want to know what was lied about me.

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

(ii) Investigative materials, notes, correspondence, videos and reports

-- these are the information I want to know

(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.

-- nobody else, just me, the real victim but ending up being charged so very wrongly.

(v) Victim information, including any information that would jeopardize the safety of the victim.

-- It is just one person, it should be very easy to block the information out.

(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.

-- charge(s) were withdrawn, what else is still a secret that I cannot know?

Where is the hearing of both sides's story last year?

I asked the police last January who is going to hear my story without being responded back to, and the charge is filed anyway. Did you know that he stopped my daughter's lesson right before MTNA divisional competition (my daughter is the winner for PA state for many years) and I tried to get the lessons / support back for her then? Did you know that he still owe us 16+ lessons all because he stopped my daughter's lessons right before any big international competitions?

I asked in court where the case was withdrawn last May to send us to mediation, that is also being ignored. If I knew what I know

now, I would / should do the appeal right then last May before I tried to get the teacher we used to know back for my daughter. Back in May and June last year, I still tried to keep our respect for a long time teacher alive, but this self-proclaimed victim totally ruined our respect himself! And I was also doing 3 jobs at the same time everyday as explained below.

If I had time (I work full-time, was taking my daughter to all kinds of piano competitions / local community events / activities / festivals - I have a whole list if anyone is interested in, was coordinating and financially and emotionally support both of my dying parents) last May, I would have filed an appeal then. But I was also told the case was withdrawn, and there is nothing to appeal to. Regular people just don't understand what it takes to raise a talent who is doing so much musically. This self-proclaimed victim asked / taught / demanded me to do pretty much everything I did, only in the last few years he turned everything up-side-down and turned those all against me.

The threat is constantly coming from the other side (even last Sunday 4/19), I did not threaten anyone. I have a long list of things that happened in 2013 & 2014 that I can share (all facts), if sharing them will support the releasing of the police report.

This self-proclaimed victim totally ruined my daughter (he called her his best student ever even in 2014) at her best years of music development. This self-proclaimed victim literally robbed her competition winning positions to give it to the student who he once said he would jump from the 3rd floor if he had to teach him the music my daughter was playing (and believe or not, he was forced to do that) and the music school told him to let this student win competition to keep the student studying. This self-proclaimed victim ruined my ability to support my daughter, spread all the rumors about me, and the list goes on and on and on. Did you know that he spent 2 lessons time telling us to only study with him / one teacher (give us example of one famous pianist) back in 2011? I have facts to support the above, and I will only list them if it is relevant to supporting the release of the information.

And here is the part: when my father died very early this year and I can't go to his funeral - just one inhuman incident here, I can list more. Where is justice in this country? What have you done by not listening to a real story and real situation and blindly asked /

forced by a self-proclaimed victim to arrest me (he asked you to do that purposely to destroy us, he threaten me, yelled at me about that in a competition where we ran into him last June. Of course, he robbed my daughter's winning chance there too) and punish a lawful citizen like this?

April 21, 2015 Email Response from Requester [Xiangfei Zeng] (emphasis in original).

The Respondent has denied the request *citing* 65 P.S. § 67.708(b)(16)(ii) and (v) (“(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: ... (ii) Investigative materials, notes, correspondence, videos and reports. ... (v) Victim information, including any information that would jeopardize the safety of the victim.”).

The Respondent also denied the request *citing* 65 P.S. § 67.708(b)(1)(ii) and (6)(i)(A) (“(b) Exceptions. -- Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act: ... (1) A record, the disclosure of which: ... (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)(i) The following personal identification information: (A) A record containing all or part of a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number.”).

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) (“The burden of proving that a record of a Commonwealth agency or local

agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.”).²

In this case, there is sufficient evidence to support the determination that the documents requested are criminal investigative records that are exempt from disclosure. The RTKL provides that records of an agency relating to or resulting in a criminal investigation, such as investigative materials, notes, correspondence, videos, reports, and records, may be withheld as exempt. 65 P.S. § 67.708(b), titled, “Exceptions for public records”, provides in part as follows:

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

(1) A record, the disclosure of which:

...

(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)(i) The following personal identification information:

(A) A record containing all or part of a person’s Social Security number, driver’s license number, personal financial information, home, cellular or personal telephone numbers,

² A preponderance of the evidence, means, by a greater weight of the evidence. Commonwealth v. Brown, 567 Pa. 272, 284, 786 A.2d 961, 968 (2001). “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).

personal e-mail addresses, employee number or other confidential personal identification number.

...

(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: **“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 incident report contained notes of interviews with the alleged victims / perpetrators, as well as another witness. This information contained within the incident report was assembled as a result of an investigation into a criminal incident or an allegation of criminal wrongdoing. Consequently, the incident report was not a public record subject to disclosure. The Court also held that a victim’s name and address is “victim information,” *i.e.* information about the victim, and that the unwanted disclosure of a victim’s name may prove to be a second victimization, whether due to retaliation, the fear of retaliation, stigma, embarrassment, or other reasons.

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

to note that Requester does not dispute that the records requested are criminal investigative records. Requester states that she is in fact seeking criminal investigative records. Consequently, Requester does not dispute or address the grounds stated by Respondent for denying the request. When a party seeks to challenge an agency's refusal to release information by appealing that party must address any grounds stated by the agency for denying the request. Department of Corrections v. Office of Open Records, 18 A.3d 429, 434 (Pa. Cmwlth. 2011); Padgett v. Pennsylvania State Police, 73 A.3d 644, 647-648 (Pa. Cmwlth. 2013). In Department of Corrections v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011), the Commonwealth Court stated in part:

Consequently, we agree with DOC that when a party seeks to challenge an agency's refusal to release information by appealing to Open Records, that party must "address any grounds stated by the agency for ... denying the request." This is a typical requirement in any process that aims to provide a forum for error correction. We do not see it as a particularly onerous requirement, whether the requester has the benefit of legal counsel or is *pro se*.

DOC v. OOR at 434.

The Respondent also denied the request *citing* 65 P.S. § 67.708(b)(1)(ii) and (6)(i)(A) ("(b) Exceptions. -- Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act: ... (1) A record, the disclosure of which: ... (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)(i) The following personal identification information: (A) A record containing all or part of a person's Social Security number, driver's license number, personal financial information, home,

cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number.”).

In response to this reason for denial concerning personal information and safety, Requester states that the criminal investigative records can be redacted. Where a record falls within an exemption under 67.708(b), it is not a public record as defined by the RTKL, and an agency is not required to redact the record. 65 P.S. § 67.706, titled, “Redaction”, provides as follows:

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency’s response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9. [65 P.S. § 67.901 *et seq.*]

65 P.S. § 67.706.

In Saunders v. Pennsylvania Department of Corrections, 48 A.3d 540 (Pa. Cmwlth. 2012), the Commonwealth Court stated in part:

Petitioner’s first argument addresses the sufficiency of the Department’s denial of his request. Petitioner contends that because the Department’s denial merely parroted the statutory language he was unable to properly respond to the Department’s assertion of exemption from disclosure. Section 903 of the RTKL, 65 P.S. § 67.903, states that a denial of access shall include, *inter alia*, a description of the record requested and the specific reasons for

the denial, including a citation of the supporting legal authority. Correspondingly, Section 1101 of the RTKL, 65 P.S. § 67.1101, requires that a party appealing a denial 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.” See Dep’t of Corr. v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011).

The Department asserted that the requested records were exempt from disclosure under five different subsections of Section 708. Petitioner is correct in noting that the Department merely parroted the statutory language. However, the Department’s citations to the various subsections of Section 708 were sufficient to give him notice of the grounds for denial. Once the Department asserted that the requested records were exempt from disclosure under Section 708, Petitioner was required by Section 1101 to state why the records did not fall under the asserted exemptions and, thus, were public records subject to access. Petitioner failed to do so.

Petitioner’s argument that the Department was required to produce the requested records subject to redaction of the exempt information is without merit. Section 706 provides that if an agency determines that a public record contains information that is both subject to disclosure and exempt from the disclosure, the agency shall grant access and redact from the record the information which is subject to disclosure. Pursuant to Section 706, the redaction requirement only applies to records that are determined to be “public records.” A “public record” is defined in part as “a record, including a financial record, of a Commonwealth ... agency that: (1) is not exempt under section 708.” Section 102, 65 P.S. § 67.102 (emphasis added). Thus, a record that falls within one of the exemptions set forth in Section 708 does not constitute a “public record.” Dept. of Health v. Office of Open Records, 4 A.3d 803 (Pa. Cmwlth. 2010).

Saunders at 542-543 (footnote omitted).

In Heavens v. Pennsylvania Department of Environmental Protection, 65 A.3d 1069 (Pa. Cmwlth. 2013), the Commonwealth Court stated in part:

Furthermore, under the RTKL, records that are exempt under Section 708 or privileged are not considered public records and are

therefore not subject to the redaction requirement contained in Section 706, which applies only to records that are public and contain information that is not subject to access. 65 P.S. § 67.706; Saunders v. Pennsylvania Department of Corrections, 48 A.3d 540, 543 (Pa. Cmwlth. 2012).

Heavens at 1077.

Requester argues at length that she is entitled to the criminal investigative records as a party involved in the criminal investigations to which her request relates. Requester argues that she was the real victim. Whether or not a requester is or is not a crime victim is irrelevant to this analysis. 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. Requester's explanation supports Respondent's denial of her request in that the records requested are in fact criminal investigative records.

In DiMartino v. Pennsylvania State Police, 2011 WL 10841570 (Pa. Cmwlth. 2011), the Commonwealth Court, in a memorandum opinion,³ stated in 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

³ 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.

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).

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 *648 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).

As in Padgett, this decision does not involve whether or not Requester would be entitled to these criminal investigative records under an alternate legal mechanism.

CONCLUSION

For the foregoing reasons, the appeal is **DENIED**, and the Respondent is not required to take any further action. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may 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: May 13, 2015

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INDEX OF APPENDICES

- APPENDIX "A"** March 9, 2015 Final Determination of Office of Open Records
- APPENDIX "B"** April 13, 2015 Right to Know Appeal
- APPENDIX "C"** April 14, 2014 Letter of CDDA Nicholas J. Casenta, Jr., Esquire
Appeals Officer for District Attorney's Office of Chester County
- APPENDIX "D"** April 20, 2015, 2013 Letter of Sandra D. Steen, Right-To-Know
Officer for Coatesville Police Department (Respondent)
- APPENDIX "E"** April 17, 2015 Email Response from Xiangfei Zeng (Requester)
- APPENDIX "F"** April 21, 2015 Email Response from Xiangfei Zeng (Requester)