



May 3, 2012

Joel S. Barras
Reed Smith, LLP
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Philadelphia, PA 19103-7301

RE: Advisory Opinion—Inmate Photographs

Dear Mr. Barras:

Thank you for writing to the Office of Open Records (“OOR”) on behalf of the Berks County Prison Board to request an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”).

The purpose of an Advisory Opinion is to provide written guidance to an agency or requester that may be relied upon in taking action. Please be advised however, that the views expressed in Advisory Opinions are those of the OOR and as such, they may be superseded by subsequent statute or court ruling. In addition, please note that the OOR lacks jurisdiction to consider appeals relating to access of criminal investigative records in the possession of local agencies and, instead, those appeals are heard by appeals officers designated by the district attorney in the local agency’s county. 65 P.S. § 67.503(d).

In your request, you ask the OOR to advise you whether the criminal investigation exemption of the RTKL, 65 P.S. § 67.708(b)(16) would apply to a right-to-know request made to a county prison board for an inmate photograph taken at the commencement of an inmate’s incarceration (“inmate photograph”). You further inquired that, if the criminal investigation exemption does not apply to an inmate photograph, whether an inmate photograph would be protected under any other exemptions.

As a record of a local agency, an inmate photograph is presumptively a public record, unless it is otherwise exempt under the RTKL or other law or protected by privilege. 65 P.S. § 67.305. *See id.* § 67.102 (defining the term “record” to include a “photograph”). Under the RTKL, the criminal investigation exemption excludes from public access “[a] record of an agency relating to or resulting in a criminal investigation....” *See* 65 P.S. § 67.708(b)(16). Based on the underlying purpose of the RTKL, “exemptions from disclosure must be narrowly construed.” *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010).

As you described in your request, the OOR previously held that an “arrest photograph” taken by the Pennsylvania State Police related to a criminal investigation and was not a public record under the RTKL. *Duffner v. Pennsylvania State Police*, OOR Dkt. 2009-0130, 2009 PA

O.O.R.D. LEXIS 7. However, an inmate photograph taken by a county prison at the time of incarceration is not “relating to or resulting in a criminal investigation” and instead, based on the facts set forth in the advisory opinion request, an inmate photograph is taken pursuant to county prison intake procedures distinct from any criminal investigation. *See* 65 P.S. § 67.708(b)(16). It is important to note that other RTKL exemptions may apply to inmate photographs depending on specific factual circumstances, including the personal identification information exemption of 65 P.S. § 67.708(b)(6)(i) for information such as an inmate number; and the personal security exemption of 65 P.S. § 67.708(b)(1)(ii).

Because the RTKL does not supersede other laws governing the access of otherwise public records, the OOR must consider whether an inmate photograph is exempt under Federal or State law. 65 P.S. § 67.305(3). Because of the nature of an inmate photograph, the Pennsylvania Criminal History Record Information Act (“CHRIA”), 18 Pa. C.S. §§ 9101, *et seq.* may be implicated. CHRIA governs the release of “criminal history record information” collected by criminal justice agencies, such as county prisons, and makes the information available to noncriminal justice agencies and individuals upon request. 18 Pa. C.S. §§ 9121(b); 9102 (defining “criminal history record information” as “[i]nformation collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom...”). CHRIA also prohibits the release of “investigative information” and “treatment information.” *Id.* § 9102 (defining “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 a criminal wrongdoing and may included *modus operandi* information” and defining “treatment information” as “information concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual charged with or convicted of a crime”). However, as inmate photographs are taken pursuant to county prison procedures that are not contemplated in the definitions of “criminal history record information,” “investigative information,” or “treatment information,” CHRIA would not prohibit the release of inmate photographs that are otherwise public records pursuant to the RTKL.

Thank you for your inquiry. We will post this advisory opinion on the OOR website at <http://openrecords.state.pa.us>.

Respectfully,



Terry Mutchler
Executive Director