

THE HONORABLE GREGORY J. NEUGEBAUER
DISTRICT ATTORNEY OF CAMBRIA COUNTY

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	AP 2020-2066
RICHARD REVELEY,	:	
Requester	:	
	:	
v.	:	
	:	
CRESSON BOROUGH,	:	
	:	
Respondent,	:	
	:	

This Right to Know Law [“RTKL”] appeal has been appropriately transferred to the Office of the District Attorney of Cambria County as the RTKL request pertains to investigative records from a local police agency within the confines of Cambria County, Pennsylvania. 65 P.S. § 67.503(d) (2). For the reasons that follow and based on the submissions of the parties received as of December 11, 2020 and applicable law, the appeal is **DENIED**.

Factual Background

On October 9, 2020, Richard Reveley [“Requester”] requested records from the Cresson Borough Police Department [“Cresson”]. The record requested was the “police report of the night of 7/24/20 that was dictated by Ptlm. Stumpf (Officer Id. no. 6).” RTKL REQUEST, pg. 1 (October 9, 2020) (some capitalization omitted).

Cresson denied the request in a letter dated October 14, 2020. On October 15, 2020 Requester appealed to the Office of Open Records (“OOR”) and challenged the grounds for denial. On October 26, 2020, Cresson submitted a position statement, arguing that OOR does

not have jurisdiction over this appeal. LETTER FROM CRESSON, 10/26/20. The OOR then transferred the appeal to the District Attorney's Office of Cambria County by its Final Determination of November 17, 2020. FINAL DETERMINATION OF OOR AT CASE NO. AP 2020-2066, p.1, (November 17, 2020) (transferring jurisdiction to the District Attorney's Office of Cambria County). The undersigned has been designated the Right to Know Appeals Officer for the District Attorney's Office of Cambria County by the Honorable Gregory J. Neugebauer, District Attorney of Cambria County. On November 30, 2020, the undersigned sent correspondence to all parties regarding the transfer. The undersigned requested evidence, legal argument or any other supportive information to be provided to the District Attorney's Office of Cambria County on or before December 11, 2020. Cresson indicated it "will rely upon the facts and legal analysis set forth in the Borough's original denial letter dated October 14, 2020 and the Borough's subsequent response to Attorney Burlew at the Pennsylvania Office of Open Records dated October 26, 2020" in an email to the undersigned on December 4, 2020. Requestor has not made any submission to this office or the undersigned.

Discussion

"If a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b) (16) (ii)." *Barros v. Martin*, 92 A.3d 1243, 1250 (Pa. Cmwlth. Ct. 2014) (citing, *inter alia*, *Coley v. Philadelphia District Attorney's Office*, 77 A.3d 694, 697 (Pa. Cmwlth. Ct. 2013)). "Criminal investigative records remain exempt from disclosure under the RTKL even after the investigation is completed." *Id.* (citing *Sullivan v. City of Pittsburgh, Dep't of Pub. Safety*, 561 A.2d 863, 865 (Pa. Cmwlth. Ct. 1989)).

The investigative record exclusion from the RTKL is defined as follows:

(b)... the following are exempt from access by a requester under [the RTKL] ...
(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.

65 P.S. § 67.708(b) (16). In addition, the Criminal History Record Information Act (“CHRIA”) provides:

(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 which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

18 Pa. C.S. § 9106 (c) (4). CHRIA defines “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 and may include modus operandi information.”

18 Pa. C.S. § 9102. “The operative word in the above definition is “assembled,” which means to “bring or gather together into a group or whole. *California Borough v. Rothey*, 185 A.3d 456,

467 (Pa. Commw. Ct. 2018) citing *Pennsylvania State Police v. Kim*, 150 A.3d 155, 160 (Pa. Cmwlth. 2016).

The request plainly and on its face requests a “police report of the night of 7/24/20 that was dictated by Ptlm. Stumpf (Officer Id. no. 6).” RTKL REQUEST, pg. 1 (October 9, 2020) (some capitalization omitted). Thus, on its face, this is a criminal investigative record, and the request therefor properly DENIED by Cresson. 65 P.S. § 67.708(b) (16) (ii); 18 Pa. C.S. 9106 (c) (4). The RTKL clearly exempts “[i]nvestigative materials, notes, correspondence, videos and reports” from disclosure. 65 P.S. § 67.708 (b) (16) (ii). Additionally, CHRIA prohibits the dissemination of material assembled for the purpose of an inquiry into a criminal incident or an allegation of criminal wrongdoing. The Commonwealth Court in *Barros*, cited *supra*, held:

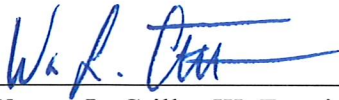
Thus, the records requested by Barros—*i.e.*, the criminal complaint file, forensic lab reports, any confession and record of polygraph of Quinones, the “Communication Center Incident Review,” the “Internal Police Wanted Notice,” “Reports on individual mistakenly apprehended,” and three signed witness statements—are protected from disclosure under both the RTKL and the CHRIA as records “relating to ... a criminal investigation” and “investigative information,” respectively.

Barros v. Martin, 92 A.3d 1243, 1250 (Pa. Commw. Ct. 2014). “Because the Incident Report is a criminal investigative report, it falls within the exemption at Section 708(b) (16) (ii) and is not a public record; therefore, it is not subject to disclosure.” *Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473, 479 (Pa.Cmwlth.2010), *appeal denied*, 621 Pa. 685, 76 A.3d 540 (2013). Requestor seeks a police report dictated by a police officer; therefore the records he seeks are exempt as a criminal investigative report and investigative information.

Conclusion

For the reasons stated above, Requester's appeal is DENIED. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Cambria County Court of Common Pleas. 65 P.S. §67.1302(A). All parties must be served with notice of the appeal. The Office of the District Attorney must also be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial adjudicator in this matter, the Office of the District Attorney is not a proper party to any appeal and should not be named as a party. *Padgett v. Pennsylvania State Police*, 73 A.3d 644, 648 n.5 (Pa. Cmwlth. Ct. 2013).

Final Determination Issued and Mailed December 15, 2020.



Warren L. Crilly, III, Esquire
Chief Deputy District Attorney
Right to Know Law Appeals Officer