

NORTHAMPTON COUNTY, PENNSYLVANIA
DISTRICT ATTORNEY'S OFFICE

FINAL DETERMINATION

SHEILA AYRES,	:	
Requester,	:	No. 2-ORA-2022
	:	
v.	:	
	:	
CITY OF BETHLEHEM POLICE	:	
DEPARTMENT,	:	
Respondent.	:	

BACKGROUND

On February 14, 2022, Sheila Ayres (“Requester”) submitted a written request to the City of Bethlehem Police Department (“Respondent”) pursuant to the Right to Know Law (“RTKL”). Although a copy of this initial request is not included with the appeal to this Office, the request was for: “Incident report 2022-4991.” Attachment “A.” On February 18, 2022, the Respondent denied the request under Section 708(b)(5), (6) and (17) of the RTKL, finding that the requested record was related to a non-criminal investigation. *Id.*

On February 23, 2022, the Requester appealed to Northampton County District Attorney’s Office, challenging the denial. *See* Attachment “B.” The Requester avers that she requires the requested police report for her insurance, but acknowledges that “I do not know the RTK request” and does not include a copy of the initial request. *Id.*

The appeal was received on February 24, 2022. Upon receipt, this Appeals Officer invited both parties to supplement the record by March 15, 2022. On March 9, 2022, the Requester submitted documents to explain why she needs the requested incident report. *See* Attachment “C” (redacted). The Requester included within her supplemental documentation a copy of a Petition for a Protection from Abuse Order, a copy of an invoice from a plumbing company, and eighteen (18) photographs, including photographs of a sump pump and vehicles. *Id.*

LEGAL ANALYSIS

Under Section 102 of the RTKL, a “public record” is defined as:

A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under 708; (2) is not exempt from being disclosed under any other Federal or State laws or regulation or judicial order or decree; or (3) is not protected by a privilege.

65 P.S. § 67.102. The burden of proving that the record is exempt rests with the public body by a preponderance of the evidence. Preponderance of the evidence requires proof “by a greater weight of the evidence.” *Commonwealth v. Williams*, 732 A.2d 1167, 1187 (Pa. 1999). In *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Commw. 2002), the Commonwealth Court explained that “preponderance of the evidence is tantamount to a ‘more likely than not’ standard.”


The Respondent contends that the requested records are exempt from disclosure under 65 P.S. §§ 67.708(b)(5), (6), (17). Under Section 708(b)(17), records of an agency relating to or resulting in a non-criminal investigation are exempt from disclosure, “including . . . [i]nvestigative materials, notes, correspondence, and reports,” are exempt from disclosure. 65 P.S. § 67.708(b)(17)(ii). This exemption further protects from disclosure requested records that may contain information that would “[c]onstitute an unwarranted invasion of privacy” to the involved parties. *Id.* at § 67.708(b)(17)(vi)(C). While the RTKL does not define “noncriminal” or “investigation,” the Commonwealth Court of Pennsylvania has held that a noncriminal court is “one not intended to consider prosecution and, in this context, ‘investigation’ means ‘a systematic or searching inquiry, a detailed examination, or an official probe.’” *In re Johnson*, 254 A.3d 796, 799-800 (Pa. Commw. 2021) (quoting *California Borough v. Rothkey*, 185 A.3d 456, 465 (Pa. Commw. 2018)). In addition, the Commonwealth Court has held that “a report generated in

response to a call to the police is a record that relates to a noncriminal investigation.” *Id.* at 802; *see also Taylor v. Pennsylvania State Police*, 2020 WL 119593 (Pa. Commw. 2020).¹

Here, totality of the evidence shows that the Respondent properly denied access to the requested incident report under Section 708(b)(17), as the requested incident report is related to a noncriminal investigation. Indeed, the Requester acknowledges within her appeal and supporting documentation that she is requesting the police report due to pending civil litigation and in support of an insurance claim. *See* Attachments “B,” “C.” As the requested record may contain information that would constitute an unwarranted invasion of privacy to those parties involved, the Respondent has met its burden of showing that the requested police report is exempt from disclosure.

CONCLUSION

For the foregoing reasons, and because the Respondent has met its burden of proof by the preponderance of the evidence in showing that the requested record is exempt from disclosure, the Requester’s appeal is denied. This Final Determination is binding. Within thirty (30) days of the mailing of this determination, any party may appeal to the Northampton County Court of Common Pleas under 65 P.S. § 67.1302(a). All parties must be served with the notice of the appeal.


KATHARINE R. KURNAS, ESQUIRE
Appeals Officer for Northampton County
District Attorney’s Office

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OFFICE

Date: March 22, 2022

¹ An unreported decision of the Commonwealth Court “issued after January 15, 2008,” may be cited to “for its persuasive value[.]” 210 Pa. Code § 69.414(a).