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JULIA GITELMAN AND MAKNON AND ASSOCIATES, LLC, Requester	:	Docket No: AP 2021-1213
v.	:	
PINE CREEK TOWNSHIP, Respondent	:	

FINAL DETERMINATION ON ITEM 4
as transferred by the OOR on August 5, 2021.

Factual Statement

The interaction between Christian M. Mcloud and Officer Stephen Brion occurred on or about March 22, 2021. Officer Brion performed a traffic stop on Mcloud because the trailer he was driving had not operable tail lights visible. This hearing officer takes notice that the time for sunset was 7:24 pm and this traffic stop occurred at approximately 7:53 pm. The location was in the vicinity of mile marker 116 on North 220 highway. During the interaction between Mcloud and Brion, Mcloud failed to have any documentation for the trailer, displayed inconsistent statements about his travels, and displayed nervous behavior focusing on the trailer. Officer Brion also has substantial training and experience in narcotics investigations giving rise to Brion's belief that

Mcloud was being deceptive. These undisputed facts gave rise to an initial traffic violation that further evolved into a wider criminal investigation. Subsequently, law enforcement obtained a validly executed search warrant for the vehicle and trailer in pursuit of a criminal investigation – narcotics interdiction. Requestor's inquiry focuses on "Any recorded, or written communications" between Brion, Officer Klinger and/or the Pine Creek Township Police Department related to the *traffic stop* of Mcloud on the above-referenced date. *Emphasis added.*

Discussion

It is noted at the outset that the only remaining portion of the original Right to Know request is that assigned by the Office of Open Records (OOR) in Item #4 as follows:

> [4] Any recorded or written communications between Officer Stephen Brion and Officer Klinger and/or the Pine Creek Township Police Department Hours related to the traffic stop conducted on Mr. Christian Mcloud at Police Incident number: 21-0326.

The OOR noted in its August 5, 2021 order that any audio or video recordings are a different record request process contained in and addressed by the recently enacted Act 22 at 42 Pa.C.S. § 67A.03, et seq (2017). *See* OOR order dated August 5, 2021. Thus, the only remaining records apparently sought are written communications. The record as it exists is sufficient for the determination of Item #4.

Pine Creek Township denied access under the Right to Know statute asserting the sought records related to and resulted in a criminal investigation under 65 Pa.C.S. § 708(b)(16)(ii). See Township letter from Macklem, June 4, 2021. Further, Counsel for the Township further explained that an additional basis for denial is a violation of the Criminal History Record Information Act (CHRIA) at 18 Pa.C.S. § 9106(C)(4). See Argument of Pine Creek Township, Robert O'Conner.

Under the RTK Law, records in the possession of an agency are presumed to be public unless the records are exempt from disclosure. *See Pa. State Police v. Kim*, 150 A.3d 155 (Pa. Cmwlth. 2016). Ultimately, the burden is on the agency claiming the exemptions to prove the exemptions by a preponderance of the evidence. *See* 65 Pa.C.S. § 67.708(a); *See Also Pa. OIG v. Brown*, 152 A.3d 369 (Pa. Cmwlth. 2016). The exemption asserted by the Township is in section 708(b)(16)(iii) of the RTK law referring to records of "Investigative materials, notes, correspondence, videos and reports." The most relevant definition of an this information type is contained inn CHRIA at § 9102, "information assembled as a result of the performance of any inquiry, form or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information."

The Township met its burden of production in this matter clearly outlining a scenario where every record gathered related directly to a suspected narcotics investigation. Whether the matter is charged or not is irrelevant for this analysis. These written records sought are clearly "Investigative materials, notes, correspondence, videos,

and reports" and are exempt from disclosure under the RTK Law and CHRIA. See 65 Pa.C.S. § 708(b)(16)(iii) and18 Pa.C.S. § 9106(C)(4) respectively. Based on the foregoing, the appeal at Item #4 is denied.

Final Determination of Item #4 issued and emailed/mailed: August 30th, 2021.

Respectfully,

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