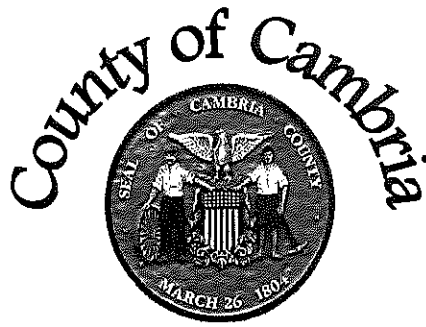


**Kelly Callihan**  
District Attorney



**Heath Long**  
First Assistant

**Scott M. Lilly**  
Chief Deputy, Appellate Division  
slilly@co.cambria.pa.us

## Office of the District Attorney

200 South Center Street, Ebensburg, PA 15931  
Phone: (814) 472-1680 • Fax: (814) 472-7134

September 21, 2015

**RECEIVED**

SEP 23 2015

OFFICE OF OPEN RECORDS

Timothy S. Hinkledire  
SCI Smithfield LX-9599  
PO Box 999 1120 Pike Street  
Huntingdon, PA 16652

William G. Barbin, Esquire  
206 Main Street  
Johnstown, PA 15901

**RE: Hinkledire v. Adams Township Police Department (OOR Docket AP 2015-1344)**

Dear Mr. Hinkledire and Mr. Barbin:

A final decision in this case has been rendered. Please see attached document.

Thank you for your time in this matter.

Sincerely,



Scott M. Lilly, Esquire  
RTKL Appeals Officer

Enclosure

CC: ✓ file

✓ Magdalene C. Zeppos, Esquire,

400 North Street, Fourth Floor, Harrisburg, PA 17120

THE HONORABLE KELLY CALLIHAN  
DISTRICT ATTORNEY OF CAMBRIA COUNTY

IN THE MATTER OF	:
	: AP 2015-1344
TIMOTHY HINKLEDIRE,	:
Requester	:
	:
v.	:
	:
ADAMS TOWNSHIP POLICE DEP'T.,	:
Respondent,	:
	:

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Timothy Hinkledire ["Requestor"] requests the following records from the Adams Township Police Department ["Police"]:

1. Provide proof of all information received in reference to the Requestor or any derivative thereof between the dates of October 9, 2014 to July 6, 2015.
2. Provide all e-mail, documents and/or notes made, sent and/or received to or from the Police between the dates of October 9, 2014 to July 6, 2015.
3. [Request Number 3 was satisfied by an opinion written by the Office of Open Records Appeals Officer.]
4. Provide all text messages provided to the Police on October 9, 2014 from B.L. and K.
5. Provide all written or recorded statements from October 9, 2014 from B.L. and K.

**Factual Background**

The Adams Township Police Department filed sexual assault related charges against Timothy Hinkledire for an offense that occurred on October 9, 2014. B.L. reported that Mr. Hinkledire had sexually assaulted her son, K. An investigation ensued and felony charges were filed on October 10, 2014.

**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). See *Coley v. Philadelphia Dist.*

*Attorney's Office*, 77 A.3d 694, 697 (Pa.Cmwlt.2013); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1264 (Pa.Cmwlt.2010). Criminal investigative records remain exempt from disclosure under the RTKL even after the investigation is completed. *Sullivan v. City of Pittsburgh, Dep't of Pub. Safety*, 127 Pa.Cmwlt. 339, 561 A.2d 863, 865 (1989).

*Barros v. Martin*, 92 A.3d 1243, 1250, 2014 WL 885994 (Pa. Cmwlt. Ct. 2014).

Requests 1, 4 and 5 facially relate to eyewitness statements and are thus exempt from disclosure as a criminal investigative record.

Request 2 asks for all emails received and sent during the timespan of the criminal investigation. The Police respond that such records are criminal investigative records. Emails may or may not be considered records for the purposes of the RTKL. Consider the following: "Any e-mails that meet definition of "record" under the Right to Know Law (RTKL), even if they are stored on township supervisors' personal computers or in their personal e-mail accounts, are records of the township for purposes of a request for township records under RTKL." *Mollick v. Township of Worcester*, 32 A.3d 859 (Pa. Cmwlt. Ct. 2011). "[E]mails should not be considered "records" just because they are sent or received using an agency email address or by virtue of their location on an agency-owned computer, even where, as here, the agency has a policy limiting use of computers to official business and stating that users have no expectation of privacy." *Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1264, 276 Ed. Law Rep. 340 (Pa. Cmwlt. Ct. 2012).

During this time period, the Requestor was under investigation. All of his other requests relate directly to criminal investigative records. However, this request is of a general nature and requests simply "all emails." Such a request must be denied on specificity grounds. "When considering a challenge to the specificity of a request under Section 703 of the RTKL, this Court employs a three-part balancing test, examining the extent to which the request sets forth (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which

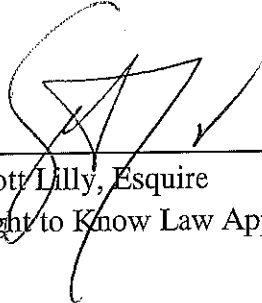
records are sought.” *Pennsylvania Dep’t of Educ. v. Pittsburgh Post-Gazette*, No. 2095 C.D. 2014, 2015 WL 4210997, at \*2 (Pa. Commw. Ct. July 14, 2015).

This request fails the subject matter prong of the specificity requirement. “[I]t would place an unreasonable burden on an agency to examine all its emails for an extended time period without knowing, with sufficient specificity, [to] what Township business or activity the request is related.” *Pennsylvania Dep’t of Educ. v. Pittsburgh Post-Gazette*, No. 2095 C.D. 2014, 2015 WL 4210997, at \*2 (Pa. Cmwlth. Ct. July 14, 2015).

### **Conclusion**

For the above stated reasons, Requestor’s appeal is denied as to requests 1,2,4, and 5. 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.

**Final Determination Issued and Mailed September 21, 2015.**



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Scott Lilly, Esquire  
Right to Know Law Appeals Officer