

IN RE: : RIGHT-TO-KNOW REQUEST
: DAUPHIN COUNTY, PENNSYLVANIA
:
:
:
:
APPEAL OF KELLI MURPHY : RTK-2021-DA-010 (SWAT. TWP)

FINAL DETERMINATION

After review of the decision of the Open Records Officer for Swatara Township, the appeal is denied. The Requester submitted a request to Swatara Township for the police report pertaining to incident number 210004567. Swatara Township provided a copy of a call summary report (C21-0004567), but redacted some portions based on its position that the redacted portions contained personal identification information and criminal investigative records, citing Sections 708(b)(6) and (b)(16) of the Right to Know Law. The Requester filed an appeal with the Office of Open Records (OOR). The OOR invited both parties to supplement the record. Swatara Township submitted a position statement. The OOR reviewed the appeal, determined that the redactions for personal identification information were justified, and properly referred the question of whether the remaining redactions qualify as “criminal investigative records” to this Appeals Officer. This Appeals Officer received the transferred appeal on June 25, 2021. I subsequently invited both parties to supplement the record prior to July 12, 2021. Neither party elected to do so. Copies of the initial request, the denial by Swatara Township, the Requester’s appeal, the referral and Final

Determination from the OOR, and the position statement of Swatara Township are incorporated herein by reference, as well as attached collectively as Appendix "A."

In addition to reviewing the above-referenced materials, I conducted an *in camera* review of the unredacted Swatara Township Police report for which the request was denied.

A record in the possession of a local agency shall be presumed to be a public record. 65 P.S. §67.305(a). However, the presumption shall not apply if the record is exempt from disclosure under section 708 of the Right to Know Law. 65 P.S. §67.305(a)(1). The burden of proving that a record of a local agency is exempt from public access is on the local agency receiving the request by a preponderance of the evidence. 65 P.S. §67.708(a)(1). The duty of this Appeals Officer is solely to determine whether the receiver of the request was obligated by law to disclose the requested item(s). Whether to disclose one or more items outside the boundaries of the Right to Know Law is within the discretion of the agency possessing the requested item(s).

Swatara Township's denial was based on Section 67.708(b)(16) of the Right-to-Know Law.

Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

* * *

- (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.

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa. C.S. §9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa. C.S. §3754(b) (relating to accident prevention investigations).

65 P.S. §67.708(b)(16).

The entirety of the police report I reviewed *in camera* consists of materials related to a criminal investigation that are excluded from the applicability of the Right-

To-Know Law. 65 P.S. §67.780(b)(16). The report includes narrative information outlining the steps taken by police to investigate a call regarding the body of a deceased individual found behind a building in Swatara Township, which is plainly within the exception. Investigative reports and witness statements taken by law enforcement personnel during a criminal investigation are not subject to disclosure under the Right-To-Know Law. ***Pennsylvania State Police v. Office of Open Records***, 5 A.3d 473 (Pa.Cmwlt. 2010). The contents of the police report fall within the exception contained at 65 P.S. §67.780(b)(16) and fall outside the definition of police blotter information.

Notably, the criminal investigation did not result in charges being filed, which may cause some to presume, incorrectly, that the criminal investigative exception does not apply. The determination that an incident does not warrant criminal charges or has not yet developed sufficient evidence to charge does not remove the reports generated from the exception contained at 65 P.S. §67.780(b)(16). It is the nature of the report as documenting the efforts of the police in investigating potential criminal activity that places it within the exemption. In many cases, the protection of those exonerated by a police investigation makes it imperative that such records remain outside public access. Otherwise, someone could make repeated, anonymous, and false allegations of crimes against a person to the police. He could then make a Right-to-Know request and accurately report publicly that the person had been the subject of police investigation for those crimes.

For the above reasons, the denial of the request for the disclosure of the police report is affirmed.

The parties are hereby notified of their right to appeal this decision to the Dauphin County Court of Common Pleas within thirty days.


MICHAEL A. SPROW
APPEALS OFFICER

DATE MAILED: 7/16/21

DISTRIBUTION:

Kelli Murphy (via email to bobkelmur@comcast.net)
Karen Alleman, AORO for Swatara Township (via email to kalleman@swataratwp.com)
Kevin Gallick, RTK Officer for Swatara Township P.D. (service by electronic mail to kgallick@swatarapolice.org)
Kelly Callihan, Esq., AORO, Dauphin County District Attorney's Office
Ryan W. Liggitt, Esq., OOR (via email to rliggitt@pa.gov)

APPENDIX "A"



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**KELLI MURPHY,
Requester**

:

:

:

:

v.

: Docket No: AP 2021-1009

:

**SWATARA TOWNSHIP,
Respondent**

:

:

INTRODUCTION

Kelli Murphy (“Requester”) submitted a request (“Request”) to Swatara Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a police report for incident number 210004567, which involves the Requester’s brother. The Township partially denied the Request, providing the responsive police report and arguing that redactions were necessary to prevent disclosure of personal identification information, 65 P.S. § 67.708(b)(6)(i)(A), and criminal investigative records, 65 P.S. § 67.708(b)(16)(ii). The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied in part** and **transferred in part**, and the Township is not required to take any further action at this time.

FACTUAL BACKGROUND

On May 21, 2021, the Request was filed, stating:

Incident # 210004567

My brother's body was found at a "pump" station...He was then taken to Dauphin Coroner. I received a call 10 days later as he had no I.D. on him...

I live in Chester County and was wondering, if possible, to have the report emailed to me.

On May 21, 2021, the Township partially denied the Request, providing the responsive report to the Requester, while arguing that withholding some records and redactions to a responsive record were necessary to prevent the disclosure of personal identification information and criminal investigative information contained within the report. 65 P.S. §§ 67.708(b)(6)(1)(A), (16)(ii).

On May 24, 2021, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On June 3, 2021, the Township submitted a position statement reiterating its grounds for denial. The Township also claims that the Requester has modified the Request on appeal and that the right to privacy applies to home address information. In support of its position, the Township submitted the affidavit of Sergeant Kevin Gallick, the Township Police Department's ("Department") Open Records Officer.

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their

actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The Township is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. §67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011)

(quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. The Requester may not modify the Request on appeal

The Township asserts that the Requester has attempted to improperly modify the Request on appeal. The Requester, on appeal, argues that the Township did not provide “all the information surrounding my brother’s death be released to me...I would like any Criminal or Civil records pertaining to this incident.” To the extent that the Requester is seeking records other than the incident report she sought in her Request initially, the Requester has improperly modified the Request on appeal.

A requester may not modify, explain or expand upon a request on appeal. *See Michak v. Dep't of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a requestor requests a specific type of record ... the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request”); *Staley v. Pittsburgh Water and Sewer Auth.*, OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256 (“A requester may not modify the original request as the denial, if any, is premised upon the original request as written”). Therefore, the OOR’s review on appeal is confined to the Request as written, and the OOR will not address records other than the incident report initially sought. *See, e.g., Brown v. Pa. Turnpike Comm'n*, OOR Dkt. AP 2011-1287, 2011 PA O.O.R.D. LEXIS 998.

2. The Township may redact personal identification information, including home address and date of birth of an individual

Here, the record itself appears to contain three separate redactions for personal identification information. Sgt. Gallick confirms this by attesting that redactions were made within the report for “personal identification information consisting of the home phone number, date of birth and home address of a witness contained in [the record].”

Under the RTKL, an affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the Township acted in bad faith, “the averments in [the affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Section 708(b)(6) of the RTKL exempts from disclosure “a record containing ... home, cellular or personal telephone numbers....” 65 P.S. § 67.708(b)(6); *see also Office of the Lieutenant Governor v. Mohn*, 67 A.3d 123 (Pa. Commw. Ct. 2013) (finding that government-issued email addresses are “personal” under Section 708(b)(6)); *Office of the Governor v. Raffle*, 65 A.3d 1105 (Pa. Commw. Ct. 2013) (finding that government-issued telephone numbers are “personal” under Section 708(b)(6)) abrogated in part on other grounds, 148 A.3d 142 (Pa. 2016); *but see Pa. State Sys. of Higher Educ. v. Fairness Ctr.*, No. 1203 C.D. 2015, 2016 Pa. Commw. Unpub. LEXIS 245 (Pa. Commw. Ct. 2016) (holding that otherwise exempt email addresses held out to the public are subject to disclosure). Therefore, the Township has properly redacted the home phone number of an individual under Section 708(b)(6) of the RTKL.

Additionally, in *Pa. State Educ. Ass’n v. Commonwealth*, the Pennsylvania Supreme Court held that individuals possess a right to privacy in certain types of personal information, including their home addresses. 148 A.3d 142 (Pa. 2016). When a request for records implicates personal information not expressly exempt from disclosure under the RTKL, the OOR must balance the individual’s interest in informational privacy with the public’s interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest. *Id.*;

see also Pa. State Univ. v. State Employees' Retirement Bd., 935 A.2d 530 (Pa. 2007) (employing a balancing test with respect to home addresses sought under the former Right-to-Know Act).

Although the Pennsylvania Supreme Court did not expressly define the types of “personal information” subject to the balancing test, the Court recognized that certain types of information, including home addresses, by their very nature, implicate privacy concerns and require balancing. *Pa. State Educ. Ass'n*, 148 A.3d at 156-57; *see also Tribune-Review Publ. Co. v. Bodack*, 961 A.2d 110, 117 (Pa. 2008) (finding telephone numbers to constitute personal information subject to the balancing test); *Pa. State Univ.*, 935 A.2d at 533 (finding home addresses, telephone numbers and social security numbers to be personal information subject to the balancing test); *Sapp Roofing Co. v. Sheet Metal Workers' International Assoc.*, 713 A.2d 627, 630 (Pa. 1998) (plurality) (finding names, home addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test).

The Requester asserts that there is a public interest in this information because it is related to the death of her brother. However, the identity of the requester is not relevant to the determination of the public status of a record. *See DiMartino v. Pa. State Police*, No. 340 C.D. 2011, 2011 Pa. Commw. Unpub. LEXIS 787 at *18-19 (Pa. Commw. Ct. 2011); *Wheelock v. Pa. Dep't of Corr.*, OOR Dkt. AP 2009-0997, 2009 PA O.O.R.D. LEXIS 725 (stating that the only information available under the RTKL is a “public record” available to all citizens regardless of personal status or stake in the requested information).

To the extent that the Requester has articulated a public interest, it does not overcome the interest in privacy identified by the Supreme Court in *Pa. State Educ. Ass'n*. *See Pa. Liquor Control Bd. v. Beh*, 2019 Pa. Commw. LEXIS 660, *23-24 (Pa. Commw. Ct., July 17, 2019)

(“There has been no demonstration that there is no less intrusive alternative means to accomplish this purported public benefit”).

Therefore, under the facts before us, the public benefit of disclosure does not outweigh the privacy interests in the requested information as it pertains to the sought redacted home address, or date of birth of the individual and the Township has proven that it has properly redacted personal information under the right to privacy from the responsive report. *See Hartman v. Pa. Dep’t of Conserv. & Nat. Res.*, 892 A.2d 897, 906-07 (Pa. Commw. Ct. 2006) (finding the names and home addresses of snowmobile registrants to be protected by the constitutional right to privacy); *Lehman v. Northampton County*, OOR Dkt. AP 2017-0098, 2017 PA O.O.R.D. LEXIS 421 (concluding that the names of employment references are protected by the constitutional right to privacy); *Lane v. Sewer Auth. of the Twp. of Pittston*, OOR Dkt. AP 2017-1605, 2017 PA O.O.R.D. LEXIS 1388 (finding that the names and home addresses contained in a list of properties connected to a specific sewer project may be redacted because such information is protected under the constitutional right to privacy). *See generally Del. Cty. v. Schaefer*, 45 A.3d 1149, 1153 (Pa. Commw. 2012) (noting that dates of birth “could be misappropriated or misused”).

3. The OOR lacks jurisdiction in part

The Township argues that some responsive information was properly withheld or redacted to prevent disclosure of criminal investigative information. In support of its argument, Sgt. Gallick attests as follows:

Upon receipt of the above-referenced Request, I examined the files in the Department’s possession, custody, and control, and I conducted a good faith search for any files that may be responsive to the Request.

The Request pertained to case number C21-0004567, where the Department investigated a report of a dead body, identified as James E. Roberts, found behind the Swatara Township pumping station located on Highland Street, Swatara Township, Pennsylvania.

Upon review of the Department's files, the police blotter information, which is contained on page 1 of the Call Summary Report, the second and final page of the Call Summary Report, the Case Report, the Crime Scene Log, and Crime Scene Photographs for case number C2 1-0004567 were identified as the only records in the Department's possession, custody, and control that relate to the incident identified in the Request and were potentially responsive to the Request.

The Case Report, Crime Scene Log, Crime Scene Photographs, and portions of the second page of the Call Summary Report were withheld because they were records relating to a criminal investigation, specifically the investigation into the death of James E. Roberts, were assembled as a result of the Department's investigation into this incident, and contain investigative materials, notes, and reports related to this criminal investigation.

Based on the above affidavit of Sgt. Gallick, the threshold question is whether the OOR has jurisdiction to render a decision on this portion of the appeal. The issue of subject matter jurisdiction may be raised by the parties or the OOR, *sua sponte*. See *Weber v. Wyoming Valley Sch. Dist.*, 668 A.2d 1218 (Pa. Commw. Ct. 1995) (Secretary of Education permitted to raise issues of subject matter jurisdiction in an administrative proceeding under the Public School Code, *sua sponte*). The OOR is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. § 67.503(a).

The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. See 65 P.S. 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney. See *id.* Accordingly, because the Township has provided evidence that the responsive police reports relate to a criminal matter, this portion of the appeal is hereby transferred to the Appeals Officer for the Dauphin County District Attorney's Office to determine whether the withheld and redacted records are criminal investigative records. See *Pennsylvanians for Union Reform v. Centre Cnty. Dist. Attorney's Office*, 139 A.3d 354 (Pa. Commw. Ct. 2016) (citing 42 Pa.C.S. § 5103(a) (relating to

the process for handling improperly filed appeals)). A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Dauphin County District Attorney's Office.

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **transferred in part**, and the Township is not required to take any further action at this time.¹ 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 Dauphin County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 23, 2021

/s/ Ryan W. Liggitt

RYAN W. LIGGITT, ESQ.
APPEALS OFFICER

Sent to: Kelli Murphy (via email only);
Karen Alleman, AORO (via email only);
Fran Charo, Esq., Dauphin County District Attorney (via US Mail only)

¹ An agency generally has the discretion to release otherwise nonpublic records. *See* 65 P.S. § 67.506(c). That decision is solely within the discretion of the agency and is not subject to the OOR's legal review. Further, "the RTKL does not mandate that an agency's exercise of this discretion requires it to continue to release the same or similar records in response to future requests." *See Sherwood v. Pa. State Police*, OOR Dkt. AP 2011-1718, 2012 PA O.O.R.D. LEXIS 373; *Tartack v. Hazleton Area Sch. Dist.*, OOR Dkt. AP 2020-2570, 2021 PA O.O.R.D. LEXIS 92.

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

DC, OpenRecords

From: no-reply@openrecordspennsylvania.com
Sent: Sunday, May 23, 2021 9:04 PM
To: bobkelmur@comcast.net
Subject: [External] PA Office of Open Records - Appeal Confirmation

***ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.*



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Kelli Murphy
Company:	
Address 1:	64 Denton Drive
Address 2:	
City:	Glenmoore
State:	Pennsylvania
Zip:	19343
Phone:	215-888-4568
Email:	bobkelmur@comcast.net
Agency (list):	Swatara Township
Agency Address 1:	599 Eisenhower Blvd.
Agency Address 2:	
Agency City:	Harrisburg
Agency State:	Pennsylvania
Agency Zip:	17111
Agency Phone:	717-564-2550
Agency Email:	

Records at Issue in this Appeal: Incident #C21-0004567. As the sibling and only living direct relative of the decedent, I am requesting all the information surrounding my brothers death be released to me. I feel I have a right to know the circumstances. I would like any Criminal or Civil records pertaining to this incident.

Request Submitted to Agency Via: fax

Request Date: 05/20/2021

Response Date: 05/21/2021

Deemed Denied: No

Agency Open Records Officer: Sgt. Kevin Gallick

Attached a copy of my request for records: Yes

Attached a copy of all responses from the Agency regarding my request: Yes

Attached any letters or notices extending the Agency's time to respond to my request: No

Agree to permit the OOR additional time to issue a final determination: No

Interested in resolving this issue through OOR mediation: No

Attachments:

- Right to Know.pdf
- Right to Know request.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

SWATARA TOWNSHIP RIGHT-TO-KNOW RESPONSE FORM

**Granted in Part/Denied in Part
RTK 2021-111**

Date: 21 May 2021
Name: Kelli K. Murphy
Address: 64 Denton Drive, Glenmoore, PA 19343
Telephone number: (215) 888-4568
Email: bobkelmur@comcast.net

Dear Kelli K. Murphy,

Thank you for writing to Swatara Township with your request for records pursuant to Pennsylvania's Right-To-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*

On 21 May 2021 we received your request for report 21-0004567. However, Swatara Township has withheld information that is exempt from disclosure by law. We have provided you police blotter information and parts of the incident report with redaction of personal identification information and investigative material as outlined in Section 708(b).

This information is exempt from disclosure under Right to Know Law, Act 3-2008 Sections 708(b)(6)(i)(A) and 708(b)(16)(ii).

For Civil Records, appeals may be submitted to Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17101. For Criminal Records, appeal to the First Assistant District Attorney, Michael Sprow, Esq., Rm. 205, Dauphin County Courthouse, Front and Market Streets, Harrisburg, PA 17101.

Right-to-Know request and this denial letter must be included when filing an appeal. More information about how to file an appeal under the Right-to-Know Law is available at the Office of Open Records website, <https://www.openrecords.pa.gov>.

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response, as outlined in Section 1101. If you have further questions, please call Sergeant Kevin Gallick. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,



POLICE DEPARTMENT RIGHT-TO-KNOW OFFICER: Kevin Gallick
TITLE: Administrative Sergeant
BUSINESS ADDRESS: 599 Eisenhower Blvd; Harrisburg, PA 17111
BUSINESS TELEPHONE: 717-564-2550

RE: C21-0005977



Swatara Township Police Dept
 599 Eisenhower Blvd Harrisburg, PA 17111
 Phone #: 717-564-2550
 Email:

Call Summary Report

<u>Call Details</u>		Date Printed 5/21/2021 08:29
Call Number: C21-0004567	How Received: PHONE	
Call Type: DEATH INVESTIGATION		
Custom Field		
Assigned Officer: NEAL, SCOTT B		
Reported: 4/20/2021 10:12	Time Dispatched: 4/20/2021 10:12	Time Arrived: 4/20/2021 10:14
Occurred From:	Occurred To:	Time Cleared: 4/20/2021 11:17
Municipality: SWATARA	Latitude:	
Dispatch Location: 1700 BLOCK HIGHLAND STREET, HARRISBURG PA 17111	Longitude:	
Zone 3	Altitude:	
Assigned Officer Signature: _____		
Approved: 4/23/2021 15:06	Approving Officer: BLOSS, TIMOTHY ROBIN	
Approving Officer Signature: _____		
<u>Complainant / Contact Information</u>		
Person/Org: SHATTO, TIMOTHY	Address: Confidential	
Business Ph: Confidential	Mobile Ph: Confidential	DOB: Confidential
Home Ph: Confidential	Other Ph: Confidential	
Role: Assisting		
Person/Org: DEGROAT, BRETT ALAN	Address: Confidential	
Business Ph: Confidential	Mobile Ph: Confidential	DOB: Confidential
Home Ph: Confidential	Other Ph: Confidential	
Role: Assisting		
Person/Org: RYDER, BRANDON WILLIAM	Address: Confidential	
Business Ph: Confidential	Mobile Ph: Confidential	DOB: Confidential
Home Ph: Confidential	Other Ph: Confidential	
Role: Assisting		
Person/Org: MORRIS, ERIC	Address: Confidential	
Business Ph: Confidential	Mobile Ph: Confidential	DOB: Confidential
Home Ph: Confidential	Other Ph: Confidential	
Role: Assisting		
Person/Org: HORNER, DAVID A.	Address: Confidential	
Business Ph: Confidential	Mobile Ph: Confidential	DOB: Confidential
Home Ph: Confidential	Other Ph: Confidential	
Role: Assisting		
Person/Org: HUMMEL, WILLIAM	Address: [REDACTED]	
Business Ph: --	Mobile Ph: --	DOB: [REDACTED]
Home Ph: [REDACTED]	Other Ph: --	
Role: Complainant		
Person/Org: GALLICK, KEVIN J	Address: Confidential	
Business Ph: Confidential	Mobile Ph: Confidential	DOB: Confidential
Home Ph: Confidential	Other Ph: Confidential	
Role: Assisting		



Swatara Township Police Dept
599 Eisenhower Blvd Harrisburg, PA 17111
Phone #: 717-564-2550
Email:

Call Summary Report

Person/Org: **MOYER, JAMES KEVIN** Address: **Confidential**
Business Ph: **Confidential** Mobile Ph: **Confidential** DOB: **Confidential**
Home Ph: **Confidential** Other Ph: **Confidential**
Role: **Assisting**

Call Notes

Received a call from the Swatara Township Authority reporting a dead body behind the pumping station on Highland St.

Upon police arrival in the 1700 Blk. Highland Street I was met by the complainant / Swatara Township Sewer Authority employee William Hummel who directed me to a white male who appeared to be mid to late 30's deceased on his back in the grass area directly behind the building.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Swatara Township Right-To-Know Request Form

Please Note: A cost of .25¢ per page may be charged for the requested information.



Date Requested: 5 / 20 / 2021

Request Submitted By: E-Mail U.S. Mail Fax In-Person

Name of Requestor: Kelli K. Murphy

Street Address: 64 Denton Drive

City/State/Zip Code (Required): Glenmoore, Pa 19343

Telephone (Required): 215-888-4568 - email bobkelmur@comcast.net

Records Requested: (James E. Roberts) Incident # 210004567

*Please Provide as much specific detail as possible so the correct information can be identified.

My brother's body was found at a "pump" station (I guess "gas" station). He was then taken to Dauphin Coroner. I received a call (10) days later, as he had no I.D. on him. (This information is all I know. I was told by Jill at the County Coroner.

I live in Chester County and was wondering, if possible, to have the report e-mailed to me. Thank you, Kelli K. Murphy
email - bobkelmur@comcast.net

Do You Want Copies? YES NO

Do You Want to Inspect the Records? YES NO

Do You Want Certified Copies of Records? YES NO

INTERNAL USE ONLY

Right To Know Officer: Karen Alleman, Swatara Township Administrative Assistant

Date Received By Swatara: 5 / 21 / 2021 Agency Five (5)-Day Response Due: 5 / 28 / 2021

Response # 2021-111

**Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)

ATTN:

Sgt. Gallick

FROM: Kelli Murphy
RE: Incident # 2100004567



Swatara Township Right-To-Know Request Form

Please Note: A cost of .25¢ per page may be charged for the requested information.



Date Requested: 5 / 20 / 2021

Request Submitted By: E-Mail U.S. Mail Fax In-Person

Name of Requestor: Kelli K. Murphy

Street Address: 64 Denton Drive

City/State/Zip Code (Required): Glenmoore, Pa 19343

Telephone (Required): 215-888-4568 - email bobkelmur@comcast.net

Records Requested: (James E Roberts) Incident # 210004567

*Please Provide as much specific detail as possible so the correct information can be identified.

My brother's body was found at a "pump" station (I guess "gas" station. He was then taken to Dauphin Coroner. I received a call (10) days later, as he had no I.D. on him. (This information is all I know. I was told by Jill at the County Coroner.

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Do You Want Copies? YES NO

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INTERNAL USE ONLY

Right To Know Officer: Karen Alleman, Swatara Township Administrative Assistant

Date Received By Swatara: 5 / 21 / 2021 Agency Five (5)-Day Response Due: 5 / 28 / 2021

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**Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)

June 3, 2021

VIA EMAIL ADDRESSED TO rliggitt@pa.gov
AND bobkelmur@comcast.net

Ryan Liggitt, Esq.
Commonwealth of Pennsylvania
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234

Re: **Murphy v. Swatara Township (Dauphin)**
Docket No. AP 2021-1009

Dear Mr. Liggitt:

The Swatara Township Police Department (the “Department”) is a local agency subject to the Right-to-Know Law (“RTKL”) that is required to disclose public records. 65 P.S. § 67.302.¹ With respect to the request that is the subject of this appeal, the Department complied in all ways with the RTKL’s requirements and granted requester Kelli K. Murphy (“Ms. Murphy”) access to all public records in the Department’s possession, custody, and control responsive to her request. There is no legal or factual merit to any contention by Ms. Murphy that the Department denied her access to the requested public records. Accordingly, the Department respectfully requests that the Office of Open Records (“OOR”) deny the appeal.

¹ Because the RTKL request at issue in this appeal was for police records, the request was filed with the Department and handled by the Department’s Right-to-Know Officer, and not Swatara Township’s Right-to-Know Officer.

A. Ms. Murphy's RTKL Request

On May 21, 2021, the Department received a request from Ms. Murphy (the "Request"). A true and correct copy of the Request is attached hereto as Exhibit "A." The Request provided as follows:

(James E. Roberts) Incident # 210004567

My Brother's body was found at a "pump" station (I guess "gas" station. He was then taken to Dauphin Coroner. I received a call til (10) ten days later, as he had no I.D. on him. (This information is all I Know. I was told by dill at the County Coroner.

I live in Chester County and was wondering, if possible, to have the report e-mailed to me. Thank you.

B. The Department's Response to the Request

On May 21, 2021, the Department responded to Ms. Murphy and granted in part and denied in part Ms. Murphy's Request, and provided Ms. Murphy with all public records responsive thereto. A true and correct copy of the Department's May 21, 2021 letter and the responsive public records provided to Ms. Murphy are attached collectively hereto as Exhibit "B." The Department provided Ms. Murphy with the police blotter information, which is contained on page 1 of the Call Summary Report, with personal identification information contained therein redacted, and the second page of the Call Summary Report, with criminal investigative material contained therein redacted, responsive to her Request.

The Department denied in part Ms. Murphy's Request because portions of the second page of the Call Summary Report and all remaining records in the Department's possession, custody, and control found in response to the Request were exempt from disclosure under the RTKL's exception for records relating to a criminal investigation that contain investigative material pursuant to 65 P.S. § 67.708(b)(16)(ii). Additionally, the Department denied in part Ms. Murphy's

Request and redacted personal identification information contained in the police blotter information that was exempt from disclosure pursuant to 65 P.S. § 67.708(b)(6)(i)(A) of the RTKL. The Department found no other public records responsive to the Request other than those supplied to Ms. Murphy on May 21, 2021.

On May 24, 2021, Ms. Murphy filed the instant appeal (the “Appeal”). The Department notes that Ms. Murphy improperly attempts to modify and expand her Request in her Appeal, which is not permitted. *See Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Cmwlth. 2010); *Staley v. Pittsburgh Water and Sewer Authority*, OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256. Specifically, Ms. Murphy’s Request sought only “the report” related to the investigation of her brother, James E. Roberts’, death. But in the Appeal, Ms. Murphy states that she is “requesting all the information surrounding” her brother’s death and “any Criminal or Civil records pertaining to this incident.” Even taking into account the expansion of Ms. Murphy’s Request in her Appeal, however, for the reasons stated below, all responsive records in the Department’s custody, possession, and control that were not provided to Ms. Murphy are exempt under the RTKL as records related to a criminal investigation pursuant 65 P.S. § 67.708(b)(16) and as personal identification information pursuant to 65 P.S. § 67.708(b)(6)(i)(A).

C. Department’s Legal Position

1. The records are exempt because they relate to a criminal investigation and contain investigative materials pursuant to 65 P.S. § 67.708(b)(16)(ii)

Records in possession of a local agency are presumed public unless exempt under the RTKL or other law, or protected by a privilege, judicial order, or decree. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(a). Section 102 of the RTKL defines a “record” as “[i]nformation, regardless of physical

form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102.

Section 708(b)(16) of the RTKL, however, exempts from disclosure “[a] record of an agency relating to or resulting in a criminal investigation, including . . . [i]nvestigative materials, notes, . . . and reports.” 65 P.S. § 67.708(b)(16)(ii). This exemption does not apply to information contained in a police blotter. *See* 65 P.S. § 67.708(b)(16). But the Commonwealth Court has held that police incident reports regarding a criminal investigation are exempt from disclosure under Section 708(b)(16)’s criminal investigation exemption. *See Pennsylvania State Police v. Off. of Open Recs.*, 5 A.3d 473 (Pa. Cmwlth. 2010); *Hunsicker v. Pennsylvania State Police*, 93 A.3d 911 (Pa. Cmwlth. 2014).

For example, in *Pennsylvania State Police*, the requester sought an incident report from the Pennsylvania State Police (“PSP”) related to an incident that occurred at a private residence. *Pennsylvania State Police*, 5 A.3d at 475. The PSP denied the request on the basis that the requested incident report was a criminal investigative record and, therefore, exempt under Section 708(b)(16) of the RTKL, 65 P.S. § 67.708(b)(16). *Id.* The OOR held that the incident report was a public record and subject to disclosure because incident reports are equivalent to police blotters for which the criminal investigative exemption does not apply. *Id.* at 476. On appeal, the Commonwealth Court reversed and held that the incident report was not a public record because incident reports are not equivalent to police blotters under the RTKL. *Id.* at 477. Specifically, the court reasoned that the report was assembled as a result of an investigation into a criminal incident or an allegation of criminal wrongdoing and contained investigative information. *Id.* The incident

report, therefore, fell within the Section 708(b)(16)(ii) exemption and was not subject to disclosure. *Id.*

Similarly, in *Hunsicker*, the requester sought all reports regarding the investigation into the death of her brother. *Hunsicker*, 93 A.3d at 913. The PSP denied the request pursuant to the criminal investigative exemption because the records contained, *inter alia*, “[i]nvestigative materials, notes, correspondence, videos and reports.” *Id.* 912–13. The Commonwealth Court rejected the requestor’s argument that the requested materials are referred to as an “incident” report, and not an “investigative” report. *Id.* at 913. The court held that regardless of “what is contained in an incident report, incident reports are considered investigative materials and” exempt from disclosure under the criminal investigative records exception. *Id.* (citing, *Pennsylvania State Police v. Office of Open Records*, 5 A.3d at 479 (Pa. Cmwlth. 2010)).

Here, Ms. Murphy’s Request seeks an incident report related to the criminal investigation into her brother, James E. Roberts’, death, identified as case number C21-0004567. Specifically, with respect to case number C21-0004567, the Department investigated a report of a dead body, identified as James E. Roberts, found behind the Swatara Township pumping station located on Highland Street, Swatara Township, Pennsylvania. *See* Exhibit C, Gallick Affidavit ¶ 5. Upon receipt of Ms. Murphy’s Request, the Department’s Administrative Sergeant and Right-to-Know-Officer Kevin Gallick identified the police blotter information, which is contained on page 1 of the Call Summary Report, the second and final page of the Call Summary Report, the Case Report, the Crime Scene Log, and Crime Scene Photographs for case number C21-0004567 as the only records in the Department’s possession, custody, and control that relate to the incident identified in the Request and were potentially responsive to the Request. *See* Exhibit C at ¶ 6. The Department identified the police blotter information, except for personal identification information

contained therein, and the second page of the Call Summary Report, except for investigative material contained therein, as public records responsive to the Request. *See* Exhibit C at ¶ 7. As such, the Department granted Ms. Murphy’s Request in part, and properly provided her with all public records responsive to her Request, specifically the police blotter information with redactions for personal identification information and portions of the second page of the Call Summary Report that did not contain criminal investigative material. *See* Exhibit C at ¶¶ 10-12.

The Department’s response to Ms. Murphy’s Request is consistent with *Pennsylvania State Police* and *Hunsicker*. The Department properly withheld the Case Report, Crime Scene Log, Crime Scene Photographs, and portions of the second page of the Call Summary Report containing investigative material as exempt from disclosure under the criminal investigation exception of Section 708(b)(16)(ii) of the RTKL. *See* Exhibit A; Exhibit C at ¶ 8. Each of these withheld documents relate to a criminal investigation, that is, the criminal investigation into the death of James E. Roberts, were assembled as a result of the Department’s investigation into this criminal incident, and contain investigative materials, notes, and reports related to the Department’s criminal investigation into Mr. Roberts’ death. *See* Exhibit C at ¶ 8. It is well established that such records relating to a criminal investigation containing investigative information are exempt from disclosure under the RTKL’s criminal investigative exemption of Section 708(b)(16)(ii).

Additionally, Ms. Murphy asserts in her Appeal that she “ha[s] a right to know the circumstances” surrounding her brother’s death because she is “the sibling and only direct relative of” her brother. While the Department is sympathetic to Ms. Murphy’s Request, it is constrained to follow the law. As the Commonwealth Court recognized in *Hunsicker*, the fact that Ms. Murphy is the sister of the decedent to which the criminal investigative records relate is irrelevant and does not render the requested records public records subject to disclosure. To the contrary, these

criminal investigative records are still protected from disclosure under to 65 P.S. § 67.706(b)(16)(ii) and the Department properly withheld them pursuant to this exemption. *See Hunsicker*, 93 A.3d at 913.

Under the RTKL, an affidavit may serve as sufficient evidentiary support for a claimed exemption. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Cmwlth. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Cmwlth. 2010). An agency can meet its burden of proof through the use of affidavits. *See Moore*, 992 A.2d at 909 (Pa. Cmwlth. 2010). In the absence of any competent evidence that the Department acted in bad faith, “the averments in [the affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Cmwlth. 2014) (citing, *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Cmwlth. 2013)). Here, the Affidavit of Sergeant Gallick is sufficient to establish that the Department provided Ms. Murphy with all public records responsive to her Request in its possession, custody, and control, and that the Department properly withheld responsive records that are exempt as criminal investigative records under Section 708(b)(16)(ii) of the RTKL. *See Exhibit C at ¶¶ 4-11.*

Alternatively, if the OOR determines that the Department has not met its burden that the withheld records are exempt under Section 708(b)(16)(ii) of the RTKL, the Department requests that this Appeal be transferred to the Appeals Officer for the Dauphin County District Attorney’s Office because the records relate to a criminal investigation pursuant to 65 P.S. § 67.503(d)(2). The RTKL provides that the OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. *See* 65 P.S. § 67.503(d)(2). Rather, where the agency “either submits evidence demonstrating that a criminal investigation occurred or, based on the appeal documents or the language of the request itself, there is no dispute between

the parties regarding the existence of a criminal investigation, such appeals are to be heard by an appeals officer designated by the local district attorney.” See *Fiallo v. Westtown-East Goshen Regional Police Department*, 2020 WL 206521 (Pa. OOR. 2019); *Steinheiser v. Falls Twp.*, 2015 WL 1611543 (Pa. OOR. 2015). Here, Ms. Murphy’s Request seeks a police report from the Department, a local law enforcement agency, related to the death of James E. Roberts. Such records undisputedly relate to a criminal investigative matter. It is, therefore, proper for the OOR to transfer this Appeal to the Appeals Officer for the Dauphin County District Attorney’s Office to determine whether the requested records are exempt as criminal investigative records.

2. The redacted portions of the police blotter are exempt as personal identification information pursuant to 65 P.S. § 67.708(b)(6)(i)(A)

The Department provided Ms. Murphy with the police blotter information responsive to her Request but properly withheld and redacted the personal identification information consisting of the home phone number, home address, and date of birth of a witness contained therein. See Exhibit C at ¶¶ 9-10. The RTKL exempts personal identification information contained in records from disclosure. See 65 P.S. §67.708(b)(6)(i). Personal identification information is “information that is unique to a particular individual [that] may be used to identify or isolate an individual from the general population; it is information “which makes an individual distinguishable from another.” *Delaware Cty. v. Schaefer ex rel. Philadelphia Inquirer*, 45 A.3d 1149, 1153 (Pa. Cmwlth. 2012). Under Section 708(b)(6)(i)(A) of the RTKL, home phone numbers are expressly exempted from disclosure. 65 P.S. § 67.708(b)(6)(i)(A). As such, the Department properly redacted the home phone number of the witness in the police blotter information record pursuant to 65 P.S. § 67.708(b)(6)(i)(A).

Moreover, in *Pa. State Educ. Ass’n v. Commonwealth Dep’t of Cmty. & Econ. Dev.*, 148 A.3d 142 (Pa. 2016), the Pennsylvania Supreme Court held that even if personal identification

information is not expressly exempt under the RTKL, personal identification information can still be properly withheld based on an individual's right to privacy, including an individual's home address and date of birth. In such cases, the court must balance the individual's interest in informational privacy with the public's interest in disclosure and may release the personal information only when the public benefit outweighs the interest. *Id.* at 154; *See also Smith v. Downingtown Borough Police Department*, 2020 WL 5992932 (Pa. OOR. 2020).

Here, the Department redacted a witness's home address and date of birth. While home addresses and dates of birth of witnesses are not expressly exempt under Section 708(b)(6) of the RTKL, the Pennsylvania Supreme Court has recognized that the disclosure of such personal identification information reveals little, if anything, about the workings of government. *Pa. State Educ. Ass'n*, 148 A.3d at 145. The OOR has held that home addresses and dates of birth were properly redacted from public records provided in response to RTKL requests, finding that there is a strong privacy interest in this information and no discernable benefit to the disclosure of this personal identification information. *See Ramirez v. Pennsylvania State Police*, OOR Dkt. AP 2019-0175, 2019 WL 1465986 (stating that "there exists a strong public interest favoring the withholding of home addresses and the OOR cannot discern any public benefit in disclosing this information that outweighs the individuals' right to privacy"); *McKelvey et al. v. Pa. Dep't of Health*, OOR Dkt. AP 2017-1443, 2018 PA O.O.R.D. LEXIS 72 (citing *Delaware County v. Schaefer*, 45 A.3d 1149, 1153 (Pa. Cmwlth. 2012)) (stating that "there is a strong privacy interest" in one's date of birth and finding no benefit to disclosing this information). In this case, the witness who found the decedent's body has a strong privacy interest in his home address and date of birth and there is no discernable benefit for disclosure of such personal information, nor does Ms. Murphy provide any such potential public benefit in her Appeal. The Department, therefore,

properly redacted the witness's home address and date of birth from the police blotter information provided to Ms. Murphy.

In summary, any suggestion by Ms. Murphy that Department denied her access to public records justifying this Appeal is incorrect. The Department is sensitive to Ms. Murphy's Request. But the law provides that the records at issue were properly withheld. Accordingly, the Department respectfully requests that the Office of Open Records deny this Appeal.

Respectfully submitted,

SALZMANN HUGHES, P.C.

s/Isaac P. Wakefield
Isaac P. Wakefield

EXHIBIT A



Swatara Township Right-To-Know Request Form

Please Note: A cost of .25¢ per page may be charged for the requested information.



Date Requested: 5 / 20 / 2021

Request Submitted By: E-Mail U.S. Mail Fax In-Person

Name of Requestor: Kelli K. Murphy

Street Address: 64 Denton Drive

City/State/Zip Code (Required): Glenmoore, Pa 19343

Telephone (Required): 215-888-4568 - email bobkelmur@comcast.net

Records Requested: (James E Roberts) Incident # 210004567

*Please Provide as much specific detail as possible so the correct information can be identified.

My brother's body was found at a "pump" station (I guess "gas" station). He was then taken to Dauphin Coroner. I received a call (10) days later, as he had no I.D. on him. (This information is all I know. I was told by Jill at the County Coroner.

I live in Chester County and was wondering, if possible, to have the report e-mailed to me. Thank you, Kelli K. Murphy
email - bobkelmur@comcast.net

Do You Want Copies? YES NO

Do You Want to Inspect the Records? YES NO

Do You Want Certified Copies of Records? YES NO

INTERNAL USE ONLY

Right To Know Officer: Karen Alleman, Swatara Township Administrative Assistant

Date Received By Swatara: 5 / 21 / 2021 Agency Five (5)-Day Response Due: 5 / 28 / 2021

Response # 2021-111

**Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)

ATTN:

Sgt. Gallick

FROM: Kelli Murphy
RE: Incident # 2100004567

EXHIBIT B

SWATARA TOWNSHIP RIGHT-TO-KNOW RESPONSE FORM

Granted in Part/Denied in Part
RTK 2021-111

Date: 21 May 2021
Name: Kelli K. Murphy
Address: 64 Denton Drive, Glenmoore, PA 19343
Telephone number: (215) 888-4568
Email: bobkelmur@comcast.net

Dear Kelli K. Murphy,

Thank you for writing to Swatara Township with your request for records pursuant to Pennsylvania's Right-To-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*

On 21 May 2021 we received your request for report 21-0004567. However, Swatara Township has withheld information that is exempt from disclosure by law. We have provided you police blotter information and parts of the incident report with redaction of personal identification information and investigative material as outlined in Section 708(b).

This information is exempt from disclosure under Right to Know Law, Act 3-2008 Sections 708(b)(6)(i)(A) and 708(b)(16)(ii).

For Civil Records, appeals may be submitted to Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17101. For Criminal Records, appeal to the First Assistant District Attorney, Michael Sprow, Esq., Rm. 205, Dauphin County Courthouse, Front and Market Streets, Harrisburg, PA 17101.

Right-to-Know request and this denial letter must be included when filing an appeal. More information about how to file an appeal under the Right-to-Know Law is available at the Office of Open Records website, <https://www.openrecords.pa.gov>.

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response, as outlined in Section 1101. If you have further questions, please call Sergeant Kevin Gallick. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,



POLICE DEPARTMENT RIGHT-TO-KNOW OFFICER: Kevin Gallick
TITLE: Administrative Sergeant
BUSINESS ADDRESS: 599 Eisenhower Blvd; Harrisburg, PA 17111
BUSINESS TELEPHONE: 717-564-2550

RE: C21-0005977



Swatara Township Police Dept
 599 Eisenhower Blvd Harrisburg, PA 17111
 Phone #: 717-564-2550
 Email:

Call Summary Report

Call Details

Date Printed
5/21/2021 08:29

Call Number: **C21-0004567** How Received: **PHONE**
 Call Type: **DEATH INVESTIGATION**
 Custom Field:
 Assigned Officer: **NEAL, SCOTT B**
 Reported: **4/20/2021 10:12** Time Dispatched: **4/20/2021 10:12** Time Arrived: **4/20/2021 10:14** Time Cleared: **4/20/2021 11:17**
 Occurred From: Occurred To:

Municipality: **SWATARA** Latitude:
 Dispatch Location: **1700 BLOCK HIGHLAND STREET, HARRISBURG PA 17111** Longitude:
Zone 3 Altitude:

Assigned Officer
 Signature: _____
 Approved: **4/23/2021 15:06** Approving Officer: **BLOSS, TIMOTHY ROBIN**
 Approving Officer
 Signature: _____

Complainant / Contact Information

Person/Org: **SHATTO, TIMOTHY** Address: **Confidential**
 Business Ph: **Confidential** Mobile Ph: **Confidential** DOB: **Confidential**
 Home Ph: **Confidential** Other Ph: **Confidential**
 Role: **Assisting**

Person/Org: **DEGROAT, BRETT ALAN** Address: **Confidential**
 Business Ph: **Confidential** Mobile Ph: **Confidential** DOB: **Confidential**
 Home Ph: **Confidential** Other Ph: **Confidential**
 Role: **Assisting**

Person/Org: **RYDER, BRANDON WILLIAM** Address: **Confidential**
 Business Ph: **Confidential** Mobile Ph: **Confidential** DOB: **Confidential**
 Home Ph: **Confidential** Other Ph: **Confidential**
 Role: **Assisting**

Person/Org: **MORRIS, ERIC** Address: **Confidential**
 Business Ph: **Confidential** Mobile Ph: **Confidential** DOB: **Confidential**
 Home Ph: **Confidential** Other Ph: **Confidential**
 Role: **Assisting**

Person/Org: **HORNER, DAVID A.** Address: **Confidential**
 Business Ph: **Confidential** Mobile Ph: **Confidential** DOB: **Confidential**
 Home Ph: **Confidential** Other Ph: **Confidential**
 Role: **Assisting**

Person/Org: **HUMMEL, WILLIAM** Address: **[REDACTED]**
 Business Ph: **--** Mobile Ph: **--** DOB: **[REDACTED]**
 Home Ph: **[REDACTED]** Other Ph: **--**
 Role: **Complainant**

Person/Org: **GALLICK, KEVIN J** Address: **Confidential**
 Business Ph: **Confidential** Mobile Ph: **Confidential** DOB: **Confidential**
 Home Ph: **Confidential** Other Ph: **Confidential**
 Role: **Assisting**



Swatara Township Police Dept
 599 Eisenhower Blvd Harrisburg, PA 17111
 Phone #: 717-564-2550
 Email:

Call Summary Report

Person/Org: **MOYER, JAMES KEVIN** Address: **Confidential**
 Business Ph: **Confidential** Mobile Ph: **Confidential** DOB: **Confidential**
 Home Ph: **Confidential** Other Ph: **Confidential**
 Role: **Assisting**

Call Notes

Received a call from the Swatara Township Authority reporting a dead body behind the pumping station on Highland St.

Upon police arrival in the 1700 Blk. Highland Street I was met by the complainant / Swatara Township Sewer Authority employee William Hummel who directed me to a white male who appeared to be mid to late 30's deceased on his back in the grass area directly behind the building.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT C

AFFIDAVIT OF KEVIN GALLICK

Records Requested: On May 21, 2021, the Requester, Kelli K. Murphy ("Ms. Murphy"), filed a request under the Right-to-Know Law seeking the following: "(James E. Roberts) Incident # 210004567 My Brother's body was found at a "pump" station (I guess "gas" station. He was then taken to Dauphin Coroner. I received a call til (10) ten days later, as he had no I.D. on him. (This information is all I Know. I was told by dill at the County Coroner. I live in Chester County and was wondering, if possible, to have the report e-mailed to me. Thank you."

Appeal Caption: **Docket No. 2021-1009**


I, Sergeant Kevin Gallick, hereby declare that the following statements are true and correct based upon my personal knowledge, information, and belief, subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities:

1. I am the Administrative Sergeant and serve as the Right-to-Know-Officer for the Swatara Township Police Department (the "Department").
2. As the Department's Right to Know Officer, I am responsible for responding to Right-to-Know requests filed with the Department.
3. In my capacity as the Department's Administrative Sergeant and Right-To-Know Officer, I am familiar with the records of the Department.
4. Upon receipt of the above-referenced Request, I examined the files in the Department's possession, custody, and control, and I conducted a good faith search for any files that may be responsive to the Request.
5. The Request pertained to case number C21-0004567, where the Department investigated a report of a dead body, identified as James E. Roberts, found behind the Swatara Township pumping station located on Highland Street, Swatara Township, Pennsylvania.
6. Upon review of the Department's files, the police blotter information, which is contained on page 1 of the Call Summary Report, the second and final page of the Call Summary Report, the Case Report, the Crime Scene Log, and Crime Scene Photographs for case number C21-0004567 were identified as the only records in the Department's possession, custody, and control that relate to the incident identified in the Request and were potentially responsive to the Request.
7. The Department identified the police blotter information, except for personal identification information contained therein, and the second page of the Call Summary Report, except for investigative material contained therein, as public records responsive to the Request.
8. The Case Report, Crime Scene Log, Crime Scene Photographs, and portions of the second page of the Call Summary Report were withheld because they were records relating to a

criminal investigation, specifically the investigation into the death of James E. Roberts, were assembled as a result of the Department's investigation into this incident, and contain investigative materials, notes, and reports related to this criminal investigation.

9. Additionally, personal identification information consisting of the home phone number, date of birth, and home address of a witness contained in the police blotter information was redacted.
10. Along with my May 21, 2021 letter to Ms. Murphy responding to her Request, I provided Ms. Murphy with the police blotter information with redactions of personal identification information and the second page of the Call Summary Report with redactions of investigative materials for case number C21-0004567.
11. All public records in the Department's possession, custody, and control identified as responsive to the Request were provided to Ms. Murphy on May 21, 2021.
12. Beyond the records provided to Ms. Murphy in response to her Request on May 21, 2021, the Department does not possess any public records responsive to the Request.

Date: 3 June 2021

Signature: 

Kevin Gallick

Administrative Sergeant and Right-to-Know Officer
Swatara Township Police Department