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IN THE MATTER OF	:	DISTRICT ATTORNEY'S OFFICE
	:	
JOSEF G. OBERNIER, SR.,	:	CHESTER COUNTY, PENNSYLVANIA
Requester	:	
	:	RIGHT TO KNOW APPEAL
v.	:	
	:	FINAL DETERMINATION
WEST BRANDYWINE TOWNSHIP,	:	
Respondent	:	DA-RTKL-A NO. 2016-007

INTRODUCTION

On May 5, 2016, Josef G. Obernier, Sr., Requester, filed a right-to-know request with West Brandywine Township, Respondent, for records involving its Police Department, pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*. On June 17, 2016, after invoking a thirty (30) extension, the Respondent denied the request. On June 29, 2016 and June 30, 2016, the Requester, by email, appealed to the Chester County District Attorney's Office. June 30, 2015 will be considered the date of the appeal, and the date the appeal was perfected.

For the reasons set forth in this Final Determination, the appeal is **DENIED** and the Respondent is not required to take any further action.

FACTUAL BACKGROUND

On May 5, 2016, Requester submitted a right-to-know request with the Respondent, pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*, requesting the following:

- A. For Police vehicle 2906, the most recent available Master Vehicle Inspection Report.
- B. Paper copy of the Incident Report Filed by Officer Vattilana, with respect to his stop of Josef G. Obernier, Sr. on 9-26-2014 @ 1:19 hrs.
- C. Paper copy of the Arrest Report filed with the Chester County District Attorney's Office, with respect to his stop of Josef G. Obernier, Sr. on 9-26-2014 @ 1:19 hrs.
- D. Paper copy of the Arrest Report filed with the Pennsylvania State Police, with respect to his stop of Josef G. Obernier, Sr. on 9-26-2014 @ 1:19 hrs.

On June 17, 2016, after invoking a thirty (30) extension, the Respondent denied the request stating in part:

Your request for the following information is denied for the explanation specified herein, or unavailable due to non-existence of records requested:

- A. For Police Vehicle 2906, the most recent available weekly Master Vehicle Inspection Report. The request is duplicative, previously submitted by April 27, 2016 RTK Request. **An attestation of non-existence of record was filed with appeal case #AP 2016-0875 for this previous request made for this information.** The requests are further denied pursuant to Section

506(a)(i) of the PA Right To Know law. An agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.

B. Paper copy of the Incident Report filed by Officer Vattilana, with respect to his stop of Josef G. Obernier, Sr. on 9-26-2014 @ 01:19 hrs. The request is duplicative, the request for the same information was submitted and responded to four separate times. The dates of the previous requests are November 10, 2014, May 1, 2015, June 10, 2015 and May 5, 2016. The requests were denied pursuant to The PA Right to Know law, Section 708(b)(16)(ii) exempts records of an agency relating to or resulting In a criminal investigation, including: investigative materials, notes, correspondence, videos and reports. Copies of the RTK requests and the subsequent denials are included herein.

Further, the requested information was provided to the Pennsylvania State Police for their investigation into the incident. The potential exists that providing the requested information may have an impact on the PSP's ability to prosecute its case.

Additionally, the requests are denied pursuant Section 506(a)(i) of the PA Right To Know Law. An agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.

C. Paper copy of the Arrest Report filed by Officer Vattilana with the Chester County District Attorney's Office, with respect to his stop of Josef G. Obemier, Sr. on 9-26-2014 @ 01:19 hrs. **See enclosed Attestation of non-existence of record.**

D. Paper copy of the Arrest Report filed by Officer Vattilana with the Pennsylvania State Police, with respect to his stop of Josef G. Obemier, Sr. on 9-26-2014 @ 01:19 hrs. **See enclosed Attestation of non-existence of record.**

On June 29, 2016 and June 30, 2016, the Requester, by email, appealed to the Chester County District Attorney's Office. Requester include with his appeal multiple

attachments. On July 1, 2016, this Appeals Officer for the Chester County District Attorney's Office gave Notice to the parties of the following:

Requester filed a right-to-know request with the Respondent, pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*. The request was denied. On June 29, 2016 and June 30, 2016, Requester, by email, appealed to the Chester County District Attorney's Office. June 30, 2015 will be considered the date of the appeal, and June 30, 2016 will be considered the date the appeal was perfected.

Unless the Requester agrees otherwise, as the appeals officer, I shall make a final determination, which shall be mailed to the Requester and the Respondent, within 30 days of June 30, 2016, which is July 30, 2016. 65 P.S. § 67.1101(b)(1). As July 30, 2016, falls on a Saturday, the 30th day becomes August 1, 2016. *See* 1 Pa.C.S.A. § 1908. However, Requester has indicated in the appeal form that: "I hereby agree to permit the OOR and additional 30 days to issue a final order." Consequently, if a final determination is not made by August 31, 2016, the appeal is deemed denied by operation of law. 65 P.S. § 67.1101(b)(2).

Prior to issuing a final determination, a hearing may be conducted. However, a hearing is generally not needed to make a final determination. The final determination shall be a final appealable order, and shall include a written explanation of the reason for the decision. 65 P.S. § 67.1101(b)(3).

The Supreme Court of Pennsylvania has held that a Respondent is permitted to assert exemptions on appeal, even if the agency did not assert them when the request was originally denied. Levy v. Senate of Pennsylvania, 619 Pa. 586, 65 A.3d 361 (2013).

The Commonwealth Court of Pennsylvania has held that, pursuant to 65 P.S. § 67.1101(a), the appeal shall state the grounds upon which the Requester asserts that the record is a public record and shall address any grounds stated by the agency for denying the request. When a Requester fails to state the records sought are public, or fails to address an agency's grounds for denial, the appeal may be dismissed. Padgett v. Pennsylvania State Police, 73 A.3d 644 (Pa. Cmwlth. 2013); Saunders v. Department of Correction, 48 A. 3d 540 (Pa. Cmwlth. 2012); Department of

Corrections v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011).

If the Respondent wishes to submit a response, it should do so on or before **July 21, 2016**. The Respondent should provide a factual basis for denying the request and not just a citation to the applicable statutes or conclusory statements.

If the Requester wishes to submit a response, it should do so on or before **August 4, 2016**. The Requester should assert why the record is a public record and address any grounds stated by the Respondent for denying the request.

Any statements of fact must be supported by an Affidavit made under penalty of perjury by a person with actual knowledge. All submissions must be served on all parties. However, legal arguments and citation to authority do not require Affidavits. All parties must be served with a copy of any responses submitted to this appeal officer.

July 1, 2016 Letter of Chief Deputy District Attorney Nicholas J. Casenta, Jr.

On July 21, 2016, Respondent sent a response further explaining the reasons for the denial of the right-to-know request.

I have reviewed all of the material submitted by the parties, including the prior proceedings before the Office of Open Records: AP 2014-1667; AP 2016-0852; AP 2016-053; AP 2016-0875.

LEGAL ANALYSIS

The Chester County District Attorney's Office is authorized to hear appeals relating to access to criminal investigative records in the possession of a local agency located within Chester County. 65 P.S. § 67.503(d)(2) ("The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating

to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.”). The West Brandywine Township (“Respondent”) is a local agency subject to the RTKL that is required to disclose public documents. 65 P.S. § 67.302.

Records of a local agency are presumed “public” unless the record: (1) is exempt under 65 P.S. § 67.708(b); (2) is protected by privilege; or (3) is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. § 67.305. “Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.306.

The Respondent bears the burden of proving, by a preponderance of the evidence, that the document requested is exempt from public access. 65 P.S. § 67.708(a)(1). A preponderance of the evidence standard is the lowest evidentiary standard. The preponderance of evidence standard is defined as the greater weight of the evidence, *i.e.*, to tip a scale slightly is the criteria or requirement for preponderance of the evidence. Commonwealth v. Brown, 567 Pa. 272, 284, 786 A.2d 961, 968 (2001), *cert. denied*, 537 U.S. 1187, 123 S.Ct. 1351, 154 L.Ed.2d 1018 (2003). “A ‘preponderance of the evidence’ is defined as ‘the greater weight of the evidence ... evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other...’ Black’s Law Dictionary

1301 (9th ed. 2009).” Mitchell v. Office of Open Records, 997 A.2d 1262, 1264 n.3 (Pa. Cmwlth. 2010); *See also* Commonwealth v. Williams, 532 Pa. 265, 284-286, 615 A.2d 716, 726 (1992) (preponderance of the evidence in essence is proof that something is more likely than not).

The Respondent has submitted affidavits that three (3) of the four (4) requested documents do not exist. These requested documents are:

A. For Police vehicle 2906, the most recent available Master Vehicle Inspection Report.

C. Paper copy of the Arrest Report filed with the Chester County District Attorney’s Office, with respect to his stop of Josef G. Obernier, Sr. on 9-26-2014 @ 1:19 hrs.

D. Paper copy of the Arrest Report filed with the Pennsylvania State Police, with respect to his stop of Josef G. Obernier, Sr. on 9-26-2014 @ 1:19 hrs.

Under the RTKL, an affidavit may serve as sufficient evidence to support an appeals officer’s decision. Office of Governor v. Davis, 122 A.3d 1185, 1194 (Pa.Cmwlth. 2015); 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) (affidavit suffices to establish nonexistence of records). In the absence of any evidence that a Respondent has acted in bad faith or that the records do, in fact, exist, the averments in an 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); Office of the Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013). Based on the evidence provided, the Respondent has met its burden of proof that it does not possess the requested documents (A, C, and D).

The Requester makes extensive arguments and provides exhibits explaining why the requested documents should exist, and alleges that the Respondent has committed perjury. However, Requester has not offered any proof as to his allegations. The Requester's argument is based on speculation and accusation.

Moreover, there is sufficient evidence to support the determination that the documents requested (B, C, and D) are criminal investigative records and exempt from disclosure. The RTKL provides that records of an agency relating to or resulting in a criminal investigation, such as investigative materials, notes, correspondence, videos, reports, and records, may be withheld as exempt. 65 P.S. § 67.708(b), titled, "Exceptions for public records", provides in part as follows:

(b) Exceptions. -- 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).

18 Pa.C.S.A. § 9102 (relating to definitions) states in part: **“Police blotter.”** A chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.”

18 Pa.C.S.A. § 9102 (relating to definitions) states in part: **“Investigative information.”** Information 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.”

In Pennsylvania State Police v. Office of Open Records, 5 A.3d 473 (Pa. Cmwlth. 2010), the *en banc* Commonwealth Court found an incident report exempt from disclosure pursuant to 65 P.S. § 67.708(b)(16). The Court held that the incident report was not a public record because the incident report was not the equivalent of a police blotter under the RTKL and the Criminal History Records Information Act (“CHRIA”).

Pursuant to 65 P.S. § 67.708(b)(16), records of an agency are exempt from access by a requester if the records relate to or result in a criminal investigation. When a party seeks to challenge an agency’s refusal to release information by appealing that party must address any grounds stated by the agency for denying the request. Department of Corrections v. Office of Open Records, 18 A.3d 429, 434 (Pa. Cmwlth. 2011); Padgett v. Pennsylvania State Police, 73 A.3d 644, 647-648 (Pa. Cmwlth. 2013).

In Department of Corrections v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011), the Commonwealth Court stated in part:

Consequently, we agree with DOC that when a party seeks to challenge an agency’s refusal to release information by appealing to Open Records, that party must “address any grounds stated by the agency for ... denying the request.” This is a typical requirement in any process that aims to provide a forum for error correction. We do not see it as a particularly onerous requirement, whether the requester has the benefit of legal counsel or is *pro se*.

DOC v. OOR at 434.

The Requester does not present any reason to dispute that the documents requested are investigative records and exempt from disclosure. When a party seeks to challenge an agency’s refusal to release information by appealing that party must address any grounds stated by the agency for denying the request. The Requester’s

position is in essence that she has a need for these documents because she is the victim of a crime.

It is also important to note that a requester's identity and motivation for making a request is not relevant, and his or her intended use for the information may not be grounds for granting or denying a request. *See* 65 P.S. § 67.301(b), 65 P.S. § 67.703. In DiMartino v. Pennsylvania State Police, 2011 WL 10841570 (Pa. Cmwlth. 2011), the Commonwealth Court, in a memorandum opinion,¹ stated in part:

As a final point, we note that, the requester's status as representative of Decedent's family has no bearing on whether the requested records are accessible through a RTKL request. We agree with the OOR that the RTKL must be construed without regard to the requester's identity. *See, e.g.*, Section 301(b) of the RTKL, 65 P.S. § 67.301(b) (stating that an agency "may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law"); Weaver v. Dep't of Corr., 702 A.2d 370 (Pa. Cmwlth. 1997) (under the former Right-to-Know Act, the right to examine a public record is not based on whether the person requesting the disclosure is affected by the records or if her motives are pure in seeking them, but whether any person's rights are fixed); Furin v. Pittsburgh Sch. Dist., OOR Dkt. No. AP 2010-0181, 2010 PA OORD LEXIS 212 (Pa. OOR 2010) (finding records exempt under Section 708(b) regardless of status of person requesting them); Wheelock v. Dep't of Corr., OOR Dkt. No. AP 2009-0997, 2009 PA OORD LEXIS 725 (Pa. OOR 2009) (stating the only information available under the RTKL is a "public record" available to all citizens regardless of personal status or stake in requested information).

¹ DiMartino v. Pennsylvania State Police, 340 C.D. 2011, 2011 WL 10841570 (Pa. Cmwlth. 2011) is an unreported panel decision of the Commonwealth Court. As such, it may be cited for its persuasive value, but not as binding precedent. *See* Section 414 of the Commonwealth Court's Internal Operating Procedures.

DiMartino at *6 (footnote omitted). *See also* Mahoney v. Pennsylvania State Police, 339 C.D. 2011, 2011 WL 10841247 (Pa. Cmwlth. 2011).

In Hunsicker v. Pennsylvania State Police, 93 A.3d 911 (Pa. Cmwlth. 2014), Requester (Hunsicker) appealed a Determination of the Office of Open Records denying her request under the RTKL for access to Pennsylvania State Police records regarding an investigation surrounding her brother's death, which involved a State Trooper. In affirming the denial, the Commonwealth Court stated in part:

Requestor appealed the PSP's denial to the OOR contending that she lived with her brother for 35 years, that she was not a member of the general public but his sister, and that she should have special access to the information. The OOR denied her appeal because it failed to address agency grounds for denial of access and the appeal did not challenge the confidentiality of the records under CHRIA. This appeal followed.

On appeal, Requestor first contends that the materials she is requesting are referred to as an "incident" report, not an "investigative" report, implying that those records fall outside of the investigative exemption. An incident report normally refers to a report filed by the responding officers, not the entire investigative file, although, here, it appears that the investigative report was filed at the incident report number. In any event, no matter what is contained in an incident report, incident reports are considered investigative materials and are covered by that exemption. 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).

Even if the requested records fall within the investigative exception, Requestor contends that she is entitled to those records because she has a special need for them because, as Mr. Rotkewicz's sister, she needs to know what her brother did to cause a PSP Trooper to shoot him and to investigate a possible PSP "cover up." While we are sympathetic to Requestor's desire to understand her brother's death, her status as his sister and her reasons for requesting the records do not render records that fall

within the investigative exemption accessible. Under the RTKL, whether the document is accessible is based only on whether a document is a public record, and, if so, whether it falls within an exemption that allows that it not be disclosed. The status of the individual requesting the record and the reason for the request, good or bad, are irrelevant as to whether a document must be made accessible under Section 301(b). *See* 65 P.S. § 67.301(b) (stating that an agency “may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.”).

As a corollary to this argument, Requestor contends that the investigative file should be made accessible because portions of the withheld documents are already known to her, and that if any of the record contains information that falls within an exemption to disclosure, that information should be redacted and the records then be given to her. Again, for the reasons stated above, just because she purportedly knows some of the information contained in the documents is irrelevant as to whether a document must be made accessible. Moreover, her request that the documents be redacted to the extent the records contain exempt information is based on a premise that only certain information is exempt from disclosure when, under the investigative exemption, the entire investigative report falls within the investigative exemption. 65 P.S. § 67.706(b)(16); *see also* Pennsylvania State Police.

Finally Requestor contends that the PSP Trooper who investigated the incident assured her that she would receive that information. Even assuming that the assertion is true, an individual State Trooper does not have the authority to authorize the release of documents or make PSP RTKL determinations pursuant to Section 1102, 65 P.S. § 67.1102.

Hunsicker v. Pennsylvania State Police at 913-914 (footnote omitted).

A criminal investigative record is anything that contains information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing. 18 Pa.C.S.A. § 9102. The size, scope, or formality, of police inquiries are not relevant in determining if something is a

criminal investigative record. Whether an arrest has occurred or whether a criminal investigation is ongoing or closed, are not relevant factors in determining if something is a criminal investigative record. Criminal investigative records remain exempt from disclosure under the RTKL even after the investigation is completed. Also, a record is not considered a public record if it is exempt under any other State or Federal Law, including the Criminal History Records Information Act.

In Barros v. Martin, 92 A.3d 1243 (Pa. Cmwlth. 2014), *appeal denied*, 626 Pa. 701, 97 A.3d 745 (2014), the Commonwealth Court stated in part:

Thus, 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. Cmwlth. 2013); Mitchell v. Office of Open Records, 997 A.2d 1262, 1264 (Pa. Cmwlth. 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. Cmwlth. 339, 561 A.2d 863, 865 (1989).

Also, a record is not considered a public record under Section 102 of the RTKL if it is "exempt under any other State or Federal Law," including the CHRIA. See Coley, 77 A.3d at 697. Section 9106(c)(4) of the CHRIA, 18 Pa.C.S. § 9106(c)(4), provides that "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." The CHRIA defines "investigative information" as "information 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." Section 9102 of the CHRIA, 18 Pa.C.S. § 9102.

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 at 1250 (emphasis added).

In Padgett v. Pennsylvania State Police, 73 A.3d 644 (Pa. Cmwlth. 2013), the Commonwealth Court stated in part:

Pursuant to Section 1101(a) of the RTKL, “[t]he appeal shall state the grounds upon which the requester asserts that the record is a public record ... and shall address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a). When a requester fails to state the records sought are public, or fails to address an agency’s grounds for denial, the OOR properly dismisses the appeal. See Saunders v. Dep’t of Corr., 48 A. 3d 540 (Pa. Cmwlth. 2012) (affirming OOR dismissal); Dep’t of Corr. v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011) (holding an appeal that fails to sufficiently specify the reasons for appeal should be dismissed rather than addressed by OOR).

In Department of Corrections, we outlined the sufficiency requirements for an appeal under Section 1101(a) of the RTKL. At a minimum, a requester’s appeal “must address any grounds stated by the agency ... for denying the request.” Dep’t of Corr., 18 A.3d at 434. We reasoned a minimally sufficient appeal is a condition precedent for OOR to consider a requester’s challenge to an agency denial.

More recently, in Saunders, we explained Section 1101(a) of the RTKL requires a requester “to state why the records did not fall under the asserted exemptions and, thus, were public records subject to access.” Id. at 543 (agency’s citation to various subsections of the RTKL, without explanation or application of exceptions, triggers requester’s burden to address exemption). Because Saunders failed to address the exemptions, we affirmed OOR’s dismissal of the appeal.

In this case, Requester did not state the records are public, or address the exemptions PSP cited in its response and verification. Requester stated merely that the RTKL exceptions do not apply

without further explication. That does not satisfy the requirements of Section 1101(a) as we interpret that provision. Id.

Requester also did not address the agency's cited exemptions pertaining to the police report. Most notably, Requester did not discuss CHRIA, which pertains to criminal records. In fact, when he explained the reason he sought the records, Requester described them as criminal investigation records.

Requester emphasized he is entitled to the records as a party involved in the criminal investigation to which his Request relates. However, a requester's motivation for making a request is not relevant, and his intended use for the information may not be grounds for denial. *See* Section 301(b) of the RTKL, 65 P.S. § 67.301(b); Section 703 of the RTKL, 65 P.S. § 67.703. An explanation of why a requester believes an agency should disclose records to him does not satisfy the requirement in Section 1101(a) to explain why the requested records are public and available to everyone. To the contrary, Requester's explanation underscores PSP's criminal investigative defenses here.

We make no decision regarding Requester's alleged entitlement to the records under an alternate legal mechanism. Entitlement does not arise under the RTKL through which citizens have a right to access public records "open to the entire public at large." *See, e.g., Coulter v. Pa. Bd. of Prob. & Parole*, 48 A.3d 516, 519 (Pa. Cmwlth. 2012) ("home plans" of parolee requester are not accessible to her under RTKL though she is subject of records; to be accessible under the RTKL, identity of the requester is irrelevant).

Padgett at 647-648 (footnote omitted).

Requester submitted a right-to-know request requesting the following:

- A. For Police vehicle 2906, the most recent available Master Vehicle Inspection Report.

- B. Paper copy of the Incident Report Filed by Officer Vattilana, with respect to his stop of Josef G. Obernier, Sr. on 9-26-2014 @ 1:19 hrs.

C. Paper copy of the Arrest Report filed with the Chester County District Attorney's Office, with respect to his stop of Josef G. Obernier, Sr. on 9-26-2014 @ 1:19 hrs.

D. Paper copy of the Arrest Report filed with the Pennsylvania State Police, with respect to his stop of Josef G. Obernier, Sr. on 9-26-2014 @ 1:19 hrs.

Under the RTKL, an affidavit may serve as sufficient evidence to support an appeals officer's decision. In the absence of any evidence that a Respondent has acted in bad faith or that the records do, in fact, exist, the averments in an affidavit should be accepted as true. Based on the evidence provided, the Respondent has met its burden of proof that it does not possess the requested documents (A, C, and D). Moreover, there is sufficient evidence to support the determination that the documents requested (B, C, and D) are criminal investigative records and exempt from disclosure.

CONCLUSION

For the foregoing reasons, the appeal is **DENIED**, and the Respondent is not required to take any further action. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may petition for review, to the Chester County Court of Common Pleas, pursuant to 65 P.S. § 67.1302(a). All parties must be served with a copy of the petition for review. The Chester County District Attorney's Office shall also be served with a copy of the petition for review, pursuant to 65 P.S. § 67.1303(a), for the purpose of transmitting the record to the reviewing court. See East Stroudsburg University Foundation v. Office of Open Records, 995 A.2d 496, 507 (Pa. Cmwlth. 2010).

FINAL DETERMINATION ISSUED AND MAILED ON: August 19, 2016

Nicholas J. Casenta, Jr.

APPEALS OFFICER:

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