

NORTHAMPTON COUNTY, PENNSYLVANIA
DISTRICT ATTORNEY'S OFFICE

FINAL DETERMINATION

ROSS SEGREAVES,	:	
Requester,	:	No. 7-ORA-2021
	:	
v.	:	
	:	
NORTHAMPTON COUNTY DISTRICT	:	
ATTORNEY'S OFFICE,	:	
Respondent.	:	

BACKGROUND

This Appeals Officer received the above-captioned appeal under the Right to Know Law (“RTKL”), 65 P.S. §§ 67.101, *et seq.*, on December 14, 2021. Upon review of the file, the appeal is denied and dismissed for the following reasons:

Ross Segreaves (“Requester”) sent a request to the Northampton District Attorney’s Office (“Respondent”) dated August 27, 2021, and received on September 13, 2021, seeking: “A print-out of 120 texts in regards to the prosecution of case number CP-48-[CR]-1443-2018, and the mental health handbook.” Attachment “A.” On September 17, 2021, the Respondent provided the Requester with a copy of the mental health court handbook, but denied the request for the text messages under Section 708 of the RTKL because the requested information involved a criminal investigation. *Id.* The Respondent also stated that the information was exempt from disclosure under the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S.A. § 9106(c)(4). *Id.*

The Requester sent another request dated September 12, 2021, and received on September 24, 2021, in which he again sought “[a] print-out of 120 texts in regards to the prosecution of case number CP-48-[CR]-1443-2018.” Attachment “B.” The Respondent sent a response on October 1, 2021. *Id.* The Respondent noted that it was a serial request and again stated that the information

sought was exempt from disclosure under Section 708 of the RTKL and CHRIA, as it involved a criminal investigation. *Id.*

The Requester filed an appeal dated November 20, 2021, and postmarked on December 9, 2021. *See* Attachment “C.” Within this document, the Requester states: “Your correspondence was received by me at SCI/DC @ Mahanoy 10/29/21 on CCTV.” *Id.* The envelope indicates that this appeal was mailed on December 9, 2021. *Id.*

LEGAL ANALYSIS

Section 1101(a)(1) of the RTKL states that a requester may appeal to this designated office “within 15 business days of the mailing date of the agency’s response or within 15 business days of a deemed denial.” 65 P.S. § 67.1101(a)(1). Here, Respondent’s denial to the second request was dated October 1, 2021, and was received by the Requester on or about October 29, 2021. *See* Attachment “C.” However, Requester did not mail the instant appeal until December 9, 2021, well beyond the fifteen-day period, and is thus facially untimely.

Moreover, this Officer finds that these records are exempt from disclosure under the RTKL. Under Section 102 of the RTKL, a “public record” is defined as:

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

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

The Respondent contends that the requested records are exempt from disclosure under 65 P.S. §§ 67.708(b)(16),(17). In that Section, records of an agency relating to or resulting in a criminal investigation, “including . . . [i]nvestigative materials, notes, correspondence, videos and reports,” are exempt from disclosure. 65 P.S. § 67.708(b)(16)(ii). As the records sought led to an arrest for the crime of Theft, graded as a misdemeanor of the third degree, this Officer finds that the Respondent has proven that the requested records relate to a criminal investigation and are exempt.

In *Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473, 479 (Pa. Commw. 2010), the Commonwealth Court held that incident reports which contain investigative materials are exempt from the definition of a public record and are not subject to disclosure or redaction. Further, Section 708 exempts release of “[a] record of an agency relating to or resulting in a criminal investigation.” 65 P.S. § 67.708(b)(16). The records at issue here are related to a criminal investigation, which resulted in an arrest and the prosecution of a criminal charge, as is admitted by the Requester. *See* Attachments “A,” “C.” Accordingly, it is clear that the requested material falls within the definition of items that are exempt from disclosure.

Additionally, the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S.A. § 9101, *et seq.*, prohibits the disclosure of the information requested. This information is “investigative information” which is defined by CHRIA as: “[I]nformation 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.” 18 Pa.C.S.A. § 9102. Importantly, 18 Pa.C.S.A. § 9106(c)(4) specifies 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 which requests the information

in connection with its duties, and the request is based upon a name, fingerprints, *modus operandi*, genetic typing, voice print or other identifying characteristic.” The Requester is not a “criminal justice agency” as defined by 18 Pa.C.S.A. § 9102. Therefore, the requested information cannot be disseminated to the Requester under CHRIA.

Finally, in *Barros v. Martin*, 92 A.3d 1243 (Pa. Commw. 2014), a prisoner who requested documents relating to the homicide investigation for which he was incarcerated was denied access because the documents were exempt under both the RTKL and CHRIA. The Commonwealth Court cited to *Sullivan v. City of Pittsburgh, Dept. of Public Safety*, 561 A.2d 863, 864-65 (Pa. Commw. 1989), and found that criminal investigative records remain exempt from disclosure even if the investigation is completed. *Barros*, 92 A.3d at 1250. The court held: “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).” *Id.* (emphasis added) (citing *Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 697 (Pa. Commw. 2013); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1264 (Pa. Commw. 2010)). Here, the requested records are, on their face, related to a police investigation and prosecution, and are thus exempt from disclosure. These records remain exempt from disclosure even though the investigation and prosecution in this matter are complete. *See Barros*, 92 A.3d at 1250.

CONCLUSION

Based upon all of the foregoing, this appeal is DISMISSED as untimely submitted. Moreover, based upon a review of the record, this Officer determines that Respondent has met its burden of proof by the preponderance of the evidence in showing that the requested records are exempt from disclosure. Thus, the Requester's appeal is DENIED.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing of this determination, any party may appeal to the Northampton County Court of Common Pleas under 65 P.S. § 67.1302(a). All parties must be served with the notice of the appeal.



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

Date: January 12, 2022

2022 JAN 12 AM 8:51
DISTRICT ATTORNEY'S OFFICE

TERENCE HOUCK
DISTRICT ATTORNEY

COUNTY OF NORTHAMPTON
OFFICE OF THE DISTRICT ATTORNEY

Northampton County Government Center
669 Washington Street
Easton, Pennsylvania 18042
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JULIANNE DANCHAK
ADRIANNE DOLL
AARON GALLOGLY
KATHARINE KURNAS
PATRICIA TURZYN

VIA MAIL:
Ross Segreaves

RE: Right to Know Request

September 17, 2021

Dear Mr. Segreaves,

Please be advised that this office acknowledges receipt of your request dated August 27, 2021, and received on September 13, 2021:

A print-out of 120 texts in regards to the prosecution of case number CP-48-1443-2018, and the mental health court handbook.

A copy of the mental health court handbook is attached for your reference. As to the text messages, please be advised that the request must be denied. This office relies on Section 708 of the Right to Know Law, which provides that certain records are subject to an exemption for disclosure as follows:

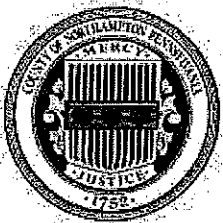
... (16) A record of an agency relating to or resulting in a criminal investigation, including:

... (ii) investigative materials, notes, correspondences, videos, and reports.

The information you request involves a criminal investigation. As such, it is exempt from disclosure. See *Coley v. Philadelphia District Attorney's Office*, 77 A.3d 694, 696 (Pa. Commw. 2013) (denying access to investigative materials because criminal investigation records are still exempt after investigation is completed).

Additionally the Criminal History Record Information Act 18 Pa.C.S. § 9106(c)(4) states 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."

Investigative information is "information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or allegation of criminal wrongdoing and may include modus operandi information." 18 Pa.C.S. § 9102. The information you have requested is "investigative information" and you are not a criminal justice agency, so the information you requested cannot be released.



Attachment "A"

TERENCE HOUCK
DISTRICT ATTORNEY

**COUNTY OF NORTHAMPTON
OFFICE OF THE DISTRICT ATTORNEY**

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Easton, Pennsylvania 18042
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ADRIANNE DOLL
AARON GALLOGLY
KATHARINE KURNAS
PATRICIA TURZYN

If you choose to appeal this decision, it must be filed with the Office of Open Records as follows, within fifteen (15) business days of this date pursuant to 65 P.S. § 67.1101:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg PA 17120-0225

You may also appeal to the Northampton County Court of Common Pleas within thirty days (30) of the mailing date of this decision. See 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal.

Sincerely,

Nicole A. Cheskey
Open Records Officer
District Attorney's Office



TERENCE HOUCK
DISTRICT ATTORNEY

COUNTY OF NORTHAMPTON
OFFICE OF THE DISTRICT ATTORNEY

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ADRIANNE DOLL
AARON GALLOGLY
KATHARINE KURNAS
PATRICIA TURZYN

VIA MAIL:
Ross Segreaves

RE: Right to Know Request

October 1, 2021

Dear Mr. Segreaves,

Please be advised that this office acknowledges receipt of your request dated September 12, 2021, and received on September 24, 2021:

A print-out of 120 texts in regards to the prosecution of case number CP-48-1443-2018.

You have previously requested this same information from our office, on September 13, 2021. A denial letter was issued and mailed to you on September 17, 2021.

As previously stated in the letter dated September 17, 2021 the request for said text messages must be denied. This office relies on Section 708 of the Right to Know Law, which provides that certain records are subject to an exemption for disclosure as follows:

- ... (16) A record of an agency relating to or resulting in a criminal investigation, including:
 - ... (ii) investigative materials, notes, correspondences, videos, and reports.

The information you request involves a criminal investigation. As such, it is exempt from disclosure. See Coley v. Philadelphia District Attorney's Office, 77 A.3d 694, 696 (Pa. Commw. 2013) (denying access to investigative materials because criminal investigation records are still exempt after investigation is completed).

Additionally the Criminal History Record Information Act 18 Pa.C.S. § 9106(c)(4) states 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."



Attachment "B"

TERENCE HOUCK
DISTRICT ATTORNEY

**COUNTY OF NORTHAMPTON
OFFICE OF THE DISTRICT ATTORNEY**

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Investigative information is "information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or allegation of criminal wrongdoing and may include modus operandi information." 18 Pa.C.S. § 9102. The information you have requested is "investigative information" and you are not a criminal justice agency, so the information you requested cannot be released.

If you choose to appeal this decision, it must be filed with the Office of Open Records as follows, within fifteen (15) business days of this date pursuant to 65 P.S. § 67.1101:

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Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg PA 17120-0225

You may also appeal to the Northampton County Court of Common Pleas within thirty days (30) of the mailing date of this decision. See 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal.

Sincerely,

Nicole A. Cheskey
Open Records Officer
District Attorney's Office



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Blind cc

Expect covid Delays

CP-48-1443-2018

669 Washington Street, 18042

PS-38

Page 2 of 2

Due By 11/29/2021

11/20/21

Dear D.A. Office: Ms. Nicole A. Cheskey, et.al.

This is an appeal to your...

Your letter of decision is September 17, 2021.

Your date stamp upon exit your office is October 18, 2021.

Your post-mark is October 22, 2021.

My appeal is dated (post-marked) 10/22/21

Your correspondence was received by me at SCZ/DOE Mahoney 10/29/21 on CCTV (TBO at litigation if need be).

Mrs. R.F. bore witness to the printed out 120 (n) texts - T.B.D. / witness

Please provide the 120 (n) text messages before December 31, 2021.

I am mailing out my appeal pursuant to 65 PS § 67.1302 (a) serving the following parties: (as informed)

1. D.A. Office, ^{Ms.} Nicole A. Cheskey 669 Washington St, 18042
2. Ms. Ellen Kingsley, Esquire, 162 S. Union St. . .
3. Mr. Robert Patterson, Esq, 3513 Southwood Dr. . .
4. Mr. Matt Deschler, Esq, 512 N. New St. . .

Russ Seigreaves
PO Box 256, Rt. 6
Waymart, PA, 18472

I stated "I have a right to know" however this info. is "Discovery Evidence" under law I am entitled to, it is not an issue of Right to Know Law. I apologize for the confusion. Happy Holidays! Happy Hannukah! Merry Christmas!

Happy Thanksgivins! God Bless!

Legal mail Address:

Most Sincerely, Russ J. Seigreaves

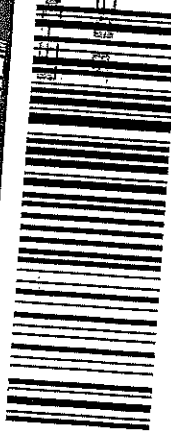
~~SCZ Mahoney AB30, Russ Seigreaves NS 544, 301 Norca Rd, Frackville, PA, 17932~~
Attachment "C"

PLACE STICKER AT TOP OF ENVELOPE
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE
CERTIFIED MAIL™

~~Ross Segreaves~~
~~301 Water Rd.~~
~~Easton PA 18042~~

Scz Waymart Pa 1004
Ross Segreaves NSS4U
PO Box 256, Rt. 6
Waymart PA 18847A
PS 3800 \$3.75
certified DC-138A

Scz Waymart Pa 1004
Photocopied contents/envelope 18042-749299



7007 0710 0002 2248 7957

neopost
12/09/2021

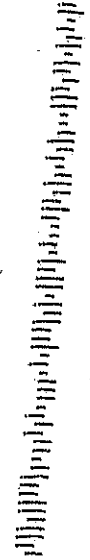
US POSTAGE \$004.28



ZIP 18472
041M12251412

Courthouse

c/o: District Attorney Office
Attn: Nicole A. Cheskey
669 Washington St.
Easton, PA 18042



2021 DEC 14 PM 12:16

District Attorney Office
Ms. Nicole A. Cheskey

Needs
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