

OOB Holds that Police Taser Usage Reports Are, in Part, Public Records

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In *Ciavaglia v. New Hope Borough*, AP 2019-0707 (June 19, 2019), the Requester sought copies of “Taser Usage Report Forms” from the Borough. The Borough denied the Request, arguing that the records relate to criminal and noncriminal investigations, 65 P.S. §§ 67.708(b)(16)-(17), and contain individuals’ medical information, 65 P.S. § 67.708(b)(5).

Though police incident reports are typically attached to Taser Forms, the OOR interpreted the request as only seeking the Taser Forms and not the attached incident reports. Subject to this limitation, the OOR concluded that the Taser Forms are public records subject to redaction.

The Taser Forms at issue contained the following fields:

- Date
- Incident Number
- Officer
- Location of the Incident
- TASER discharged (Yes or No)
- Serial Number of TASER Used
- Serial Number of the Cartridge Used
- AFIDS Collected (Yes or No)
- Property Report Number for Deployed Cartridge
- Probe Hit/Drive Stun/Both
- Location of Probe Hits (with entries for Probe #1 and Probe #2)
- Number of Times the Subject was Energized
- Was the Subject Transported to the Hospital (Yes or No)
- Subject’s Name/Date of Birth/Address/Social Security Number/Phone Number
- Comments

The OOR rejected the argument that the Taser Forms were exempt under the criminal investigative exception set forth in Section 708(b)(16) of the RTKL and/or the Criminal History Record Information Act (“CHRIA”) because the Taser Forms, for the most part, document information that is only tangentially related to a criminal investigation and are not investigative themselves. See *Levy v. Senate of Pa.*, 94 A.3d 436, 448 (Pa. Commw. 2014) (“To the extent the documents reference and arguably ‘relate to’ a criminal investigation, the records themselves do not contain any investigatory material”). In other words, the OOR concluded that the Taser Forms, as a whole, do not “depict a systematic inquiry or examination into a potential crime” and that the purpose of the Taser Forms is outside of the criminal investigation itself. *Pa. State Police v. Grove*, 161 A.3d 877, 893 (Pa. 2017); *Schmitt v. Churchill Borough*, OOR Dkt. AP 2017-1868 (finding that Taser discharge reports are not criminal investigative records). Because they are not criminal investigative records, the OOR concluded that the Borough did not meet its burden of proving that the records are exempt under Section 708(b)(16) of the RTKL or protected from disclosure by CHRIA.

However, the OOR acknowledged that portions of the Taser Forms may contain criminal investigation information, including the “Comments” section and the OOR transferred the case to the District Attorney’s office to make that determination.

The OOR also rejected the argument that the Taser Forms are related to noncriminal investigations for similar reasons. Section 708(b)(17) of the RTKL exempts from disclosure “[a] record of an agency relating to a noncriminal investigation,” including “[i]nvestigative materials, notes, correspondence and reports.” 65 P.S. § 67.708(b)(17)(ii). The OOR rejected this argument because the Borough did not provide any argument or evidence regarding its authority to conduct investigations into the use of Tasers by police officers. Moreover, even assuming that such authority exists, the OOR concluded that the Borough did not demonstrate that the Taser Forms’ contents are investigative in nature.

Finally, the OOR agreed that the Borough could redact certain information from the Taser Forms. Section 708(b)(5) of the RTKL exempts from disclosure “[a] record of an individual’s medical, psychiatric or psychological history or disability status,” as well as “related information that would disclose individually identifiable health information.” 65 P.S. § 67.708(b)(5). While the Taser Forms do not contain any fields addressing protected health information, the Borough asserted that one of the Taser Forms addressed “a mentally ill subject who was not charged with a crime.” Therefore, to the extent the “Comments” section contained any individually identifiable medical information about this individual, including information regarding his or her mental health status, the OOR held that such information could be redacted.

The OOR also agreed that the Borough could redact home addresses, telephone numbers, dates of birth and social security numbers from the Taser Forms. In *Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142 (Pa. 2016) (“PSEA”), the Pennsylvania Supreme Court held that individuals possess a right to privacy in certain types of personal information, including their home addresses. 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. The OOR concluded that, because the Requester did not assert a public interest in disclosing the birth dates and addresses contained on the Taser Forms, such information could be redacted because there is a strong privacy interest in this information.

However, the OOR concluded that names could not be redacted because, according to the OOR, there was no strong privacy interest in the names contained on the Taser Forms. Specifically, the Taser Forms contain the names of individuals who have been taken into custody by the Borough Police Department and there is no reasonable expectation of privacy in this information because police blotter information, including the names of individuals arrested, is expressly public under both the RTKL and CHRIA. See 65 P.S. § 67.708(b)(16); 18 Pa.C.S. § 9104(b).

Finally, because Section 708(b)(6) of the RTKL exempts from disclosure “a person’s Social Security number” and “home, cellular or personal telephone numbers” the OOR concluded that this information could and should be redacted from the Taser Forms. 65 P.S. § 67.708(b)(6)(i)(A); *Reese v. Pennsylvanians for Union Reform*, 173 A.3d 1143 (Pa. 2017) (by exempting this information in the RTKL, “the General Assembly has already performed the necessary PSEA balancing test.”).

This case is helpful because, in addition providing guidance on how to respond to requests for Taser Reports or other similar reports, it demonstrates that, in many cases, requested records are not public or exempt in their entirety. To the contrary, Open Records Officers should always work with their solicitor to determine what, if anything, should be disclosed when responding to a RTKL Request.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.