

## Court Quashes Civil Subpoena for Investigative Information Pursuant to Criminal History Record Information Act (“CHRIA”)

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In an important decision for all law enforcement agencies, the Court of Common Pleas of Allegheny County quashed a civil subpoena directed to a local police department. The subpoena sought a toxicology report that the department obtained as part of its criminal investigation into the defendant who was charged with and convicted of driving under the influence. *Miller v. Cecchino*, Case No. 18-004557 (Allegheny Cty. Oct. 10, 2019). While acknowledging that its ruling could prevent plaintiffs from obtaining evidence that law enforcement agencies are in a unique position to collect based on their power to obtain search warrants, the Court concluded that the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101-9183, mandated that the subpoena be quashed.

Section 9106(c)(4) of CHRIA provides: “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 . . . .” 18 Pa.C.S. §§ 9106(c)(4) (emphasis added).

CHRIA defines “investigative information” broadly 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.” 18 Pa.C.S. § 9102; compare 65 P.S. § 67.708(b)(16)(ii) (exempting “[i]nvestigative materials, notes, correspondence, videos and reports.”). CHRIA also omits plaintiffs and their counsel from the definition of “criminal justice agency.” *Id.*

The Court’s decision is consistent with an earlier unreported decision by the Pennsylvania Superior Court. In *In re Subpoenas in Case of Mielcarz v. Pietzsch*, 119 EDA 2017, 2018 WL 3113916 (Pa. Super. June 22, 2018), the court held that CHRIA unambiguously prohibits the dissemination of investigative information. Accordingly, by its terms, investigative information may not be disseminated to plaintiffs or their counsel.

As interpreted by the courts, the term “investigative information” in CHRIA encompasses only information that is created for the purpose of investigating suspected criminal activity. *Pennsylvania State Police v. Grove*, 161 A.3d 877 (Pa. 2017). Importantly, this means that every investigative record in a police department’s possession is not protected by CHRIA. CHRIA does not bar disclosure of information gathered during a noncriminal investigation, even if conducted by the police.

Under the RTKL, records relating to noncriminal investigations and criminal investigations are exempt from public disclosure. 65 P.S. § 97.708(b)(16), (17). CHRIA, by contrast only precludes the dissemination of information pertaining to criminal investigations. By comparing these statutes, the *Pietzsch* court concluded that the General Assembly meant only to protect criminal investigative information under CHRIA and made a policy choice to permit disclosure of noncriminal investigative information by criminal justice agencies when served with a lawful subpoena under the Federal Rules of Civil Procedure or Pennsylvania Rules of Civil Procedure.

Accordingly, when determining whether a record is a criminal “investigative record” protected by CHRIA, local agencies must look to the circumstances under which the information contained in the record was gathered. Information obtained as a result of an investigation into criminal activity is not a public record and is not subject to disclosure pursuant to a

subpoena. Information gathered as a result of a different inquiry or for a different noncriminal reason is not a public record, but can be obtained by a subpoena. Other factors, such as whether the information is helpful to a plaintiff's or a prosecutor's case are irrelevant to the determination as to whether CHRIA applies. Similarly, it does not matter if the criminal investigation or case is open or closed.

If you or your police department receive a RTKL request or a subpoena for investigative information, you should contact your solicitor immediately to determine if the records are protected by CHRIA or the RTKL.

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.