

OOOR Rules that Police Investigative Report is Exempt in its Entirety

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In *Weik v. Pennsylvania State Police*, AP 2020-1139 (October 6, 2020), the Requester sought records related to a fatal police shooting. The State Police identified a responsive Incident Report, but denied the request, arguing, among other things, that Incident Report related to a criminal investigation, 65 P.S. § 67.708(b)(16) and was exempt under the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101-9183.

The RTKL provides that “[a] record of an agency relating to or resulting in a criminal investigation...” is exempt from access by a requester. 65 P.S. § 67.708(b)(16). Further, 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).

The OOR noted that the Commonwealth Court, relying on both CHRIA and Section 708(b)(16) of the RTKL, had held that State Police investigative reports are exempt from disclosure. *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 477 (Pa. Commw. Ct. 2010), *appeal denied*, 76 A.3d 540 (Pa. 2013). Accordingly, the OOR found that the Incident Report was exempt from disclosure.

The OOR also rejected Requester’s argument that the State Police should have to provide a redacted report instead of withholding the report in its entirety because: “where a record falls within an exemption under Section 708(b), it is not a public record as defined by the RTKL and an agency is not required to redact the record...” *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 481 (Pa. Commw. Ct. 2010).

Finally, the OOR concluded that it could not compel disclosure under Section 506 of the RTKL, which generally authorizes a local agency to release exempt records if it is in the public interests to do so and the release is not prohibited by law, court order or privilege. 65 P.S. § 67.506. First, because the State Police had demonstrated that a criminal investigation did occur, the OOR determined that CHRIA, a State law, prohibited the release. Second, the OOR noted that it is without authority to compel an agency to exercise its discretion in favor of disclosing exempt records. *Pa. Dep’t of Pub. Welf. v. Froelich*, 29 A.3d 863 (Pa. Commw. Ct. 2011).

Open Records Officers frequently receive requests for police incident reports and it is critical they understand what can and cannot be released. This recent determination by the OOR provides helpful guidance in responding to such a 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.