

RTK-259



pennsylvania

OFFICE OF OPEN RECORDS



Springettsbury Township

1501 Mt. Zion Road

York, PA 17402

(717) 757-3521 (Phone)

(717) 505-0455 (Fax)

www.springettsbury.com

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 3/15/2014

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

NAME OF REQUESTOR: KEVIN SHERLOCK

STREET ADDRESS: 34 CAMELOT ARMS

CITY/STATE/COUNTY (Required): YORK, PA 17406

TELEPHONE (Optional): [REDACTED]

RECORDS REQUESTED:

**Provide as much specific detail as possible so the agency can identify the information.*

- CALL FOR SERVICE REPORT AKA INCIDENT REPORT 3/13/2014 @ 33 CAMELOT ARMS (2230 HRS)
- ANY RELATED POLICE BLOTTER ENTRY TO ABOVE INCIDENT

DO YOU WANT COPIES? YES or NO

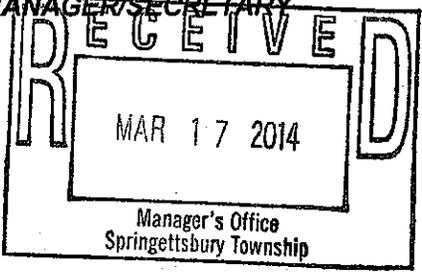
DO YOU WANT TO INSPECT THE RECORDS? YES or NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO

RIGHT TO KNOW OFFICER: JOHN J. HOLMAN, TOWNSHIP MANAGER/SECRETARY
john.holman@springettsbury.com

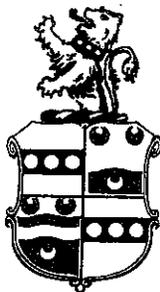
DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5)-DAY RESPONSE DUE:



***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

Questions: please contact the Office of Open Records at (717) 346-9903 or openrecords@state.pa.us



COAT OF ARMS OF SPRINGETT PENN
1701-1731

SPRINGETTSBURY TOWNSHIP

1501 Mt. Zion Road
York, Pennsylvania 17402
717-757-3521 Fax: 717-757-7856
www.springettsbury.com
email: info@springettsbury.com

Police: 717-757-3525 Fax: 717-840-1908
Police and Fire Emergencies - Dial 911
Recreation Office: 717-505-0406

Wastewater Treatment Facility
3501 North Sherman Street
717-757-3521 Fax: 717-840-0680

BOARD OF SUPERVISORS

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William H. Schenck, III

Kathleen A. Phan

TOWNSHIP MANAGER

John J. Holman
Secretary

March 24, 2014

Kevin Sherlock
34 Camelot Arms
York, PA 17406

Re: **RIGHT-TO-KNOW REQUEST**
Police Records

Dear Mr. Sherlock,

Thank you for writing to Springettsbury Township with your request for information pursuant to the Pennsylvania Right-To-Know law. Your request is for "Call for service report aka incident report 3/13/2014 @ Camelot Arms (2230 Hrs.). Any related police blotter entry to above incident."

The request is approved in part and denied in part. The Springettsbury police blotter information is as follows:

DATE	Time	UCR- DESCRIPTION	ADDRESS	INCIDENT NUMBER
3/13/2014	10:40pm	Domestic	33 Camelot Arms, Apt E, York Pa 17406	2014-0314-M0003

Records related to criminal and or non-criminal investigations are hereby denied for the following reason(s).

1. The requested information is a noncriminal investigative report and is exempt under the law: Section 708 (b) (17).
2. The requested information is a criminal investigative report and is exempt under the law: Section 708 (b) (16).

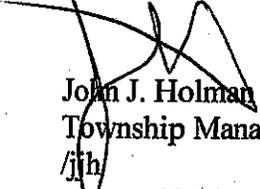
You have a right to appeal denial of information in writing to the York County Office of the District Attorney, 45 N. George Street, York, PA 17401.

If you choose to file an appeal, you must do so within fifteen business days of the mailing date of the agency's response, as outlined in Section 1101.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

If you have any questions please do not hesitate to contact me.

Very truly yours,



John J. Holman
Township Manager

/j/h

cc: Charles Rausch, Township Solicitor
Chief Hyers, Police Department

File: Right-to-Know - 259



Ⓟ
RTK-259

April 3, 2014

Via First Class Mail only:

Kevin Sherlock
34 Camelot Arms
York, PA 17406

Via E-Mail only:

John J. Holman
Open Records Officer
Springettsburg Township
1501 Mt. Zion Road
York, PA 17402
info@springettsbury.com
John.Holman@springettsbury.com

RE: OFFICIAL NOTICE OF APPEAL - DOCKET # AP 2014-0525

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.* ("RTKL") on April 2, 2014. The process to follow in submitting information to the OOR is attached. A binding Final Determination will be issued in 30 calendar days as set forth in the RTKL.

The Supreme Court of Pennsylvania has held that an agency 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 Pa.*, 65 A.3d 361 (Pa. 2013). Accordingly, the agency may supplement its response within the time frame set forth below.

You may submit information and legal argument to support your position by 5:00 p.m. seven (7) business days from the date on this letter. Please include the docket number above on all submissions.

The law requires that your position must be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and Final Determinations of the OOR. **Statements of fact must be supported by an affidavit made under penalty of perjury by a person with actual knowledge.** An affidavit is required to demonstrate nonexistence of records. Blank sample affidavits are available on our website.

The agency has the burden of proving that records are not subject to public access. Any written information you provide to OOR must be provided to all parties.

Agency Must Notify Third Parties: If records contain personal information of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice to the OOR within 7 business days.**

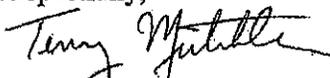
Such notice must be made by 1) providing a copy of all documents included with this letter; and 2) advising that interested persons may request to participate in this appeal (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” See *Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011). **Failure to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys are required to appoint appeals officers to hear appeals regarding access to criminal investigative records in possession of a local agency. If records were denied in part upon that basis, requester may consider filing a concurrent appeal with the District Attorney of the County where the agency is located if the records were denied, in part, because they are criminal investigative records of a local agency.

If you have questions, contact the assigned Appeals Officer in writing and copy the other party.

Respectfully,


Terry Mutchler
Executive Director

Enclosures:

Assigned Appeals Officer contact information
Entire appeal as filed with OOR

REQUEST TO PARTICIPATE AS DIRECT INTEREST PARTY

Please accept this as a Request to participate as a 3rd party with a direct interest in a currently pending appeal before the Office of Open Records pursuant to 65 P.S. § 67.1101(c). I hereby make the following statements under penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904.

Today's date: _____

OOR Docket No: _____

Name of Direct Interest Participant Information: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Date you received actual notice of the appeal: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

Statement of Direct Interest:

I have a direct interest in the record(s) at issue as:

- employee of the agency
- containing confidential or proprietary information or trademarked records
- contractor or vendor
- Other: (attach additional pages if necessary) _____

Explain how the information you will submit in this appeal is probative to the final determination in support of the Requester's or Agency's position (attach additional pages if necessary) _____

I have attached a copy of my position statement to be included in the Office's final determination.

Respectfully submitted, _____ (must be signed)

Please submit this form the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.



pennsylvania
OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Angela Eveler, Esquire

CONTACT INFORMATION:

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

PHONE:

(717) 346-9903

FACSIMILE:

(717) 425-5343

E-MAIL:

AEveler@pa.gov

**Preferred method of contact
and submission of information:**

EMAIL

**Please direct submissions and correspondence related
to this appeal to the above Appeals Officer. Please include the case
name and docket number on all submissions.**

**You must copy the other party on everything you submit
to the OOR.**

The OOR website, <http://openrecords.state.pa.us>, is searchable and both
parties are encouraged to review prior final determinations involving similar
records and fees that may impact this appeal.

Kevin Sherlock
34 Camelot Arms
York, PA 17406

31 MAR 2014

RECEIVED

APR 02 2014

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

York County Office of the District Attorney
45 N. George St.
York, PA 17401

OFFICE OF OPEN RECORDS

This is an appeal of Springettsbury Township's denial in part of a Right to Know Request I filed 15 March 2014.

I am mailing this appeal to the state Office of Open Records and to the York County DA because of a glitch in the Right to Know Law. The Office of Open Records website explicitly says to mail appeals to them. However, a powerpoint slide presentations mentions sending appeals in the case of criminal investigations to the county prosecutor. Springettsbury Township's town manager directed me to contact the York County DA. I believe he is in error because the record in question is from a closed, and not an active, investigation, but the Office of Open Records website powerpoint info might have confused him or maybe that is the right thing to do in this matter.

At any rate, here's my appeal:

I asked for a call for service report aka incident report (different states have different names for a police report in response to an incident) at 33 Camelot Arms about 2230 3/13/2014 and the related police blotter entry.

Springettsbury Township manager John Holman denied it on grounds of it being exempt from disclosure per Section 708 (b) (17) noncriminal investigative report and per Section 708 (b) (16) criminal investigative report.

My request form follows end of this letter.

Springettsbury Township's denial in part letter follows end of this letter.

I appeal on the following grounds:

1. **The record I asked for is a public record per state law.** In fact, the Pennsylvania Guide for Law Enforcement Agencies is explicit on the issue of disclosability of certain police records. One of their question and answer segments reads as follows (in fact I cut and pasted this out of the on-line document):

"What are common public records of a law enforcement agency?"

Examples of Public Records:

Police blotters
Incident reports
Traffic reports
Emergency time response logs
Private criminal complaints "

2. **My request is not covered by one of the exceptions to release allowed by Section 708 (b) (16) and (17).**

The police made no arrests, they dropped the case, and the identities of the residents of the address are public record. The actual portions of the law Holman quoted and presumes to know are these:

"(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).

(17) A record of an agency relating to a noncriminal investigation, including:

(i) Complaints submitted to an agency.

(ii) Investigative materials, notes, correspondence and reports.

(iii) A record that includes the identity of a confidential source, including individuals subject to the act

of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

(iv) A record that includes information made confidential by law.

(v) Work papers underlying an audit.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit,

registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

(B) Deprive a person of the right to an impartial adjudication.

(C) Constitute an unwarranted invasion of privacy.

(D) Hinder an agency's ability to secure an administrative or civil sanction.

(E) Endanger the life or physical safety of an individual.

So let's examine why he made the wrong decision in denying the incident report.

- A. Police closed the investigation by deciding not to arrest or refer the suspect for charges.
- B. The police know the suspect and victim, and where the suspect lives; there is no codefendant at large they need to track down.
- C. There should be no chance that the victim will suffer worse on disclosure.

- D. It was noticeable to multiple residents a noise sounding like a child being slammed against a wall and the very loud crying of that same child, and the yelling of the suspect emanated from the address. This is why there were one or more phoned-in complaints.
- E. Loud noises emanating from the suspect's apartment are the result of the actions of the suspect, and were reasonably audible in common areas outside the suspect's apartment. This is not a privacy issue, as the suspect lowered expectations of privacy by causing others to alert to the incident by her own boisterous and potentially unlawful physical behavior. People thought she was abusing a child.
- F. The only privacy matter is the identity of the victim, whose name should be redacted. There should be a notation police contacted child's parents to verify child was supposed to be at apartment of suspect (if she was not a caregiving relative of the child) so late at night.
- G. Since the case is closed and is not in continuing investigation, there are no concerns about leaking of info that would compromise an investigation.
- H. There is no chance the suspect will be denied a fair trial. The police are not pursuing the case. There is no source or informant whose cover will be blown. And there will be no trial.
- I. The same general arguments would apply to any non-criminal investigation.
- J. Since the matter is closed in the minds of Springettsbury Township police and the York County DA, and since no federal law enforcement or prosecution agencies are involved, then there is no need to shield information in the case from the public -- except the identity of the victim. Even there, the police should have noted why the child was in the apartment of a woman if she was not her mother or her relative.

3. **Pennsylvania courts have ruled police incident reports are public record.**

The Pennsylvania Newspaper Association and the Pennsylvania Freedom of Information Coalition released the following on March 12, 2009 (I cut and pasted it into this letter):

Pennsylvania News

**By Teri Henning, General Counsel
and Melissa Melewsky, Media Law Counsel
Pennsylvania Newspaper Association**

One of the most frequent questions to our legal hotline is, "What records should I be able to get from the state or local police?" It is so common, in fact, that we regularly run it as a Q&A in the PNA's weekly newsletter, *Headlines & Deadlines*. It also shows up in multiple forms in our "From the Hotline" archive,

The short answer is that under the Criminal History Record Information Act, 18 Pa.C.S.A. § 9101, et seq., police blotters, press releases and criminal dockets are public records. Additionally, Pennsylvania courts have determined that police incident reports are public records. *See Tapco, Inc. v. Township of Neville, 695 A.2d 460 (Pa. Cmwlth. 1997)*. In other words, basic information, such as names of those involved in an incident, a brief description of the incident, and any charges filed, are public. In contrast, more detailed police investigative records are generally not public.

4. **This is a selective denial. Springettsbury Township authorities gave specific information on the case to the management of the apartment complex, as they should have done for the protection and quiet enjoyment of tenants.**

5. **Public safety outweighs the desire of authorities not to disclose an incident report.**

The address is at the Camelot Arms apartment complex. Therefore, this incident is of concern to a number of parents who have children in the complex. It is a public safety issue regarding children.

This is akin to the disclosure of sex offenders, which enables the public to avoid danger.

Making public records public, such as the disclosure of acts of those suspected of abusing children in their care, will lead to less abuse.

It is also in the public interest to monitor police and prosecutor performance.

Springettsbury Township police overreacted in two recent beating cases that, on or about the day of the police incident in question, cost the taxpayers of the township a half a million dollars for the substandard behavior of the officers in question. This is a tax on every member of the community.

In this case, police did little or nothing. Well, they apparently did decide to leave a vulnerable child with someone who is believed to have slammed the child into a wall. The physical act was clearly audible outside the apartment in question, and so was the hurt and fearful crying of the child.

The police questioned the child at the apartment. Naturally the child would be afraid to say she was physically assaulted, as the suspect admitted there was a violent argument (she had to, as other people heard her) but denied she laid hands on the child, and the child still had to stay there.

The responding officers admitted they did not check the child's back or buttocks for bruising, as those were evidently the portions of the child's body that was apparently bounced off the wall. If the victim in question is a girl, there should have been a clearly heterosexual matron or policewoman reasonably available in York County to examine her physically to satisfy the child's rights to freedom from sexual abuse in examination in this regard.

Did the officers check to verify right of people present to be at that apartment at that hour? The child could be a runaway or a sex trafficking victim.

These are issues of police training for the welfare of children. Was their training poor in this regard, or did the police failed their training? Or are local or state officials or prosecutors hamstringing good officers with suspect-friendly rules of making arrests or making referrals for prosecution?

6. **The denial itself is self-evidently ludicrous.**

Town manager Holman claims the record I asked for is a criminal and a noncriminal investigative report at the same time!

It was a criminal report, per the blotter entry of "Domestic". I have it on the word of at least one of the persons who made the police report, the responding officers, and the agents of the owner of the property in question it was a domestic violence call of suspected child abuse by an adult against a frightened child.

I talked with the officers and their superior. They said they didn't file charges or make any arrests. Therefore it is not even an investigation anymore, but a police incident report of a closed case.

I have some other concerns about how Springettsbury Township officials handled my right to know request (and others):

1. **Springettsbury Township posts right to know requests on their town website in a way which I believe and here state is calculated to dissuade citizens from exercising their rights under the right to know law.**

I realize right to know requests can be public records. However, Springettsbury Township officials post such requests so openly the casual browser of the website can see who is applying.

Make anyone curious about records requests file formally to obtain them, like they make citizens file Right to Know requests in the first place. I believe the existence of such a feature on the town website is an attempt to scare people away from making public records requests,

If this is common practice in Pennsylvania, it needs to be stopped for self-evident reasons.

2. **Springettsbury Township's manager gave out info on the appeal process that appears to be incorrect. At this time I choose to believe it was an honest mistake on his part rather than an attempt to violate the spirit of the Right to Know law.**

The Pennsylvania Office of Open Records Citizen's Guide states the following (and I cut and pasted it from the website):

“HOW TO FILE AN APPEAL?”

If an Agency denies a record, or a portion of a record, the requester has a right to file an appeal with the Office of Open Records.

The appeal must be submitted to the Office of Open Records within 15 business days of the mailing date of the Agency's response. Appeals should be sent to the Office of Open Records, Commonwealth Keystone Building, 400 North St., 4th Floor, Harrisburg, PA 17120-0225. They may also be submitted via facsimile to 717-425-5343 or via email to openrecords@pa.gov as a Microsoft Word or PDF attachment.”

The guide makes no mention of the county prosecutor being an appellate authority.

Powerpoint training for officials available on the Office of Open Record's website suggests appeals involving records from active criminal investigations, especially those denied under Sec. 708 of the Right to Know law, should go thru the county prosecutor. This is not in the actual text of the law. I appealed essentially under protest to the York DA's Office, as the law doesn't specify appealing with the county prosecutor. After all, this is not an active criminal prosecution.

If this is a glitch in the law, and Springettsbury Township's manager was following what he believed to be licit instructions, then the law needs clarification.

IN SUMMARY:

Hiding records from the public and applying pressure to those who question authorities who do so is the mentality that led public officials to cover for Jerry Sandusky's serial child molesting because he coached at Penn State.

Hiding records from the public and applying pressure to those who question authorities who do so helped evil Pennsylvania judges Michael Conahan and Mark Ciavarella run a slavery ring for profit – they jailed kids for trivial reasons and made millions from the private jail operators on kickbacks.

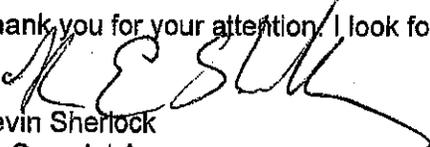
Pennsylvania has one of the most corrupt legislatures and court systems in America, based on the number of officials and judges removed and jailed. (This even accounts for adjustment due to the large number of people in Pennsylvania.) And this doesn't even count the corrupt officials from Philadelphia who Attorney General Kathleen Kane is refusing to investigate for reasons of party loyalty. Predictably, Pennsylvania has a more restrictive approach to the release of public records than most other states.

Pennsylvania authorities had to be taken to court to release sex offender info ... and they spend a considerable amount of effort warning people not to hurt these poor misunderstood rapists.

I am asking for the following:

1. I am asking applicable authorities of the Pennsylvania Office of Open Records (or if applicable, the applicable authorities of the York County Office of the District Attorney) to overturn on my appeal the decision of Springettsbury Township to refuse me the police incident report in question (3/13/2013 at 33 Camelot Arms, York 17406, within the confines of Springettsbury Township, number purported to be 2014-0314-M0003).
2. I am asking for the appropriate public disclosure authority to compel Springettsbury Township authorities to provide me the police incident report in question. We are aware of the potential \$1500 civil penalty the township may have to pay under certain circumstances.
3. I am asking the appropriate state authorities to make it clear to Springettsbury Township officials what the law is on public records requests, to include the proper means for informing people about appeals. This can be a training and learning experience for the police and officials in the township.
4. I am also asking the appropriate state authorities to direct Springettsbury Township officials to take down from their website the easily available right to know requests filed. These are public records, but make anyone curious about such matters file formally to obtain them, like they make citizens file Right to Know requests in the first place. I believe the existence of such a feature on the town website is an attempt to scare people away from making public records requests, or at the very least is an obtuse mindset in applying the law.
5. I am asking Terry Mutchler, the executive director of the Pennsylvania Office of Open Records, to clarify the participation of local prosecutors in the appeal process. Either remove this from the powerpoint slides for training, or get the law amended, or amend review procedure so a local district attorney at least gets a courtesy call on appeals to assess the effects of releasing certain information on a criminal case.

Thank you for your attention. I look forward to your response and decision.


Kevin Sherlock
34 Camelot Arms
York, PA 17406



pennsylvania
OFFICE OF OPEN RECORDS

**RIGHT TO KNOW LAW APPEAL
DENIAL OR PARTIAL DENIAL**

Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
Fax: (717) 425-5343 E-mail: openrecords@pa.gov

Today's date: 31 MARCH 2014

Requester's name: KEVIN SHORLOCK
Address/City/State/Zip: 54 CAMLOT APTS
Request submitted by: Fax Mail E-mail In-Person (Please check one)
Date of Right to Know request: 3/15/2014 Date of Agency Response: 3/24/2014
Telephone and fax number: / E-mail:

Name and address of Agency: SPRINGBETSBURY TOWNSHIP (YORK COUNTY)
E-mail Address of Agency: INFO@SPRINGBETSBURY.CO Fax of Agency: 717-757-7856
Name and title of person who denied my request: JOHN HOLMAN, TWP MANAGER

I submitted a request for records to the agency named above. The agency either denied or partially denied my request. I am appealing that denial to the Office of Open Records (OOR), and I am providing the following information:

I was denied access to the following records (attach additional pages if necessary): CLAIM OF EXEMPTION UNDER SEC 708

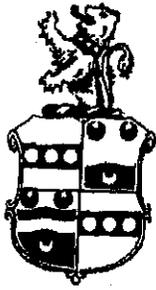
The agency's denial of my request is flawed and the requested records are public records because (check all that apply) **(REQUIRED)**:

- the records document the receipt or use of agency funds.
- the records are in the possession, custody or control of the agency and are not protected by any exemptions under Section 708 of the Right-to-Know Law, are not protected by privilege, and are not exempted under any Federal or State law or regulation.
- Other SELECTIVE DENIAL - THEY RELEASED INFO TO ANOTHER PARTY
(attach additional pages if necessary) ACCORDING TO SOMEONE IN A POSITION TO KNOW.

- I have attached a copy of my request for records. **(REQUIRED)**
- I have attached a copy of all responses from the agency regarding my request. **(REQUIRED)**
- I have attached any letters or notices extending the agency's time to respond to my request.
- I hereby agree to permit the OOR an additional thirty (30) days to issue a final order in this appeal.

Respectfully Submitted, [Signature] (must be signed)

You should provide the agency with a copy of this form and any documents you submit to the OOR.



COAT OF ARMS OF SPRINGETT PENN
1701-1731

SPRINGETTSBURY TOWNSHIP

1501 Mt. Zion Road
York, Pennsylvania 17402
717-757-3521 Fax: 717-757-7856
www.springettsbury.com
email: info@springettsbury.com

Police: 717-757-3525 Fax: 717-840-1908
Police and Fire Emergencies - Dial 911
Recreation Office: 717-506-0406

Wastewater Treatment Facility
3501 North Sherman Street
717-757-3521 Fax: 717-840-0680

BOARD OF SUPERVISORS

George M. Dvoryak
Chairman

Julie A. Landis
Vice Chairman

Mark M. Swomley
Assistant Secretary/Treasurer

William H. Schenck, III

Kathleen A. Phan

TOWNSHIP MANAGER

John J. Holman
Secretary

March 24, 2014

Kevin Sherlock
34 Camelot Arms
York, PA 17406

Re: **RIGHT-TO-KNOW REQUEST**
Police Records

Dear Mr. Sherlock,

Thank you for writing to Springettsbury Township with your request for information pursuant to the Pennsylvania Right-To-Know law. Your request is for "Call for service report aka incident report 3/13/2014 @ Camelot Arms (2230 Hrs.). Any related police blotter entry to above incident."

The request is approved in part and denied in part. The Springettsbury police blotter information is as follows:

DATE	Time	UCR- DESCRIPTION	ADDRESS	INCIDENT NUMBER
3/13/2014	10:40pm	Domestic	33 Camelot Arms, Apt E, York Pa 17406	2014-0314-M0003

Records related to criminal and or non-criminal investigations are hereby denied for the following reason(s).

1. The requested information is a noncriminal investigative report and is exempt under the law: Section 708 (b) (17).
2. The requested information is a criminal investigative report and is exempt under the law: Section 708 (b) (16).

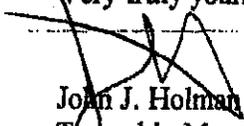
You have a right to appeal denial of information in writing to the York County Office of the District Attorney, 45 N. George Street, York, PA 17401.

If you choose to file an appeal, you must do so within fifteen business days of the mailing date of the agency's response, as outlined in Section 1101.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

If you have any questions please do not hesitate to contact me.

Very truly yours,


Joan J. Holman
Township Manager

/j/h

cc: Charles Rausch, Township Solicitor
Chief Hyers, Police Department

File: Right-to-Know - 259



pennsylvania
OFFICE OF OPEN RECORDS



Springettsbury Township
1501 Mt. Zion Road
York, PA 17402
(717) 757-3521 (Phone)
(717) 505-0455 (Fax)
www.springettsbury.com

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 3/15/2014

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

NAME OF REQUESTOR: KEVIN SHERLOCK

STREET ADDRESS: 34 CAMELOT ARMS

CITY/STATE/COUNTY (Required): YORK, PA 17406

TELEPHONE (Optional): (330) 882-4690

RECORDS REQUESTED:

**Provide as much specific detail as possible so the agency can identify the information.*

- CALL FOR SERVICE REPORT AND INCIDENT REPORT
3/13/2014 @ 33 CAMELOT ARMS (2230 HRS)
- ANY RELATED POLICE BLOTTER ENTRY TO ABOVE INCIDENT

DO YOU WANT COPIES? YES or NO

DO YOU WANT TO INSPECT THE RECORDS? YES or NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO

RIGHT TO KNOW OFFICER: JOHN J. HOLMAN, TOWNSHIP MANAGER/SECRETARY
john.holman@springettsbury.com

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5)-DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

Questions: please contact the Office of Open Records at (717) 346-9903 or openrecords@state.pa.us

Kevin Sherlock
34 Camelot Arms
York, PA 17406

RTK
259

11 APRIL 2014

Angela Eveler
Office of Open Records
Commonwealth Keystone Building,
400 North St., 4th Floor
Harrisburg, PA 17120-0225

RAUSCH
COPY

RTK Case AP 2014-525

RESPONSE TO SPRINGGETTSBURY TOWNSHIP'S APRIL 8, 2014 REPLY, RECEIVED LATER

This is incident to my appeal of Springgettsbury Township's denial in part of a Right to Know Request I filed 15 March 2014. I received their reply dated 8 April 2014 on or about 10 April 2014. I received the acknowledgement from Officer Eveler on or about 7 April 2014.

This is an answer to the reply of Springgettsbury Township and their hired lawyer Charles Rausch dated 8 April 2014. He made incorrect and/or deliberately false statements, and they cannot be allowed to stand. Due to the time mailing takes, I ask for an extension of time to respond to the spurious claims made by the lawyer for defendant township if response time is an issue.

I am mailing a copy to Charles Rausch per the directions of the Office of Open Records. I am also e-mailing a copy to you, and this is your post office- mailed copy.

My points are these:

1. **The record I asked for is a public record per state law, and per the Office of Open Records website. Defendants are clearly wrong to state otherwise.**

The Pennsylvania Guide for Law Enforcement Agencies is explicit on the issue of disclosability of certain police records. One of their question and answer segments reads as follows (in fact I cut and pasted this out of the on-line document):

"What are common public records of a law enforcement agency?"

Examples of Public Records:

- Police blotters
- Incident reports
- Traffic reports
- Emergency time response logs
- Private criminal complaints "

Counsel for the defendant township is referred to the Office of Open Records website. All of his arguments to the contrary are trumped by this truth.

2. **Rausch falsely or incorrectly claims the incident report in question, which is a closed case domestic violence call, can be hidden by town authorities.**

Rausch claims Tapco allowed the hiding of police reports. He claims the current Right to Know Law "codified" the legality of hiding "information related to police investigations" (Rausch's words).

Rausch is misrepresenting to the point of falsification.

Section 708 is very clear on what the exemptions are. The law does not give a blanket exemption to hiding from the public "information related to police investigations" (Rausch's quote).

I am including the pertinent section as an attachment to this letter to prove Rausch is trying to sell a fatally flawed interpretation of the law.

If Rausch is telling the truth on this, then Springettsbury Township authorities and authorities of most similar localities in Pennsylvania are violating the law daily or weekly because they release incident reports to insurance companies and news media routinely.

Why would the Pennsylvania Newspaper Association and the Pennsylvania Freedom of Information Coalition make an argument similar to mine? Because the Office of Open Records website and the Right to Know Law itself support their conclusions.

3. **Rausch falsely or incorrectly claims Sullivan v. Pittsburgh, ruled on in 1989 and in 1990, applies in Pennsylvania today in allowing Springettsbury Township authorities to withhold results of information from the public.**

The law changed after 1990. The law went into effect in 2009, and was designed to stop most of the abuses that gave Pennsylvania officials the well-deserved reputations of stonewalling sleazes.

Rausch's singular argument is akin to him representing Michael Conahan and Mark Ciavarella, the evil judges in the child slavery ring up in Luzerne County, and defending their indefensible conduct by invoking the Dred Scott decision. Problem for him is the 13th Amendment trumped that horrible ruling. Likewise, the current Right To Know law trumps the case Rausch quotes or misquotes.

4. **Rausch makes a false argument in claiming the Tapco case and the Sullivan case support Springettsbury Township authorities.**

He claims the current Right to Know law "codifies" the wrongful action of government agencies in having the blanket right to withhold incident reports from the public.

Where is hiding police incident reports codified? It isn't.

The law says only certain info can be held back, mainly to protect victims and witnesses, keep an ongoing investigation hidden from the targets of same, and keep suspects from fleeing. None of these reasons apply to my request. I repeat the relevant part of Sec. 708 as an attachment; I quoted the exemptions in the law and showed why the exemptions in the law didn't apply to my request. I refer all parties to this argument.

5. **Rausch didn't answer my other points because he couldn't. He ran away from them like a child confronted with his bad behavior.**

In fact, in noting spuriously Springettsbury Township could hide information from me, Rausch in essence admitted his clients committed selective denial of records. He also failed to provide his clients a fig leaf of denial by failing to deny Springettsbury Township authorities gave the incident report or similar information to apartment complex management personnel. Or maybe he didn't want to fib for them this time by falsely claiming they didn't give out that info to the management personnel. So he said nothing, hoping it would be overlooked.

Rausch also gave John Holman, the township official in question, bad advice in having him file an affidavit saying the incident report was hideable because its release would reveal the result of a

criminal investigation IAW 708 (b) (16). The law does not say that at all, and I am reprinting that section as an attachment to prove either Holman or Rausch or both are reading-comprehension challenged or are trying to secure a verdict by fraud. I suspect Holman is ignorant of the law and he made this spurious statement at Rausch's advice; the town pays Rausch to lawyer for them.

Besides, I already know the result. I heard it from the responding officers, the sergeant of the watch the next day, the apartment complex management team, and one of the people who heard the thumping and the frightened child crying loudly. The police came out, did nothing, and left. They closed the case.

The horse is already out of the barn.

At least Holman concedes his denial was based on it being criminal investigation. In his initial denial, he tried to claim it was both a criminal and civil investigation. I'm glad he backed away from his ludicrous initial stance in his second bite of the apple.

And at least Rausch and Holman were clever enough not to defend or even mention the unconscionable practice of making public the requesters of information on the Springettsbury Township website. I realize it is a public record, but the town officials are cheerfully disclosing requesters, in my opinion, in a crude attempt to scare off people from asserting their rights. People who want to know who requesters are should have to file like requesters do.

And what is "unworn" falsification? Do authorities wear falsification in this state like a garment? Or is this a legitimate legal term in Pennsylvania? "Unworn" rhymes with "suborn" and "child porn." Jerry Sandusky had child porn and went further because state officials wrongfully protected him. On that note, a purpose of my request for the incident report is to see whether authorities are protecting children from abuse.

IN SUMMARY:

A good law means nothing if corrupt and/or obtuse officials can block its smooth functioning to cheat the public without fear of punishment.

Lawyers like the one retained by Springettsbury Township, by their misrepresentations and contortions, are like disbarred lawyer Bill Clinton claiming receiving fellatio wasn't sex. Such lying and quibbling by lawyers to defend the illegal and/or ridiculous actions of authorities are in large part responsible for the low repute of the legal profession.

Thanks to the misconduct of public officials in this state hiding the public record, the most well-known Pennsylvanian across the nation today is Jerry Sandusky.

The Office of Open Records' website clearly says a police incident report is a public record. Why are Springettsbury Township and Rausch even disputing this? What part of this don't they get?

The Right to Know Law puts the burden of proof on the denying agency. Rausch did not say anything about the Office of Open Records instruction that incident reports are common public records of a law enforcement agency. He can't refute it so he didn't try.

Defense attorney Rausch's most important arguments were misrepresentations. He falsely or incorrectly claimed case rulings that happened before the Right to Know law went into effect protected government agents who withhold public records. The Right to Know law was designed to end such abuses, and this law superseded bad rulings and unlawful acts before it, just like the 13th Amendment superseded the Dred Scott decision and the Fugitive Slave Act of 1850.

Since Rausch has been proven false or incorrect on the most important points of his arguments, there is no need for me to answer every one of his spurious statements. They are irrelevant.

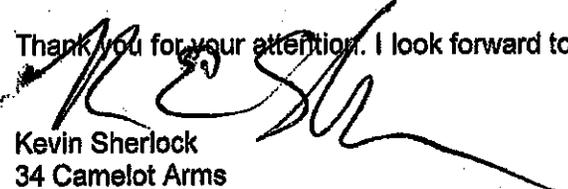
I am asking for the following:

1. I am asking applicable authorities of the Pennsylvania Office of Open Records (or if applicable, the applicable authorities of the York County Office of the District Attorney) to overturn on my appeal the decision of Springettsbury Township to refuse me the police incident report in question (3/13/2013 at 33 Camelot Arms, York 17406, within the confines of Springettsbury Township, number purported to be 2014-0314-M0003).
2. I am asking for the appropriate public disclosure authority to compel Springettsbury Township authorities to provide me the police incident report in question.

We are aware of the potential \$1500 civil penalty the township may have to pay under certain circumstances. I have had to spend considerable time to reply in the initial appeal and reply to this spurious argument and questionable affidavit, that plainly contradict the Office of Open Records' clearly-stated policy. Please review Charles Rausch's spurious and quibbling arguments and John Holman's quibbling response, as well as the denial that is an open violation of the Right to Know Law as evidence of willful withholding of information that is illegal under the Right to Know Law in deciding whether or not to impose civil penalty.

3. I am asking the appropriate state authorities to make it clear to Springettsbury Township officials what the law is on public records requests, to include the proper means for informing people about appeals. This can be a training and learning experience for the police and officials in the township.
4. I am also asking the appropriate state authorities to direct Springettsbury Township officials to take down from their website the easily available right to know requests filed. These are public records, but make anyone curious about such matters file formally to obtain them, like they make citizens file Right to Know requests in the first place. I believe the existence of such a feature on the town website is an attempt to scare people away from making public records requests, or at the very least is an obtuse mindset in applying the law.
5. I am asking Terry Mutchler, the executive director of the Pennsylvania Office of Open Records, to clarify the participation of local prosecutors in the appeal process. Either remove this from the powerpoint slides for training, or get the law amended, or amend review procedure so a local district attorney at least gets a courtesy call on appeals to assess the effects of releasing certain information on a criminal case.

Thank you for your attention. I look forward to your response and decision.



Kevin Sherlock
34 Camelot Arms
York, PA 17406

RS
ATTACHMENT CONCERNING SECTION 708 OF THE RIGHT TO KNOW LAW

My request is not covered by one of the exceptions to release allowed by Section 708 (b) (16) and (17):

The actual portions of the law Holman and Rausch quoted and presumes to know are these:

"(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).

(17) A record of an agency relating to a noncriminal investigation, including:

(i) Complaints submitted to an agency.

(ii) Investigative materials, notes, correspondence and reports.

(iii) A record that includes the identity of a confidential source, including individuals subject to the act

of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

(iv) A record that includes information made confidential by law.

(v) Work papers underlying an audit.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

(B) Deprive a person of the right to an impartial adjudication.

(C) Constitute an unwarranted invasion of privacy.

(D) Hinder an agency's ability to secure an administrative or civil sanction.

(E) Endanger the life or physical safety of an individual.

So let's examine why Holman made the wrong decision in denying the incident report.

- A. Police closed the investigation by deciding not to arrest or refer the suspect for charges.
- B. The police know the suspect and victim, and where the suspect lives; there is no codefendant at large they need to track down.
- C. There should be no chance that the victim will suffer worse on disclosure.

- 11 6 10 6
- D. It was noticeable to multiple residents a noise sounding like a child being slammed against a wall and the very loud crying of that same child, and the yelling of the suspect emanated from the address. This is why there were one or more phoned-in complaints.
 - E. Loud noises emanating from the suspect's apartment are the result of the actions of the suspect, and were reasonably audible in common areas outside the suspect's apartment. This is not a privacy issue, as the suspect lowered expectations of privacy by causing others to alert to the incident by her own boisterous and potentially unlawful physical behavior. People thought she was abusing a child.
 - F. The only privacy matter is the identity of the victim, whose name should be redacted. There should be a notation police contacted child's parents to verify child was supposed to be at apartment of suspect (if she was not a caregiving relative of the child) so late at night.
 - G. Since the case is closed and is not in continuing investigation, there are no concerns about leaking of info that would compromise an investigation.
 - H. There is no chance the suspect will be denied a fair trial. The police are not pursuing the case. There is no source or informant whose cover will be blown. And there will be no trial.
 - I. The same general arguments would apply to any non-criminal investigation.
 - J. Since the matter is closed in the minds of Springettsbury Township police and the York County DA, and since no federal law enforcement or prosecution agencies are involved, then there is no need to shield information in the case from the public – except the identity of the victim. Even there, the police should have noted why the child was in the apartment of a woman if she was not her mother or her relative.

AS

Donald B. Hoyt
Charles A. Rausch
Bradley J. Leber
David A. Mills
John J. Baranski, Jr.
Seth E. Springer*
Jessica S. Litke
*LL.M., Taxation

Joseph C. Korsak*
*LL.M., Labor
of Counsel



Blakey, Yost, Bupp & Rausch, LLP
Attorneys at Law

April 8, 2014

retired

Donald H. Yost

Albert G. Blakey
(1929-2012)
David Wm. Bupp
(1938-2010)

Via Email: AEveler@pa.gov

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

Re: RTK Appeal # AP 2014-0525

Dear Attorney Eveler:

I am submitting on behalf of Springettsbury Township the Affidavit of John J. Holman in support of the denial of the above-referenced appeal.

In his appeal, the Complainant argues that the requested record is not exempt under the criminal investigation exemption of the Right-To-Know Law. The Complainant argues that the record is not exempt because the police closed the investigation, and that Pennsylvania courts have ruled that police incident reports are public record citing to Tapco, Inc. v. Township of Neville, 695 A.2d 460 (Pa Cmwlth. 1997).

First, the Tapco case was interpreting the prior version of the Right-To-Know Law and held that police blotter reports were equivalent to incident reports. The Tapco decision held that information related to police investigations are excluded from the definition of public record. This distinction was codified in the Right-To-Know Law enacted in 2009.

Second, whether an investigation into an incident is closed is irrelevant in determining whether a record is public. There is nothing in the Right-To-Know Law that specifies that an investigation must be on-going in order for the record to be excluded from the definition of public record. See, Sullivan v. City of Pittsburgh, 561 A.2d 863, 865 (Pa. Cmwlth. 1989), appeal denied, 575 A.2d 120 (Pa 1990). The Sullivan court held that since the prior Act excludes from the definition of public record any report that would disclose the result of an investigation, the

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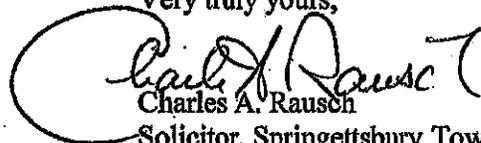
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April 8, 2014
Page 2

exclusion extends to records on completed investigations. This decision also was codified into the 2009 Right-To-Know Law.

The balance of the arguments raised in the Appellants' appeal are irrelevant to the issue of whether the requested record is a public record under the Right-To-Know law.

Very truly yours,


Charles A. Rausch
Solicitor, Springettsbury Township

CAR:moh

Enclosure

Cc: Kevin Sherlock, Appellant (via first class mail w/encl/)
John J. Holman, Manager (via email w/encl.)

PENNSYLVANIA OFFICE OF OPEN RECORDS

In the Matter of :
Kevin Sherlock, :
Appellant : Docket No. AP2014- 0525
v. :
Springettsbury Township, :
Respondent :

AFFIDAVIT

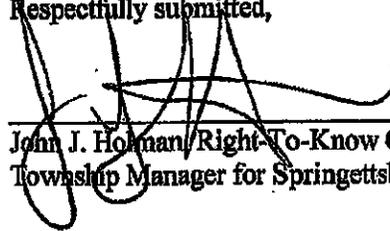
The undersigned, as Right-to-Know Officer and Township Manager for Springettsbury Township, hereby certifies as follows:

1. The Appellant requested the police service report, incident report and any police blotter for an incident at 33 Camelot Arms on 3/13/2014.
2. Respondent provided the police blotter report for the requested incident, but denied the request for the service or incident report as exempt under Right-To-Know Law Section 708(b)(17) (noncriminal investigation), and Section 708(b)(16)(criminal investigation).
3. The requested incident report was generated by the Springettsbury Township Police Department responding to a report concerning a domestic incident.
4. For purposes of this appeal, the requested record relates to and results from a criminal investigation by the Springettsbury Township Police Department.
5. The requested record is exempt under Section 708(b)(16)(ii) and (vi) of the Right-To-Know Law since the record contains investigative materials, notes and reports, and if disclosed the record would reveal the result of a criminal investigation.

This certification is made pursuant to 18 Pa. C.S. 4904 relating to unworn falsification to authorities.

Dated: April 7, 2014

Respectfully submitted,



John J. Holman/Right-To-Know Officer and
Township Manager for Springettsbury Township

On March 24, 2014, the Township partially granted the Request, providing access to the information requested in Item 1 of the Request. The Township denied access to Item 2 of the Request, stating that the report sought by the Requester is exempt from disclosure under the RTKL because it constitutes a criminal and noncriminal investigative report, 65 P.S. §§ 67.708(b)(16)-(17).

On April 2, 2014, the Requester appealed to the OOR, challenging the Township's denial and stating grounds for disclosure. The Requester contends that Sections 708(b)(16) and (17) of the RTKL do not apply to the requested incident report because, among other reasons, no arrests were made, and the case was closed by law enforcement. The Requester also contends that the Township erred by advising him to appeal to the local District Attorney's Office. The Requester asks that the OOR grant his appeal for access to the requested record, direct the Township to remove RTKL requests from its website, and to clarify the role of local prosecutors in the appeal process. The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in the appeal pursuant to 65 P.S. § 67.1101(c).

On April 8, 2014, the Township submitted a response to the appeal and provided an affidavit from John Holman, the Township's Open Records Officer. In his affidavit, Mr. Holman attests that the incident report was generated by the Township's Police Department when responding to a report of a domestic incident. Therefore, Mr. Holman states, the incident report relates to and results from a criminal investigation of the Township's Police Department. Mr. Holman further states that the incident report contains investigative materials, notes and reports that, if revealed, would reveal the result of a criminal investigation. The Township withdrew Section 708(b)(17) as a basis for its denial of the Request.

On April 14, 2014, the Requester also filed supplemental information in support of his position.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Township is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65

P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions.
See 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Township cited the criminal investigative records exemption, 65 P.S. § 67.708(b)(16) to support its withholding of requested incident report. Pursuant to 65 P.S. § 67.503(d)(2), only the York County District Attorney's Office may “determine if the record requested is a criminal investigative record” for a local agency within York County. Accordingly, the OOR lacks jurisdiction to assess the merits of this appeal. This dismissal is without prejudice to the Requester's ability to have his appeal heard before the York County District Attorney's Office within the timeframe provided for within 65 P.S. § 67.1101(a)(1).¹

To the extent that the Requester seeks for the OOR to impose penalties against the Township or direct the Township to take action with respect to its posting of RTKL requests, such is beyond the scope of this appeal.

¹ It is noted that the record reflects that the Requester did in fact file an appeal with the York County District Attorney's Office. As of April 29, 2014, the Requester states that a decision was not yet rendered.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **dismissed** and the Township is not required to take 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 appeal to the Court of Common Pleas of York County. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: April 30, 2014



ANGELA EVELER, ESQ.
APPEALS OFFICER

Sent to: Kevin Sherlock (via e-mail only);
Charles Rausch, Esq. (via e-mail only)