

On September 22, 2009, Requester submitted a Right-to-Know Law Request (Request) seeking “any and all records pertaining to incident No. E02-1353030 from the Corry station of the [PSP].” (Request, R.R. at 1a.) On October 6, 2009, the PSP’s Agency Open Records Officer (AORO) denied the Request on the basis that the records requested were PSP Incident Reports that were exempt from disclosure under Section 708(b)(16)(ii) and (vi) of the RTKL, 65 P.S. § 67.708(b)(16)(ii), (vi), as well as Section 9106(c)(4) of the Criminal History Record Information Act (CHRIA), 18 Pa. C.S. § 9106(c)(4). Attached to the denial were two RTKL Liaison Verifications. The first RTKL Liaison Verification (First Verification) stated that:

- (a). The report is used to describe investigative actions resulting from alleged criminal offenses or other police matters.
- (b). The report contains investigative materials, notes, correspondence and reports of preliminary criminal investigations, supplemental criminal investigations, or other investigations required in accordance with Departmental regulations. (Operations Manual 7-2, Chapter 7).

(First Verification, R.R. at 5a.) The second RTKL Liaison Verification (Second Verification) stated that:

- a. The [i]ncident [r]eport/[i]ncident [r]eport—Part II is submitted upon completion of preliminary criminal investigations, supplemental criminal investigations, or other investigations required in accordance with Department regulations. (Operations Manual (OM) 7-2, Chapter 7)._—
- b. Dissemination of information from reports utilized as Intelligence Memorandums shall not be disseminated, except in accordance with Department regulations concerning the release of intelligence information (OM 7-2, Chapter 6, Letter H, No. 4).

c. Reports contain the narrative of investigations which generally consist of the investigator's observations, comments, conclusions, and statements of victims, witnesses, suspects, accused, etc. (OM 7-2, Chapter 1).

d. [The Incident Reports are] not . . . public record[s] because:

(i) The investigative report is exempt from public access due to 65 P.S. §§ [sic] 67.708(b)(16) as a criminal investigative record.

(ii) Disclosure of the record would be in violation of 18 Pa. C.S. § 9106(c)(4), which prohibits disclosure of investigative information to all non-criminal justice agencies. 18 Pa. C.S. § 9102.

(iii) [The Incident Reports do] not contain a chronological listing of arrests.

(Second Verification, R.R. at 6a (emphasis in original).) Requester appealed the denial of his request to the OOR.

On December 28, 2009, the OOR issued its Final Determination, in which it granted Requester's appeal in part and denied it in part. Ultimately, the OOR determined that the Incident Reports were police blotters and, therefore, not subject to the criminal investigative record exemption of Section 708(b)(16) of the RTKL.²

² Section 102 of the RTKL, 65 P.S. § 67.102, defines a public record, in part, as a record of a Commonwealth agency that is not exempt under Section 708 of the RTKL. Section 708(b)(16) exempts from the definition of public record:

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

. . . .

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

. . . .

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

(Final Determination at 3-4.) Accordingly, the OOR directed that the Incident Reports be released, but with the investigative materials redacted.³ The PSP now petitions this Court for review.

In reviewing a final determination of the OOR, this Court “independently reviews the OOR’s orders and may substitute its own findings of fact for [those] of the agency.” Bowling v. Office of Open Records, 990 A.2d 813, 818 (Pa. Cmwlth. 2010) (en banc). With regard to what evidence this Court may consider in reviewing a decision of the OOR, this Court “is entitled to the broadest scope of review” but should “consider the manner of proceeding most consistent with justice, fairness and expeditious resolution.” Id. at 820, 823.

Before this Court, the PSP argues that the OOR erred in holding that the Incident Reports were public records because police incident reports are not equivalent to police blotters under the RTKL and the CHRIA. The PSP asserts that

(A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

.....

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).

65 Pa. C.S. § 67.708(b)(16).

³ We note that, although Requester originally sought “any and all records pertaining to incident No. E02-1353030 from the Corry station of the [PSP],” (Request, R.R. at 1a), the OOR’s order dealt only with PSP Incident Reports, and on appeal, the OOR argues only that the Incident Reports are disclosable under the RTKL.

the Incident Reports are wholly exempt from disclosure under Section 708(b)(16)(ii) and (vi)(A) because they are criminal investigative records, which contain investigative materials and would reveal the institution or progress of an investigation. For the reasons set forth in Pennsylvania State Police v. Office of Open Records, ___ A.3d ___, ___ (Pa. Cmwlth. No. 741 C.D. 2009, filed September 16, 2010), slip op. at 5-14, we hold that the Incident Reports are not police blotters but, instead, constitute criminal investigative reports which contain investigative information. In addition, the Second Verification specifically avers that the Incident Reports do “not contain a chronological listing of arrests,” (Second Verification, R.R. at 6a), which is the definition of a police blotter.⁴ The Second Verification specifically avers that PSP incident reports contain “the narrative of investigations which generally consist of the investigator’s observations, comments, conclusions, and statements of victims, witnesses, suspects, accused, etc.” (Second Verification, R.R. at 6a.) This is similar to the content of the affidavit this Court found sufficient to satisfy the PSP’s burden of proof in Mitchell v. Office of Open Records, 997 A.2d 1262, 1263-64 (Pa. Cmwlth. 2010). Therefore, on the basis of our decisions in Pennsylvania State Police v. Office of Open Records and Mitchell, we reverse the Final Determination of the OOR insofar as it granted, in part, Requester’s appeal.

RENÉE COHN JUBELIRER, Judge

⁴ Section 9102 of the CHRIA defines a “police blotter” as “[a] chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.” 18 Pa. C.S. § 9102.

disclosure under section 708(b)(16) of the Law as a record containing investigative information. (10/6/09 Denial Letter, R.R. at 2a.) Requester filed an appeal with the Office of Open Records, which, after considering the matter, directed the PSP to release the relevant incident report but redact any investigative information. The PSP now appeals to this court.

The question is whether “records” pertaining to an incident are “public records” under the Law, not whether “incident reports” are “public records” under the Law.

Unless otherwise provided by law, a “public record” shall be available for access to any person who is a legal resident of the United States. *See* sections 102 and 701(a) of the Law, 65 P.S. §67.102 (defining “requester”) & §67.701(a) (setting forth a right of access to “public records”). “Public records” include “records” of a Commonwealth agency that are not exempt under section 708 of the Law. 65 P.S. §67.102 (defining “public record”). A “record” is:

[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. **The term includes** a document, paper, letter, map, book, tape, photograph, film or sound recording, **information stored or**

maintained electronically and a data-processed or image-processed document.

65 P.S. §67.102 (emphasis added).

Section 708(b)(16) of the Law exempts a “record” relating to a criminal investigation. However, this exemption does not apply to “**information contained in a police blotter** as defined in [section 9102 of the Criminal History Record Information Act (CHRIA),] 18 Pa. C.S. §9102 (relating to definitions) and utilized or maintained by the [PSP]...” 65 P.S. §67.708(b)(16) (emphasis added). Section 9102 of the CHRIA defines “police blotter” as a “chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.” 18 Pa. C.S. §9102. Thus, the **information** in a police blotter, such as the name and address of the individual charged following an incident, **is not exempt** under section 708(b)(16) of the Law and falls within the definition of a “public record.”

In *Pennsylvania State Police v. Office of Open Records*, ___ A.3d ___, ___ (Pa. Cmwlth., No. 741 C.D. 2009, filed Sept. 16, 2010) (*PSP I*), slip op. at 1, 4, a requester sought an “incident report,” and this court held that an “incident report” is exempt from public disclosure under section 708(b)(16) of the Law. However, in that case, the PSP stated that it tracks police blotter information electronically. This court pointed out that the statutory definition of “record” includes “information stored or maintained electronically.” *Id.* at ___, slip op. at 6.

Obviously, then, the PSP has “public record” information apart from the “incident report” that pertains to incident E02-1353030 and must disclose it to Requester.²

Moreover, section 706 of the Law, 65 P.S. §67.706, provides for the redaction of a “public record” where it contains information that is not subject to access.

If an agency determines that a public record . . . contains information which is subject to access as well as information which is not subject to access, the agency’s response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record . . . and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted.

² The majority inexplicably relies on *PSP I* to hold that the “records” sought by Requester are not “public records.” However, in *PSP I*, this court addressed only whether “incident reports” are “public records,” and Requester has **not** sought “incident reports” here. Indeed, the majority has allowed the PSP to transform Requester’s request for “records” into a request for “incident reports.”

To the extent that a “public record” exists wherever police blotter information exists, the PSP may redact any information that is not subject to access.³

Accordingly, I would affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

³ I note that, in *PSP I*, this court stated that, because “incident reports” are not “public records,” they are not subject to redaction under section 706 of the Law. *PSP I*, ___ A.3d at ___, slip op. at 6-7. However, I submit that the presence of “public record” information in an exempt record transforms the exempt record into a “public record” subject to redaction. Otherwise, an agency could hide “public record” information, and avoid its duties under the Law, by combining it with exempt information.