



## I. Background

In November 2010, Mahoney, through counsel, submitted a request with the PSP, seeking “all documents relating to the death of [Decedent] including cause of death, toxicology, pharmacology and supplemental or amended autopsy reports, samples of bodily fluids, tissue or any other samples of [D]ecedent so they can be examined by an expert of [D]ecedent’s family’s choice. . . .” Reproduced Record (R.R.) at 6a.<sup>2</sup>

The PSP initially informed Mahoney it would require an additional 30 days to evaluate her request. Shortly thereafter, a PSP Deputy Agency Open Records Officer (Agency Officer) issued a letter denying the request for two reasons. First, the Agency Officer explained Mahoney’s request for “all documents” was insufficiently specific to allow the PSP to identify the particular records sought. R.R. at 17a.

In addition, the Agency Officer denied Mahoney’s request on its face, explaining the records sought were expressly exempt from disclosure under the RTKL and the Criminal History Records Information Act (CHRIA), 18 Pa. C.S. §§9101-9183. Specifically, the Agency Officer explained:

Insofar as your request can be inferred to seek access to PSP Non-traffic Death Investigation Report N° P06-0603529, a criminal investigation into the death of several individuals,

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<sup>2</sup> On the same date, counsel for Mahoney submitted an identical request on behalf of Maureen DiMartino. As explained in greater detail below, DiMartino’s RTKL request is the subject of our decision in the companion case of DiMartino v. Office of Open Records (Pa. Cmwlth., 340 C.D. 2011, filed September 19, 2011).

including Mr. DiMartino and Mr. Mahoney, it is specifically denied because the record is exempt as:

A record of an agency relating to a criminal investigation, including: . . .

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

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

(v) Victim information. . . .

(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, . . .

65 P.S. § 67.708(b)(16). Furthermore, [CHRIA], prohibits the PSP from disseminating its investigative information to any persons or entities, other than to criminal justice agents and agencies. 18 Pa. C.S. § 9106(c)(4). “Investigative Information” is defined under CHRIA as “[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing . . . .” 18 Pa.C.S. § 9102. Therefore, PSP is barred by statute from disclosing the requested investigative records to you.

For these reasons, the [OOR] determined in *Grocki v. Pennsylvania State Police*, Docket N° AP 2009-0661, and *McGarvey v. Pennsylvania State Police*, Docket N° AP 2009-0522, that records related to a criminal death investigation are entirely exempt from public disclosure under 65 P.S. § [67.708(b)(16)] and 18 Pa. C.S. § 9106. . . .

The records sought are additionally exempt under the following RTKL provisions:

- Section 67.708(b)(5) relating to an individual's medical history;

- Section 67.708(b)(6) relating to confidential personal identification information;
- Section 67.708(b)(19) relating to DNA or RNA records; and
- Section 67.708(b)(20) relating to autopsy records. ...

To the extent that your request seeks or may be construed to seek PSP records involving covert law enforcement investigations, including intelligence gathering and analysis, PSP can neither confirm, nor deny the existence of such records without risk of compromising investigations and imperiling individuals. UNDER NO CIRCUMSTANCES, therefore, should this response to your request be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the RTKL and CHRIA. ...

R.R. at 8a-9a.

The Agency Officer also enclosed a verification in which he attested that he performed a search of all accessible PSP databases for any records that responded to Mahoney's request. He stated he identified and retrieved PSP Non-traffic Death Investigation Report P06-0603529, a record assembled by Trooper S. Kelly, arising from an investigation into a criminal incident or an allegation of criminal wrongdoing. However, the Agency Officer stated, he could not confirm whether these were "all documents" regarding the death of Decedent, noting Mahoney's request was insufficiently specific. R.R. at 34a-35a. The Agency Officer further stated the Non-traffic Death Investigation Report that he located was "manifestly related to a criminal investigation ..." for the reasons set forth above. R.R. at 35a. Mahoney appealed the PSP's denial to the OOR.

On appeal to the OOR, Mahoney, through counsel, asserted the records sought did not fall within the exemption set forth in Section 708(b)(16) of the RTKL because: (1) the requester is seeking information about the analysis of Decedent's body including records or reports or any substances found in Decedent's body that could lead to a cause of death; and, (2) the requester represents the victim's family and thus, revealing the information would not jeopardize any criminal investigation or victim.

In response, the PSP indicated it continued to rely on the reasons set forth in its Agency Officer's denial letter. In addition, the PSP submitted an affidavit executed by the Agency Officer. The affidavit contained sworn statements similar to those contained in the Agency Officer's verification. In particular, Agency Officer attested that he personally examined the Non-traffic Death Investigation Report, and the report contained "[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or allegation of criminal wrongdoing," and, therefore was exempt from disclosure under Section 708(b)(16) of the RTKL. R.R. at 39a (citing 18 Pa. C.S. §9102) (emphasis omitted). He further attested, "[t]he report reflects the physical evidence gathered during the investigation, as well as the findings, conclusions, actions, observations, [and] notes of the investigating trooper ...." R.R. at 40a.

Thereafter, the OOR issued its final determination. Initially, the OOR determined Mahoney's request was sufficiently specific for the PSP to identify the records sought. Additionally, the OOR determined these records were exempt from disclosure under the criminal investigation exception set forth in Section

708(b)(16) of the RTKL. The OOR also indicated the requester's status as counsel for Decedent's family had no bearing on whether the records were publicly accessible because the OOR is required to construe the RTKL without regard to the requester's identity. Mahoney petitions for review to this Court.

## II. Contentions

Before this Court,<sup>3</sup> Mahoney asserts the OOR applied an overly broad interpretation to the criminal investigation exemption in Section 708(b)(16) of the RTKL. Mahoney argues her request did not seek the type of information contained in the specific examples of criminal investigative information enumerated in Sections 708(b)(16)(i)-(vi). Rather, her request was specific in that it was designed to establish the cause of death, which would not be available from the county coroner because that information is exempt under Section 708(b)(20) of the RTKL, 65 P.S. §67.708(b)(20).

Mahoney asks this Court to consider the Legislature's intent in enacting the criminal investigation exemption, which, she posits, is to avoid hindering or advancing a criminal investigation or endangering an individual. Mahoney argues her narrowly tailored records request, which only sought information relating to Decedent's cause of death, does not violate the purpose of

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<sup>3</sup> A reviewing court, in its appellate jurisdiction, independently reviews the OOR's orders and may substitute its own findings of fact for that of the agency. While reviewing this appeal in our appellate jurisdiction, we function as a trial court, and we subject this matter to independent review. We are not limited to the rationale offered in the OOR's written decision. Accordingly, we will enter narrative findings and conclusions based on the evidence as a whole, and we will explain our rationale. Bowling v. Office of Open Records, 990 A.2d 813 (Pa. Cmwlth. 2010) (en banc), appeal granted in part, \_\_\_ Pa. \_\_\_, 15 A.3d 427 (2011).

the criminal investigation exemption. See Cnty. of York v. Office of Open Records, 13 A.3d 594 (Pa. Cmwlth. 2011). As such, Mahoney asks that the requested records be provided or, alternatively, the records be redacted, if the information she seeks cannot be separated from information concerning any criminal investigation.

The PSP counters the OOR correctly denied Mahoney's request for records relating to Decedent's cause of death. The PSP asserts the language in the criminal investigation exemption specifically exempts from public disclosure "a record of an agency relating to or resulting in a criminal investigation." 65 P.S. §67.708(b)(16). Additionally, it contends, the OOR did not misinterpret the language or intent of the RTKL in its determination. The PSP further argues where, as here, statutory language is plain and unambiguous, resort to legislative intent is inappropriate.

In addition to containing information relating to or resulting in a criminal investigation, the PSP maintains the responsive records contain "personal identification information," which is exempt pursuant to 65 P.S. §67.708(b)(6), "medical information," which is exempt pursuant to 65 P.S. §67.708(b)(5), "DNA information," which is exempt pursuant to 65 P.S. §67.708(b)(19), as well as information relating to "autopsy records," which is exempt pursuant to 65 P.S. §67.708(b)(20). Beyond the RTKL exemptions, the PSP asserts it is barred from producing the requested records pursuant to CHRIA.

The PSP contends Mahoney offers no legal authority to refute its position. Rather, she places misguided reliance on the examples of investigative information in Section 708(b)(16). The PSP points out these subparagraphs are merely examples of criminal investigative records, and they do not provide a justification for overriding the exemption.

### **III. Analysis**

We considered identical contentions to those raised in the instant appeal in the companion case of DiMartino v. Pennsylvania State Police (Pa. Cmwlth., No. 340 C.D. 2011, filed September 19, 2011). In DiMartino, we determined the Agency Officer's affidavit provided sufficient evidence to conclude the requested records were exempt from disclosure under the criminal investigation exemption in the RTKL and CHRIA. Also, based on the plain language of the criminal investigation exemption, we rejected the assertion that disclosure of the requested records was proper because such disclosure would not conflict with the asserted purpose of the criminal investigation exemption. As a final point, we explained that the requester's status as representative of Decedent's family had no bearing on whether the requested records are accessible through a RTKL request because the RTKL must be construed without regard to the requester's identity. Therefore, we affirmed the OOR's order denying the requester's appeal.

For all the reasons discussed at length in DiMartino, we affirm the OOR's order denying Mahoney's appeal.

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ROBERT SIMPSON, Judge



**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Maureen Mahoney,	:	
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Petitioner	:	
	:	
v.	:	No. 339 C.D. 2011
	:	
Pennsylvania State Police,	:	
	:	
Respondent	:	

**ORDER**

**AND NOW**, this 19<sup>th</sup> day of September, 2011, the final determination of the Office of Open Records is **AFFIRMED**.

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ROBERT SIMPSON, Judge