

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

COVER SHEET

<p>Plaintiff(s) Vs Ken Silva and HEADLINE USA</p>	
<p>Vs.</p>	<p>Case Number :</p>
<p>Defendant(s) Municipality of Bethel Park Police Department</p>	<p>Type of pleading : Petition for Review</p>
	<p>Filed on behalf of Petitioners Ken Silva and HEADLINE USA (Name of the filing party)</p>
	<p><input checked="" type="checkbox"/> Counsel of Record <input type="checkbox"/> Individual, If Pro Se</p>
	<p>Address, Telephone Number, and Email Address: J. Chadwick Schnee, Esq. Schnee Legal Services, LLC 74 E. Main Street, #648 Lititz, PA 17543 717-400-5955 chadwick@schneelegal.com</p>
	<p>Attorney's State ID 306907</p>
	<p>Attorney's Firm ID</p>

J. Chadwick Schnee, Esquire (PA 306907)
Schnee Legal Services, LLC
74 E. Main Street, #648
Lititz, PA 17543
(717) 400-5955
Fax: (717) 882-5271
chadwick@schneelegal.com
<https://www.schneelegal.com>

Attorney for Petitioner

KEN SILVA AND HEADLINE USA,	:	IN THE COURT OF COMMON PLEAS
Petitioners,	:	ALLEGHENY COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MUNICIPALITY OF BETHEL PARK	:	
POLICE DEPARTMENT,	:	
Respondent.	:	NO. _____

PETITION FOR REVIEW OF OCTOBER 23, 2024 FINAL DETERMINATION, ISSUED BY PENNSYLVANIA OFFICE OF OPEN RECORDS AT OOR DKT. AP 2024-2228

AND NOW COMES Petitioner Ken Silva and Headline USA (collectively, “Petitioner”), who, by and through its undersigned legal counsel, files this Petition for Review of October 23, 2024 Final Determination, Issued by Pennsylvania Office of Open Records at OOR Dkt. AP 2024-2228, averring as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this statutory appeal pursuant to 42 Pa.C.S. § 933(a)(3) and 65 P.S. § 67.1302(a).
2. Venue is proper in this Court pursuant to 65 P.S. § 67.1302(a).

PARTIES

3. Petitioner is a “requester” as defined by to the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*

4. Respondent Municipality of Bethel Park Police Department (“Respondent”) is an “agency” as defined by the RTKL with offices at Bethel Park Municipal Building, 5100 West Library Avenue, Bethel Park, PA 15102.

NATURE OF ACTION

5. The Pennsylvania Office of Open Records (“OOR”) – a quasijudicial tribunal that issued the underlying final determination, has its office at 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234.

6. This action is brought in this court’s appellate jurisdiction, seeking the review of the portion of an October 23, 2024 Final Determination issued by the OOR in the matter docketed at *Ken Silva and Headline USA v. Municipality of Bethel Park Police Department*, OOR Dkt. AP 2024-2228 (“Final Determination”), that partially denied an appeal filed by Requester. The Final Determination is attached hereto at Exhibit A.¹

STANDARD AND SCOPE OF REVIEW

7. Decisions issued by the OOR are not afforded any deference, as courts “independently review” and “conduct full *de novo* reviews of appeals from decisions made by RTKL appeals officers...” *See Bowling v. Office of Open Records*, 75 A.3d 453, 474-53 (Pa. 2013).

¹ The Final Determination also transferred a portion of the appeal to the Appeals Officer for the District Attorney of Allegheny County with respect to an incident report. Petitioner does not challenge the portion of the Final Determination with respect to the transfer of the appeal to the Appeals Officer for the District Attorney of Allegheny County.

8. Additionally, reviewing courts are not limited to the evidence submitted to the OOR, as, instead, courts enjoy a plenary scope of review. *Id.* at 477.

BACKGROUND

9. On August 12, 2024, Petitioner filed a RTKL request (“Request”) with Respondent seeking

[R]ecordings of any and all calls made by the parent or parents of Thomas Crooks ... on the day that Crooks shot at Donald Trump at the July 13 campaign rally in Butler...[and] any other documentation Bethel Police have of any calls, including reports or internal communications as a result of the calls.

A true and correct copy of the Request is attached hereto at Exhibit B.

10. On August 13, 2024, Respondent sent an extension notice to the Petitioner in accordance with 65 P.S. § 67.902. A true and correct copy of Respondent’s August 13, 2024 extension notice is attached hereto at Exhibit C.

11. On August 21, 2024, Respondent denied the Request, stating that the portion of the Request seeking 911 recordings is exempt under 65 P.S. § 67.708(b)(18)(i) and that the portion of the Request seeking other records is exempt under 65 P.S. § 67.708(b)(16)-(17). A true and correct copy of Respondent’s August 21, 2024 response is attached hereto at Exhibit D.

12. On August 23, 2024, Petitioner filed an appeal to the OOR. A true and correct copy of Petitioner’s appeal is attached hereto at Exhibit E.

13. The OOR invited both parties to supplement the record before it with legal argument and relevant evidence.

14. On September 5, 2024, Petitioner articulated the strong public interest in obtaining the requested 911 recording:

As a piece of information that would inform the public about the first presidential assassination attempt in over 40 years, the public interest in disclosing the Crooks parents phone call is self-evident. But for the record, I will briefly make the case

as to why the phone call audio, transcript, and other records related to the call should be made public.

In short, there have been conflicting reports as to whether Crooks's parents called before or after his assassination attempt at 6:11 p.m. FBI Director Chris Wray also told Congress that he believes Crooks's parents called after the shooting—but that he wasn't sure. Disclosing the audio of the phone call would remove this ambiguity—and shed further light on law enforcement's response to the threat Crooks posed on July 13. Furthermore, it's in the public interest to know the contents of the phone call—i.e. what the parents told law enforcement.

15. On October 1, 2024, Respondent submitted materials to the OOR. A true and correct of the Respondent's October 1, 2024 submission is attached hereto at Exhibit F.

16. On October 23, 2024, the OOR issued the Final Determination holding that the 911 recording was exempt under 65 P.S. § 67.708(b)(18)(i).

17. However, the OOR noted that the exemption under 65 P.S. § 67.708(b)(18)(i) does not apply “if the agency **or a court** determines that the public interest in disclosure outweighs the interest in nondisclosure.” 65 P.S. § 67.708(b)(18)(ii) (emphasis added).

THE PUBLIC INTEREST IN DISCLOSING THE 911 RECORDING FROM ONE OF PARENTS OF ATTEMPTED ASSASSIN THOMAS CROOKS OUTWEIGHS ANY INTEREST IN KEEPING IT SECRET

18. Although the OOR lacked the ability to analyze whether the “the public interest in disclosure outweighs the interest in nondisclosure,” *see* Exhibit A at 3-4, this Court has jurisdiction under 65 P.S. § 67.708(b)(18)(ii) to determine whether the public interest in releasing a 911 recording of one of the parents of Thomas Crooks – the now-deceased individual who attempted to assassinate President Trump on July 13, 2024 – outweighs any purported interest in not disclosing this recording.

19. Here, as set forth above, there is a public interest in determining whether the phone call was made before or after Crooks' assassination attempt due to ambiguity surrounding FBI Director Wray's congressional testimony.

20. Disclosing the 911 recording would further aid the public's interest in completing a timeline of events surrounding the attempted assassination of President Trump on July 13, 2024.

21. Additionally, publicly disclosing the 911 recording would aid the public's interest in determining the sufficiency of law enforcement's response following the 911 call.

22. The purpose of the RTKL is "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. 2010) (en banc), *petition for allowance of appeal granted in part*, 15 A.3d 427 (Pa. 2011).

23. The public disclosure of the 911 recording fosters the very public interest set forth in the RTKL itself by enabling the public to "prohibit secrets," scrutinize the actions of public officials and making public officials accountable for their actions in connection with the events of July 13, 2024.

24. Notably, other agencies have already recognized the public's interest in disclosing body camera and 911 recordings related to the attempted assassination on July 13, 2024. *See, e.g.*, NPR, *Newly released video shows chaos and confusion after Trump assassination attempt*, available at <https://www.npr.org/2024/08/08/nx-s1-5068708/trump-assassination-attempt-police-body-cam> (last accessed Oct. 28, 2024); TribLIVE, *Butler County releases redacted 911 call*, available at <https://triblive.com/local/regional/butler-county-releases-redacted-911-calls-from-july-trump-assassination-attempt/> (last accessed Oct. 28, 2024).

25. The public interest in releasing the 911 recording far outweighs any interest in keeping it secret.

WHEREFORE, Petitioner respectfully asks this Honorable Court to issue an order reversing the Final Determination and holding that the requested 911 recording is subject to public access because the public interest in its disclosure outweighs any interest in shielding the recording from public access.

THE OOR ERRED IN HOLDING THAT IT LACKED THE ABILITY TO DETERMINE WHETHER THE PUBLIC INTEREST IN DISCLOSING THE 911 RECORDING OUTWEIGHED ANY REASONS FOR DENYING PUBLIC ACCESS

26. In the Final Determination, the OOR held that it did not have statutory authority to review Butler County’s decision to refuse to exercise its discretion. *See* Exhibit A at 4.

27. Specifically, the OOR held that only “the agency and the court system” could determine whether “the public interest in disclosure outweighs the interest in nondisclosure” under 65 P.S. § 67.708(b)(18)(ii) such that the exemption under 65 P.S. § 67.708(b)(18)(i) would not apply.

28. What the OOR ignores, however, is that the OOR is an “agency” as defined by 65 P.S. § 67.102.

29. Further, the OOR is “a court” for purposes of 65 P.S. § 67.708(b)(18)(ii), as the OOR is a quasijudicial tribunal charged with adjudicating disputes under the RTKL. *See generally Twp. of Worcester v. OOR*, 129 A.3d 44, 59 (Pa. Commw. 2016).

30. Because the OOR is both an “agency” and “a court” for purposes of 65 P.S. § 67.708(b)(18)(ii), the OOR erred as a matter of law in holding that it could not determine whether the public interest in releasing the 911 recording from a parent of attempted assassin Thomas Crooks outweighs whatever interest exists in keeping the recording secret.

WHEREFORE, Petitioner respectfully asks this Honorable Court to issue an order reversing the Final Determination and holding that the requested 911 recording is subject to

public access because the public interest in its disclosure outweighs any interest in shielding the recording from public access.

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

SCHNEE LEGAL SERVICES, LLC

By: 

J. Chadwick Schnee, Esquire
PA Attorney ID 306907
Schnee Legal Services, LLC
74 E. Main Street, #648
Lititz, PA 17543
Phone: 717-400-5955
Fax: 717-882-5271
chadwick@schneelegal.com

Dated: 10/31/2024

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial Systems of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ J. Chadwick Schnee, Esq.
J. Chadwick Schnee, Esq.
PA ID 306907

VERIFICATION

I, Ken Silva, hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 10/31/2024

/s/ Ken Silva _____
Ken Silva

EXHIBIT A



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
KEN SILVA AND HEADLINE USA,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2024-2228
	:	
MUNICIPALITY OF BETHEL PARK	:	
POLICE DEPARTMENT,	:	
Respondent	:	

FACTUAL BACKGROUND

On August 12, 2024, Ken Silva and Headline USA (collectively “Requester”) submitted a request (“Request”) to the Municipality of Bethel Park Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[R]ecordings of any and all calls made by the parent or parents of Thomas Crooks ... on the day that Crooks shot at Donald Trump at the July 13 campaign rally in Butler...[and] any other documentation Bethel Police have of any calls, including reports or internal communications as a result of the calls

On August 19, 2024, following a thirty-day extension, 65 P.S. § 67.902(b), the Department denied the Request, asserting that recordings of 911 calls are exempt from disclosure under Section 708(b)(18) of the RTKL and that the requested reports and communications are exempt as records relating to criminal and noncriminal investigations. 65 P.S. §§ 67.708(b)(16)-(18).

On August 23, 2024, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On September 5, 2024, the Requester submitted a position statement, arguing that the public interest in disclosing the requested records outweighs the interest in nondisclosure. *See* 65 P.S. § 67.708(b)(18)(ii). On October 1, 2024,² the Department submitted a position statement arguing that the responsive records are exempt under Sections 708(b)(16) and 708(b)(18) of the RTKL, as well as under Pennsylvania’s Criminal History Record Information Act, 18 Pa.C.S. §§ 9101 *et seq.* The Department also argues that the OOR does not have jurisdiction over criminal investigative records. In support of its position, the Department submitted the attestation made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, of David Arnold, the Department’s Chief of Police.

LEGAL ANALYSIS

The Department is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Department is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of

¹ The Requester granted the OOR an extension of time to issue this final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

² On September 10, 2024, the Department sought additional time to supplement the record in this appeal. While the Requester objected to this request, the OOR extended the record closing date and granted both parties additional time to make a submission. *See* 65 P.S. § 1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

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 *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. 911 recordings may be withheld under Section 708(b)(18) of the RTKL

The Department has identified one responsive 911 recording that it withheld pursuant to Section 708(b)(18) of the RTKL, which exempts from disclosure “[r]ecords or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, *including 911 recordings.*” 65 P.S. § 67.708(b)(18)(i) (emphasis added). However, “[t]his paragraph shall not apply to a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.” 65 P.S. § 67.708(b)(18)(ii).

In support of the Department’s position, Chief Arnold attests that the Department conducted a good faith search of its records and located one responsive recording of a call made by one of the parents of Thomas Crooks on July 13, 2024. Arnold Attestation,³ ¶¶ 5-7. The call was originally made to the Allegheny County Call Center, who then forwarded the 911 call to the Bethel Park Dispatch Center. *Id.* at ¶¶ 14-16. Additionally, the Request expressly seeks calls made pertaining to a shooting; therefore, based on the evidence presented by the Department and the plain language of the Request, the responsive recording is subject to the exemption set forth in 65 P.S. § 67.708(b)(18)(i). *See generally Office of the Governor v. Davis*, 122 A.3d 1185, 1193-

³ Under the RTKL, a statement made under the penalty of perjury is competent evidence to sustain an agency’s burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith, “the averments in [the attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

94 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). However, the Requester argues that because this is “the first presidential assassination attempt in over 40 years,” the public interest in disclosure outweighs the interest in nondisclosure and the Department should be compelled to disclose the recordings pursuant to 65 P.S. § 67.708(b)(18)(ii). The Department, on the other hand, argues that, while it understands the public interest in this requested recording, because the investigation into this matter is ongoing, publicizing any information “may taint ongoing investigations.” Arnold Attestation, ¶¶ 19-20.

Section 708(b)(18) clearly vests the discretion to make this determination whether to release 911 recordings with the agency and the court system; therefore, the OOR may not disturb the Department’s decision to withhold the 911 call recording rather than exercising its discretion to release it consistent with Section 708(b)(18)(ii). *See, e.g., Bedi v. Butler County*, OOR Dkt. AP 2024-1969m 2024 PA O.O.R.D. LEXIS 2072 (“While we recognize the heightened public interest in the instant records, Section 708(b)(18) clearly vests the discretion to make these recordings public with the County or the court system, not the OOR[.]”). Accordingly, the Department has demonstrated that the responsive 911 call recording is exempt from disclosure under the RTKL. *See* 65 P.S. § 67.708(a)(1).

2. The appeal is transferred in part

The Department has identified one responsive incident report that it argues is related to a criminal investigation. *See* 65 P.S. § 67.708(b)(16). The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. *See* 65 P.S. § 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the

local district attorney. *See id.* Here, the Department submitted evidence demonstrating that the responsive report could relate to a criminal investigation as it “documents the Department’s investigation into the attempted assassination of former President Trump....” Arnold Attestation, ¶ 28. Additionally, the Request, on its face, seeks documentation related to 911 calls regarding a shooting incident. *See Pa. Game Comm’n v. Fennell*, 149 A.3d 101, 104 (Pa. Commw. Ct. 2016) (explaining that the OOR must consider uncontradicted statements contained in the appeal as evidence). Accordingly, the appeal as to the responsive incident report is hereby transferred to the Appeals Officer for the Allegheny County District Attorney’s Office (“DA’s Office”).³ A copy of this final order and the appeal filed by the Requester will be sent to Appeals Officer for the DA’s Office.

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied in part** and **transferred in part** to the Appeals Officer for the DA’s Office. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Allegheny County Court of Common Pleas. 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 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁴ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 23, 2024

/s/ Kathleen A. Higgins

KATHLEEN A. HIGGINS
DEPUTY CHIEF COUNSEL

Sent to: Ken Silva (via OOR appeal portal);
J. Chadwick Schnee, Esq
Aimee Belback, AORO (via OOR appeal portal);
Christopher Volz, Esq. (via appeal portal);
Appeals Officer for the Allegheny County DA's Office (via email)

EXHIBIT B



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Municipality of Bethel Park (Attn: AORO)

Date of Request: _____ Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: _____ Company (if applicable): _____

Mailing Address: _____

City: _____ State: _____ Zip: _____ Email: _____

Telephone: _____ Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

DO YOU WANT COPIES? Yes, electronic copies preferred if available
 Yes, printed copies preferred
 No, in-person inspection of records preferred (*may request copies later*)

Do you want **certified copies**? Yes (*may be subject to additional costs*) No

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than \$100 (or) \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$_____

Appropriate third parties notified and given an opportunity to object to the release of requested records.

EXHIBIT C



Ken Silva <ken.silva@moneymetals.com>

Right-To-Know

2 messages

Aimee Belback <ABelback@bethelparkpapolice.gov>
To: "ken.silva@headlineusa.com" <ken.silva@headlineusa.com>

Tue, Aug 13, 2024 at 2:16 PM

Dear Ken Silva,

On August 13, 2024, the Municipality of Bethel Park received your request for information pursuant to the Pennsylvania Right-to-Know Law ("RTKL), 65 P.S. 67.101, et. seq. We received your request for:

"I request recordings of any and all calls made by the parent or parents of Thomas Crooks (their names are reportedly Matthew and Mary Crooks) on the day Crooks shot at Donald Trump at the July 13 campaign rally in Butler. I also request any other documentation Bethel Police have of any calls, including reports or internal communications generated as a result of the calls. If Bethel Police regards any of these records as exempt from disclosure, I'd kindly ask for a written explanation. I'd also ask for Bethel Police to provide non-exempt records.

Here's a background call on the calls Thomas Crooks's parents made to your department: <https://www.dailymail.co.uk/news/article-13643655/Secret-Service-spotted-Thomas-Crooks-hunting-rangefinder-inside-Trump-rally-THREE-HOURS-shooting.html>"

Pursuant to Section 902(a) of the Right to Know Law, the Office of Open Records requires an **additional 30 days** to respond because:

- The request for access requires redaction of a record in accordance with Section 706 of the RTKL;
- The request for access requires the retrieval of a record stored in a remote location;

- A timely response to the request for access cannot be accomplished due to bona fide and specific staffing limitations;
- A legal review is necessary to determine whether the record is a record subject to access under the RTKL;
- The requester has not complied with the Agency's policies regarding access to records;
- The requester refuses to pay applicable fees authorized by the RTKL;
- The extent or nature of the request precludes a response within the required time period.

Our office expects to respond to your request on or before September 18, 2024. As long as all records are electronic, there will not be any fees. If there are records that are not electronic, there will be a .25 cent per page fee for standard size documents. You will be notified of any fees before the copies are made.

Regards,

Aimee Belback

Open Records Officer

Aimee Belback | *Administrative Secretary – Open Records Officer*

Bethel Park Police Department
5100 West Library Ave | Bethel Park, PA 15102
Phone: 412.831.6800 x102 | Fax: 412.851.0519

Emergency: 412.833.2000

abelback@bethelparkpolice.gov

LEGAL DISCLAIMER Confidentiality Notice: This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are

hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Municipality of Bethel Park immediately.

Ken Silva <ken.silva@headlineusa.com>
To: Aimee Belback <ABelback@bethelparkpapolice.gov>

Tue, Aug 13, 2024 at 2:28 PM

OK thank you for the update.

Best,

Ken Silva

[Quoted text hidden]

EXHIBIT D



Ken Silva <ken.silva@moneymetals.com>

Right-To-Know

1 message

Aimee Belback <ABelback@bethelparkpapolice.gov>
To: "ken.silva@headlineusa.com" <ken.silva@headlineusa.com>

Wed, Aug 21, 2024 at 1:31 PM

August 21, 2024

Ken Silva

Headline USA

[Ken.silva@headlineusa.com](mailto:ken.silva@headlineusa.com)**RE: Public Records Request**

Dear Mr. Silva:

On August 12, 2024, the Bethel Park Police Department ("Police Department") received your request for records ("Request") pursuant to Pennsylvania's Right-To-Know Law ("RTKL"), stating:

I request recordings of any and all calls made by the parent or parents of Thomas Crooks . . . on the day that Crooks shot at Donald Trump I also request any other documentation Bethel Police have of any calls, including reports or internal communications as a result of the calls.

The Police Department has completed its review of your Request and your Request is denied. Section 708(b)(18) of the RTKL protects from disclosure "records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings." 65 P.S. § 67.708(b)(18)(i). Accordingly, the portion of your Request seeking "transcripts of calls among officers, 911 calls, audio recordings" is denied.

Similarly, the portion of your request seeking any calls, including reports or internal communications as a result of the calls, is also denied pursuant to Section 708(b)(16) and (17) of the RTKL. Section 708(b)(16) of the RTKL provides that "[a] record of an agency relating to or resulting in a criminal investigation..." is exempt from access by a requester, including: "Complaints of potential criminal conduct" and "Investigative materials, notes, correspondence, videos, and reports." 65 P.S. § 67.708(b)(16)(ii). Moreover, Section 708(b)(17) of the RTKL exempts from disclosure "[a] record of an agency relating to a noncriminal investigation," including "Complaints submitted to an agency" and "Investigative materials, notes, correspondence and reports." 65 P.S. § 67.708(b)(17)(ii). Incident reports are also protected from

disclosure, as they have been held to be “criminal investigative record[s].” Pa. State Police v. Office of Open Records, 5 A.3d 473, 483 (Pa. Cmmw. 2010).

You have a right to appeal the Police Department’s determination in writing to Liz Wagenseller, Executive Director, Office of Open Records, 333 Market Street, 16th Floor, Harrisburg PA 17126-0333. Please note that, pursuant to Section 503(d)(2) of the RTKL, only an appeals officer designated by the District Attorney for the County of Allegheny has jurisdiction to determine whether a requested record is a criminal investigation record (i.e., denial pursuant to Section 708(b)(16)). See Section 503(d)(2) of the RTKL. The Open Records Appeals Officer for the District Attorney of Allegheny County is Assistant District Attorney Kevin McCarthy, Office of the District Attorney, 401 Courthouse, 436 Grant Street, Pittsburgh, PA 15219 (OpenRecordsAppealsOfficer@alleghenycountyda.us).

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency’s response. See 65 P.S. § 67.1101. Please note that a copy of your original RTKL request and this denial letter must be included when filing an appeal. The RTKL also requires that you state the reasons why the record is a public record and address each of the reasons the Agency denies your request. Visit the Office of Open Records website at <http://www.openrecords.pa.gov> for further information on filing an appeal. If you have further questions, please contact me.

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

Sincerely,

Aimee Belback, Open Records Officer

Aimee Belback | *Administrative Secretary – Open Records Officer*

Bethel Park Police Department
5100 West Library Ave | Bethel Park, PA 15102
Phone: 412.831.6800 x102 | Fax: 412.851.0519

Emergency: 412.833.2000

abelback@bethelparkpapolice.gov

LEGAL DISCLAIMER Confidentiality Notice: This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Municipality of Bethel Park immediately.

----- Forwarded message -----

From: Ken Silva <ken.silva@headlineusa.com>

To: Bethel Park Police <police@bethelparkpapolice.gov>, Aimee Belback <ABelback@bethelparkpapolice.gov>

Cc:
Bcc:
Date: Mon, 12 Aug 2024 21:58:35 +0000
Subject: records request

You don't often get email from ken.silva@headlineusa.com. [Learn why this is important](#)

WARNING: This email originated from outside of the organization. USE CAUTION before clicking any link or opening any attachment. If you do not know the sender, or you are receiving an unexpected attachment or link, PLEASE VERIFY these were sent to you intentionally.

Hello,
Please find attached a Right-to-Know form for your convenience. My request is also written below.
Please let me know if you have any questions.

I request recordings of any and all calls made by the parent or parents of Thomas Crooks (their names are reportedly Matthew and Mary Crooks) on the day Crooks shot at Donald Trump at the July 13 campaign rally in Butler. I also request any other documentation Bethel Police have of any calls, including reports or internal communications generated as a result of the calls. If Bethel Police regards any of these records as exempt from disclosure, I'd kindly ask for a written explanation. I'd also ask for Bethel Police to provide non-exempt records.

Here's a background call on the calls Thomas Crooks's parents made to your department: <https://www.dailymail.co.uk/news/article-13643655/Secret-Service-spotted-Thomas-Crooks-hunting-rangefinder-inside-Trump-rally-THREE-HOURS-shooting.html>

Thanks,

Ken Silva
Headline USA reporter

2 attachments

 **7oBs9x-Right-to-Know-Request-Form.pdf**
489K

 **records request.eml**
685K

EXHIBIT E

From: no-reply@openrecordspennsylvania.com
To: ken.silva@headlineusa.com
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Friday, August 23, 2024 2:46:20 PM
Attachments: [oor_logo_email.png](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook.](#)



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Ken Silva
Company:	Headline USA
Address 1:	15720 Brixham Hill Ave Suite 205
Address 2:	
City:	Charlotte
State:	North Carolina
Zip:	28277
Phone:	330-461-2404
Email:	ken.silva@headlineusa.com
Email2:	kensilvabbe@gmail.com
Agency (list):	Municipality of Bethel Park Police Department
Agency Address 1:	5100 West Library Ave
Agency Address 2:	
Agency City:	Bethel Park
Agency State:	Pennsylvania

Agency Zip:	15102
Agency Phone:	412-831-6800
Agency Email:	abelback@bethelparkpapolice.gov
Records at Issue in this Appeal:	Recordings of any and all calls made by the parent or parents of Thomas Crooks . . . on the day that Crooks shot at Donald Trump and any other documentation Bethel Police have of any calls, including reports or internal communications as a result of Crooks's parents calls.
Request Submitted to Agency Via:	e-mail
Request Date:	08/12/2024
Response Date:	08/21/2024
Deemed Denied:	No
Agency Open Records Officer:	Aimee Belback
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue	No

**through OOR
mediation:**

Attachments:

- Right-to-Know-Request-Form.pdf
- Bethel Park response.pdf
- Bethel Park request for more time.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.



Ken Silva <ken.silva@moneymetals.com>

Right-To-Know

1 message

Aimee Belback <ABelback@bethelparkpapolice.gov>
To: "ken.silva@headlineusa.com" <ken.silva@headlineusa.com>

Wed, Aug 21, 2024 at 1:31 PM

August 21, 2024

Ken Silva

Headline USA

[Ken.silva@headlineusa.com](mailto:ken.silva@headlineusa.com)**RE: Public Records Request**

Dear Mr. Silva:

On August 12, 2024, the Bethel Park Police Department ("Police Department") received your request for records ("Request") pursuant to Pennsylvania's Right-To-Know Law ("RTKL"), stating:

I request recordings of any and all calls made by the parent or parents of Thomas Crooks . . . on the day that Crooks shot at Donald Trump I also request any other documentation Bethel Police have of any calls, including reports or internal communications as a result of the calls.

The Police Department has completed its review of your Request and your Request is denied. Section 708(b)(18) of the RTKL protects from disclosure "records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings." 65 P.S. § 67.708(b)(18)(i). Accordingly, the portion of your Request seeking "transcripts of calls among officers, 911 calls, audio recordings" is denied.

Similarly, the portion of your request seeking any calls, including reports or internal communications as a result of the calls, is also denied pursuant to Section 708(b)(16) and (17) of the RTKL. Section 708(b)(16) of the RTKL provides that "[a] record of an agency relating to or resulting in a criminal investigation..." is exempt from access by a requester, including: "Complaints of potential criminal conduct" and "Investigative materials, notes, correspondence, videos, and reports." 65 P.S. § 67.708(b)(16)(ii). Moreover, Section 708(b)(17) of the RTKL exempts from disclosure "[a] record of an agency relating to a noncriminal investigation," including "Complaints submitted to an agency" and "Investigative materials, notes, correspondence and reports." 65 P.S. § 67.708(b)(17)(ii). Incident reports are also protected from

disclosure, as they have been held to be “criminal investigative record[s].” Pa. State Police v. Office of Open Records, 5 A.3d 473, 483 (Pa. Cmmw. 2010).

You have a right to appeal the Police Department’s determination in writing to Liz Wagenseller, Executive Director, Office of Open Records, 333 Market Street, 16th Floor, Harrisburg PA 17126-0333. Please note that, pursuant to Section 503(d)(2) of the RTKL, only an appeals officer designated by the District Attorney for the County of Allegheny has jurisdiction to determine whether a requested record is a criminal investigation record (i.e., denial pursuant to Section 708(b)(16)). See Section 503(d)(2) of the RTKL. The Open Records Appeals Officer for the District Attorney of Allegheny County is Assistant District Attorney Kevin McCarthy, Office of the District Attorney, 401 Courthouse, 436 Grant Street, Pittsburgh, PA 15219 (OpenRecordsAppealsOfficer@alleghenycountyda.us).

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency’s response. See 65 P.S. § 67.1101. Please note that a copy of your original RTKL request and this denial letter must be included when filing an appeal. The RTKL also requires that you state the reasons why the record is a public record and address each of the reasons the Agency denies your request. Visit the Office of Open Records website at <http://www.openrecords.pa.gov> for further information on filing an appeal. If you have further questions, please contact me.

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

Sincerely,

Aimee Belback, Open Records Officer

Aimee Belback | *Administrative Secretary – Open Records Officer*

Bethel Park Police Department
5100 West Library Ave | Bethel Park, PA 15102
Phone: 412.831.6800 x102 | Fax: 412.851.0519

Emergency: 412.833.2000

abelback@bethelparkpapolice.gov

LEGAL DISCLAIMER Confidentiality Notice: This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Municipality of Bethel Park immediately.

----- Forwarded message -----

From: Ken Silva <ken.silva@headlineusa.com>

To: Bethel Park Police <police@bethelparkpapolice.gov>, Aimee Belback <ABelback@bethelparkpapolice.gov>

Cc:
Bcc:
Date: Mon, 12 Aug 2024 21:58:35 +0000
Subject: records request

You don't often get email from ken.silva@headlineusa.com. [Learn why this is important](#)

WARNING: This email originated from outside of the organization. USE CAUTION before clicking any link or opening any attachment. If you do not know the sender, or you are receiving an unexpected attachment or link, PLEASE VERIFY these were sent to you intentionally.

Hello,
Please find attached a Right-to-Know form for your convenience. My request is also written below.
Please let me know if you have any questions.

I request recordings of any and all calls made by the parent or parents of Thomas Crooks (their names are reportedly Matthew and Mary Crooks) on the day Crooks shot at Donald Trump at the July 13 campaign rally in Butler. I also request any other documentation Bethel Police have of any calls, including reports or internal communications generated as a result of the calls. If Bethel Police regards any of these records as exempt from disclosure, I'd kindly ask for a written explanation. I'd also ask for Bethel Police to provide non-exempt records.

Here's a background call on the calls Thomas Crooks's parents made to your department: <https://www.dailymail.co.uk/news/article-13643655/Secret-Service-spotted-Thomas-Crooks-hunting-rangefinder-inside-Trump-rally-THREE-HOURS-shooting.html>

Thanks,

Ken Silva
Headline USA reporter

2 attachments

 **7oBs9x-Right-to-Know-Request-Form.pdf**
489K

 **records request.eml**
685K



Ken Silva <ken.silva@moneymetals.com>

Right-To-Know

2 messages

Aimee Belback <ABelback@bethelparkpapolice.gov>
To: "ken.silva@headlineusa.com" <ken.silva@headlineusa.com>

Tue, Aug 13, 2024 at 2:16 PM

Dear Ken Silva,

On August 13, 2024, the Municipality of Bethel Park received your request for information pursuant to the Pennsylvania Right-to-Know Law ("RTKL), 65 P.S. 67.101, et. seq. We received your request for:

"I request recordings of any and all calls made by the parent or parents of Thomas Crooks (their names are reportedly Matthew and Mary Crooks) on the day Crooks shot at Donald Trump at the July 13 campaign rally in Butler. I also request any other documentation Bethel Police have of any calls, including reports or internal communications generated as a result of the calls. If Bethel Police regards any of these records as exempt from disclosure, I'd kindly ask for a written explanation. I'd also ask for Bethel Police to provide non-exempt records.

Here's a background call on the calls Thomas Crooks's parents made to your department: <https://www.dailymail.co.uk/news/article-13643655/Secret-Service-spotted-Thomas-Crooks-hunting-rangefinder-inside-Trump-rally-THREE-HOURS-shooting.html>"

Pursuant to Section 902(a) of the Right to Know Law, the Office of Open Records requires an **additional 30 days** to respond because:

- The request for access requires redaction of a record in accordance with Section 706 of the RTKL;
- The request for access requires the retrieval of a record stored in a remote location;

- A timely response to the request for access cannot be accomplished due to bona fide and specific staffing limitations;
- A legal review is necessary to determine whether the record is a record subject to access under the RTKL;
- The requester has not complied with the Agency's policies regarding access to records;
- The requester refuses to pay applicable fees authorized by the RTKL;
- The extent or nature of the request precludes a response within the required time period.

Our office expects to respond to your request on or before September 18, 2024. As long as all records are electronic, there will not be any fees. If there are records that are not electronic, there will be a .25 cent per page fee for standard size documents. You will be notified of any fees before the copies are made.

Regards,

Aimee Belback

Open Records Officer

Aimee Belback | *Administrative Secretary – Open Records Officer*

Bethel Park Police Department
5100 West Library Ave | Bethel Park, PA 15102
Phone: 412.831.6800 x102 | Fax: 412.851.0519

Emergency: 412.833.2000

abelback@bethelparkpolice.gov

LEGAL DISCLAIMER Confidentiality Notice: This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are

hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Municipality of Bethel Park immediately.

Ken Silva <ken.silva@headlineusa.com>
To: Aimee Belback <ABelback@bethelparkpapolice.gov>

Tue, Aug 13, 2024 at 2:28 PM

OK thank you for the update.

Best,

Ken Silva

[Quoted text hidden]



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Municipality of Bethel Park (Attn: AORO)

Date of Request: Aug. 12, 2024 Submitted via: [X] Email [] U.S. Mail [] Fax [] In Person

PERSON MAKING REQUEST:

Name: Ken Silva Company (if applicable):

Mailing Address: 15720 Brixham Hill Ave. Suite 205

City: Charlotte State: NC Zip: 28277 Email: ken.silva@headlineusa.com

Telephone: 330-461-2404 Fax:

How do you prefer to be contacted if the agency has questions? [] Telephone [X] Email [] U.S. Mail

RECORDS REQUESTED: Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.

I request recordings of any and all calls made by the parent or parents of Thomas Crooks on th

I also request any other documentation Bethel Police have of any calls, including reports or inte

If Bethel Police regards as any of these records as exempt from disclosure, I'd kindly ask for a

I'd also ask for Bethel Police to provide non-exempt records. Finally, as a member of the media

Here's the background article on Crooks's parents' phone call to your department: https://www.

- DO YOU WANT COPIES? [X] Yes, electronic copies preferred if available [] Yes, printed copies preferred [] No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? [X] Yes (may be subject to additional costs) [] No RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than [X] \$100 (or) [] \$

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: Date Received: Response Due (5 bus. days):

30-Day Ext.? [] Yes [] No (If Yes, Final Due Date:) Actual Response Date:

Request was: [] Granted [] Partially Granted & Denied [] Denied Cost to Requester: \$

[] Appropriate third parties notified and given an opportunity to object to the release of requested records.

EXHIBIT F

October 1, 2024

Kathleen Higgins, Esquire
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

RE: Silva v. Municipality of Bethel Park Police Department, AP 2024-2228

Dear Appeals Officer Higgins:

Our firm represents the Municipality of Bethel Park Police Department (“the Department”). This letter and the attached attestation of David Arnold, Department Chief of Police, are being submitted in response to the above-captioned Open Records Appeal, AP 2024-2228 (“Appeal”), filed by Ken Silva (“Requester”).

On August 12, 2024, the Department received a Public Records Request made pursuant to the Right-to-Know Law (“RTKL”) from Requester stating: \=

I request recordings of any and all calls made by the parent or parents of Thomas Crooks . . . on the day that Crooks shot at Donald Trump I also request any other documentation Bethel Police have of any calls, including reports or internal communications as a result of the calls.

(Attestation, ¶4). The Department denied the Request on August 21, 2024. Specifically, the Department identified responsive records, but determined that they were exempt from disclosure under the RTKL and other applicable laws. (Attestation, ¶9).

On Friday, September 6, 2024, Requester sent an email to the Department at 4:06 p.m., stating, in part: “You may know that I have an appeal pending in this RTKL request for Thomas Crooks’s parents’ phone call to Bethel Police.” (Attestation, ¶10). The Department was not aware that Requester had appealed the denial. (Attestation, ¶11).

Upon receipt of the Request, the Department reviewed the Department’s records and the records of Bethel Park Dispatch Center and located:

1. the recording of a call made by one of the parents of Thomas Crooks that was made on July 13, 2024 (“911 Call”).
2. an Incident Report regarding Incident Number 20240713M2259 (“Incident Report”).

(Attestation, ¶6-8).

Kathleen Higgins, Esquire

October 1, 2024

Page 2

911 Call Recording

On July 13, 2024, Thomas Crooks attempted to assassinate former President Donald Trump at a rally in Butler County and, in the process, killed a bystander. On that date, one of the parents of Thomas Crooks placed the 911 Call. The 911 Call was originally made to the Allegheny County Call Center and the Allegheny County Call Center forwarded the 911 Call to the Bethel Park Dispatch Center.

Section 708(b)(18) of the RTKL protects from disclosure "[r]ecords or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings." 65 P.S. § 67.708(b)(18)(i). The foregoing exemption, however, does not apply "to a 911 recording, or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure." 65 P.S. § 67.708(b)(18)(ii).

The Department understands Requester's interest in this 911 Call. (Attestation, ¶ 19). However, as articulated by Chief Arnold, there are stronger interests in nondisclosure because a criminal investigation into the attempted assassination is ongoing and the Department has serious concerns about publicizing any information that may taint ongoing investigations or inquiries into the attempted assassination of former President Trump. (Attestation, ¶ 20-23).

In the present case, the Requester seeks records that are expressly exempt under Section 708(b)(18) of the RTKL, the Department has articulated that it is exercising its discretion not to release the responsive 911 audio records and the OOR lacks jurisdiction to consider matters assigned to the agency's discretion. Pa. Dep't of Pub. Welf. v. Froehlich, 29 A.3d 863 (Pa. Commw. Ct. 2011); Strawbridge v. Loch Haven Police Department, AP 2021-1337, 2021 PA O.O.R.D. LEXIS 1723, *10, 2021 PA O.O.R.D. LEXIS 1723. Therefore, the responsive 911 Call is exempt from disclosure and the appeal should be denied.

Incident Report

The OOR does not have Jurisdiction to Determine if the Investigative Report is Exempt under the Criminal Investigation Exception

The OOR does not have jurisdiction to determine if the Investigative Report is exempt under Section 708(b)(16) of the RTKL or the Criminal History Record Information Act ("CHRIA"), 18 Pa.C.S. §§ 9101-9183. Section 708(b)(16) exempts from disclosure any record relating to or resulting in a criminal investigation, including: complaints of potential criminal conduct; investigative materials, notes, correspondence, videos and **reports**; and any record which, if

Kathleen Higgins, Esquire

October 1, 2024

Page 3

disclosed would reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges. 65 P.S. § 67.708(b)(16)(i), (ii), (vi)(A).

The Department is a local law enforcement agency. (Attestation, ¶ 1); Napolillo v. South Connellsville Borough, AP 2017-0669, 2017 WL 2497157. Section 503(d)(2) of the RTKL states that only the Appeals Officer for the Allegheny County District Attorney's Office is authorized to "determine if the record requested is a criminal investigative record" of a local law enforcement agency within Allegheny County. 65 P.S. § 67.503(d)(2).

The OOR lacks jurisdiction to consider whether a record of a local law enforcement agency is subject to public access where the agency claims that the records are withheld under Section 708(b)(16) of the RTKL and either submits evidence demonstrating that a criminal investigation occurred or, based on the appeal documents or the language of the request itself, there is no dispute between the parties regarding the existence of a criminal investigation. DeCrosta v. Bethlehem City, AP 2018-0668, 2018 WL 3091509.

In the present case, based on the Request, the Department's response and Appeal Documents, it is undisputed that the Incident Report reflects an investigation into potential violations of federal and state law that are enforced through criminal proceedings. (Attestation, ¶¶10-22). Moreover, the Department has submitted evidence, in the form of an Attestation, that an investigation into this alleged criminal conduct actually occurred.¹ (Attestation, ¶¶17-22, 25-40, 43). Moreover, police incident reports related to investigations of alleged criminal conduct are, on their face, related to a criminal investigation and should be transferred to the District Attorney's office pursuant to Section 503(d). See Malfaro v. Exeter Township, AP 2019-0986 (transferring appeal of request for "police incident report" to District Attorney's office without analysis).

Recently, in Snell v. Butler Township Police Department, 2024 PA O.O.R.D. LEXIS 2112, *1-2, the OOR determined that a request for police reports related to the assassination attempt had to be transferred to the District Attorney's office:

The Department is a local law enforcement agency, and the Request expressly seeks police reports regarding an assassination attempt in the possession of the Department. The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. See 65 P.S. § 67.503(d)(2). Instead, appeals involving records alleged to be criminal

¹ Under the RTKL, a sworn affidavit or statement made under the penalty of perjury is competent evidence to sustain an agency's burden of proof. See Sherry v. Radnor Twp. Sch. Dist., 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); Moore v. Office of Open Records, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

Kathleen Higgins, Esquire

October 1, 2024

Page 4

investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney. See id. Accordingly, the appeal is hereby transferred to the Appeals Officer for the Butler County District Attorney's Office ("District Attorney's Office") to determine whether the records relate to a criminal investigation.

Id. Accordingly, the OOR does not have jurisdiction to determine whether the Incident Report relates to a criminal investigation (though it clearly does) and this portion of the appeal should be transferred to the Allegheny County District Attorney's Office.²

Conclusion

For the above-stated reasons, the Department respectfully requests that the appeal be denied.

If you have any questions or if you require any additional information regarding this appeal, please do not hesitate to contact me.

Very truly yours,

TUCKER ARENSBERG, P.C.



Christopher L. Voltz

CLV:cr

Enclosure

TADMS:20555909-1:012348-006943

² The Department provided Requester with instruction on how to file an appeal with the Open Records Appeals Officer for the District Attorney of Allegheny County in its response letter. (See Appeal Docs, p. 5.)

ATTESTATION OF CHIEF DAVID ARNOLD

I, David Arnold, hereby declare, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

1. At all times relevant hereto, I have been employed as the Chief of Police for the Municipality of Bethel Park Police Department (“Department”) located in Allegheny County, Pennsylvania.

2. In my capacity as the Chief of Police, I am familiar with the records of the Department, including 911 calls received by the Department and police reports.

3. I am also familiar with the request for records made pursuant to the Pennsylvania Right-to-Know Law (“RTKL”) that was submitted to the Borough (“Request”) by Ken Silva (“Requester”) on August 12, 2024.

4. The Request stated:

I request recordings of any and all calls made by the parent or parents of Thomas Crooks . . . on the day that Crooks shot at Donald Trump I also request any other documentation Bethel Police have of any calls, including reports or internal communications as a result of the calls.

5. I conducted a thorough examination of files in the possession, custody, and control of the Municipality and Department for records that are responsive the Request.

6. Specifically, I reviewed the Department’s records and the records of Bethel Park Dispatch Center.

7. As a result of my search, I located the recording of a call made by one of the parents of Thomas Crooks that was made on July 13, 2024 (“911 Call”).

8. I also located an Incident Report regarding Incident Number 20240713M2259 (“Incident Report”).

9. The Department denied the Request on August 21, 2024. Specifically, the Department identified responsive records, but determined that they were exempt from disclosure under the RTKL and other applicable laws.

10. On Friday, September 6, 2024, Requester sent an email to the Department at 4:06 p.m., stating, in part: “You may know that I have an appeal pending in this RTKL request for Thomas Crooks's parents' phone call to Bethel Police.”

11. The Department was not aware that Requester had appealed the denial.

12. On Monday, September 9, 2024, the Department searched the OOR’s Appeal Portal and located the appeal, docketed at AP 2024-2228.

13. The Department requested, and the OOR graciously granted, an extension of the submission deadline to September 18, 2024.

911 Call

14. The 911 Call was originally made to the Allegheny County Call Center.

15. The Allegheny County Call Center forwarded the 911 call to the Bethel Park Dispatch Center.

16. The Department determined that the 911 Call is exempt from disclosure pursuant to Section 708(b)(18) of the RTKL, 65 P.S. § 67.708(b)(18)(i).

17. The Department has also determined that the 911 Call may be evidence is a pending criminal investigation and, therefore, is exempt from disclosure under Section 708(b)(16) of the RTKL and constitutes “investigative material” under the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101-9183.

18. Specifically, the 911 Call was documented in the Incident Report (discussed below) and, therefore, is related to a criminal investigation into the attempted assassination into former President Trump.

19. The Department understands that there is a significant amount of public interest in all information relating to the attempted assassination of former President Trump.

20. However, the investigation is ongoing and the Department has serious concerns about publicizing any information that may taint ongoing investigations or inquiries into the attempted assassination of former President Trump.

21. Upon information and belief, the FBI continues to investigate the attempted assassination of former President Trump. (See: <https://www.fbi.gov/news/press-releases/butler-investigation-updates>).

22. On August 28, 2024, Kevin Rojek, special agent in charge of the FBI Pittsburgh Field Office, stated: “The Pittsburgh office continues to lead the investigation into the attempted assassination of former President Donald Trump through the tireless efforts of our agents, intelligence analysts, and professional staff employees.” Agent Rojek concluded his remarks by stating: “We continue to pursue all investigative leads to determine any possible links to co-conspirators.” (See: <https://www.fbi.gov/news/speeches/fbi-pittsburgh-special-agent-in-charge-s-remarks-to-media-on-updates-to-the-butler-pennsylvania-assassination-attempt-investigation>).

23. Accordingly, even if the 911 Call could be released, the Department does not believe that the public interest in disclosure outweighs the significant interests in nondisclosure.

Incident Report

24. The Incident Report is an 8-page document. .

25. The Incident Report is on a form used by the Department when investigating allegations of criminal wrongdoing. These same report forms are used for investigations involving noncriminal matters.

26. The Incident Report was created in accordance with standard Department practice following a complaint of alleged criminal activity.

27. The first five pages of the report were prepared by Department Dispatcher Tara Eastman who is a Dispatcher for the Department

28. This portion of the Incident Report documents the Department's investigation into the attempted assassination of former President Trump, including the steps taken in cooperation with other law enforcement agencies.

29. This portion of the Incident Report identifies the names and contact information of federal law enforcement officers.

30. This portion of the Incident Report identifies suspects and witnesses contacted during the investigation.

31. This portion of the Incident Report documents and summarizes the 911 Call (discussed above) received from a parent of Thomas Crooks, including the time of the call and the contents of what the parent stated to the Department.

32. The Incident Report includes a two page supplemental report by Lieutenant Joelle Dixon of the Department.

33. Lieutenant Dixon supplemental report documents the communications between the Department and federal law enforcement agencies and the Department's steps in assisting the federal agencies in conducting an investigation into the attempted assassination of former President Trump.

34. The Incident Report includes a one-page supplemental report by Detective Lance Mattes of the Department.

35. This supplemental report documents Detective Mattes' investigation into the attempted assassination of former President Trump, including his communications with potential witnesses.

36. This supplemental report also documents the evidence gathered by Detective Mattes during his investigation.

37. As documented above, the Incident Report contains summaries and notes of statements made by the parties relating to the investigations resulting from the underlying incident.

38. The Incident Report documents the findings and conclusions of Lieutenant Dixon and Detective Mattes relating to the investigation resulting from the underlying incident.

39. The Incident Report does not contain information constituting a police blotter that is not already available to and accessible by the public.

40. All of the investigations documented in the Incident Report were compiled and the investigation conducted pursuant to the Department's official duties.

41. The Department determined that the Request had to be denied because the Incident Report constitutes "investigative material" under the Criminal History Record Information Act ("CHRIA"), 18 Pa.C.S. §§ 9101-9183.

42. The Department also determined that the Incident Report was exempt under the criminal investigation records exceptions set forth in Section 708(b)(16) of the RTKL.

43. An investigation into this alleged criminal conduct actually occurred.

44. I am not aware of, nor am I intentionally withholding any other documents that are responsive to this part of the Request.

Dated: 10/1/24



David Arnold
Chief of Police
Municipality of Bethel Park Police Department

KEN SILVA AND HEADLINE USA, : IN THE COURT OF COMMON PLEAS
Petitioners, : ALLEGHENY COUNTY,
 : PENNSYLVANIA
v. : CIVIL DIVISION
MUNICIPALITY OF BETHEL PARK :
POLICE DEPARTMENT, :
Respondent. : NO. _____

CERTIFICATE OF SERVICE

I, J. Chadwick Schnee, Esq., certify that on this 31st day of October, 2024, I have sent a true and correct copy of the attached Petition for Review to the following individuals via First Class Mail and electronic mail:

Christopher L. Voltz, Esq.
Tucker Arensberg, P.C.
One PPG Place Suite 1500
Pittsburgh, PA 15222
cvoltz@tuckerlaw.com

Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
oor-postfd@pa.gov

/s/ J. Chadwick Schnee, Esq.
J. Chadwick Schnee, Esq.