



**PENNSYLVANIA STATE POLICE
Bureau of Records & Identification
RIGHT-TO-KNOW OFFICE
1800 Elmerton Avenue
Harrisburg, PA 17110**

Mailing Date: May 1, 2013

Ryan Bagwell
5219 Shorecrest Drive
Middleton, Wisconsin

PSP/RTKL Request N° 2013-0151

Dear Mr. Bagwell:

On March 25, 2013, the Pennsylvania State Police (PSP) received your request for information pursuant to the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 – 67.3104, wherein you requested, "copies of emails, memos, faxes, letters, and reports that were sent or received between November 1, 2011, and Dec. 31, 2012, between members of your agency and the following individuals or entities:

1. employees of Freeh International Solutions
2. employees of the Freeh Group
3. employees of the law firm Freeh, Sporkin & Sullivan, LLP
4. employees of the law firm Pepper Hamilton, LLP
5. Louis Freeh
6. Omar McNeil
7. Tom Cloud
8. Greg Paw
9. other individuals whose email addresses contains the freehgroup.com domain.

A copy of your request is enclosed. By letter dated April 1, 2013, you were notified in accordance with RTKL section 67.902 (b)(2) and 1 Pa.C.S. § 1908 that the PSP required an additional thirty days, to respond to your request.

The Department has denied your request because it is not sufficiently specific. PSP would have to conduct a search of each email, letter, memo, fax and report sent or received by the PSP to accurately responds to this request. Please provide a more specific subject area or particular incident involving a PSP investigation to narrow the search perimeters. The RTKL requires that a request for records be made with "sufficient specificity to enable the agency to ascertain which records" are being

requested. 65 P.S. § 67.703; *Kantrowitz v. Great Valley School District*, OOR Dkt N° AP 2009-0646; and *Mollick v. Methacton School District*, OOR Dkt N° AP 2009-0180. In *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010), the Commonwealth Court concluded that a request for “any and all records” relating to a specific subject was not a sufficiently specific request for the agency to be required to respond under the RTKL.

Nevertheless, and without waiving the applicability of insufficiency, attempted to construe your request as specific to the Jerry Sandusky investigation. PSP’s search for potential records relating to your request revealed the following responsive record: PSP Investigation Report G07-1146135, which details a PSP investigation into allegations of potential criminal conduct. Accordingly, this PSP and the components of this record is denied on its face as wholly exempt from public disclosure:

- As “a record containing all or part of a person’s driver’s license number, home, cellular or personal telephone number,” 65 P.S. § 67.708(b)(6)(i)(A);
- As “a record of an agency relating to or resulting in a criminal investigation,” 65 P.S. § 67.708(b)(16);
- As a record comprising “Complaints of potential criminal conduct...” 65 P.S. §67.708(b)(16)(i);
- As a record comprising “investigative materials, notes, correspondence, . . . and reports,” 65 P.S. § 67.708(b)(16)(ii);
- As a record “that includes the identity of a confidential source...” 65 P.S. §67.708(b)(16)(iii);
- As “a record that includes information made confidential by law...” 65 P.S. § 67.708(b)(16)(iv);
- As a record that “includes, . . . victim information,” 65 P.S. § 67.708(b)(16)(v);
- As “a record that, if disclosed, would reveal the institution, progress, and result of a criminal investigation,” 65 P.S. § 67.708(b)(16)(vi)(A);
- A record that, if disclosed, would “endanger the life or physical safety of and individual.” 65 P.S. §67.708(b)(16)(vi)(E);
- A record of an agency relating to a non criminal investigation, 65 P.S. §67.708(b)(17);

- As “a complaint submitted to an agency.” 65 P.S. §67.708(b)(17)(i);
- As “Investigative materials, notes, correspondence and reports.” 65 P.S. §67.708(b)(17)(ii);
- As “a record that includes the identity of a confidential source...” 65 P.S. §67.708(b)(17)(iii);
- As “a record that includes information made confidential by law.” 65 P.S. §67.708(b)(17)(iv);
- As a record that, if disclosed, would, “reveal the institution, progress or result of an agency investigation...” 65 P.S. §67.708(b)(17)(vi)(A); and
- As “A record identifying the name, home address or date of birth of a child 17 years of age or younger,” 65 P.S. §67.708(b)(30).

Pennsylvania State Police v. Office of Open Records, 5 A.3d 473 (Pa. Commw. Ct. 2010) (en banc). A supporting verification accompanies this letter.

In any event, disclosing the report or its components to you would violate Pennsylvania’s *Criminal History Record Information Act* (CHRIA), 18 Pa.C.S. §§ 9101-9183, which prohibits criminal justice agencies from disseminating investigative information, except to other criminal justice agencies. 18 Pa.C.S. § 9106(c)(4). CHRIA defines “investigative information” 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 CHRIA from providing you with access to the report you have requested. See *McGarvey v. Pennsylvania State Police*, OOR Docket N° AP 2009-0522 (Glinn) (CHRIA section 9106 protects criminal investigation report, in its entirety, from public disclosure).

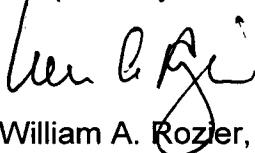
For these reasons, the responsive records are not public records under RTKL, which defines a “public record” as “[a] record . . . of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege.” 65 P.S. § 67.102.

To the extent that your request seeks or may be construed to seek 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 final response be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the RTKL and Criminal History Record Information Act (CHRIA).

You have a right to appeal this response in writing to Terry Mutchler, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North St., 4th Floor, Harrisburg, Pennsylvania 17120. Appeal forms are available on the OOR website: <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>. If you choose to file an appeal, then you must do so within 15 business days of the mailing date of this response and send to OOR:

- 1) this response;
- 2) your request; and
- 3) your reasons for believing that the record is public (a statement of the grounds you assert for the requested record being a public record), as well as for believing the agency has wrongly withheld the record from disclosure (a statement that addresses any ground stated by the agency for the denial). If the agency has given several reasons for withholding the record, then indicate which ones you believe to be wrong.

Respectfully,



William A. Rozier, J.D.
Agency Open Records Officer
Pennsylvania State Police
Bureau of Records & Identification
Right-to-Know Office
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110
1.877.785.7771 (Main)
717.525.5795 (Fax)

Enclosures: PSP/RTKL Request 2013-0151
 Rozier Verification

PENNSYLVANIA STATE POLICE
BUREAU OF RECORDS & IDENTIFICATION
RIGHT-TO-KNOW OFFICE

VERIFICATION OF
WILLIAM A. ROZIER
AGENCY OPEN RECORDS OFFICER


I, William A. Rozier, Agency Open Records Officer for the Pennsylvania State Police (PSP), am authorized to prepare this verification in response to this Right-to-Know Law (RTKL) Request for PSP records. Accordingly, on this 1st day of May, 2013, I verify the following facts to be true and correct, to the best of my knowledge or information, and belief:

- 1) I am familiar with PSP/RTK Request 2013-151, a copy of which accompanies this verification.
- 2) Your request is insufficiently specific because it fails to provide me sufficient facts to determine which records are sought and whether, on review, any part of the request constitutes a public record requiring disclosure.
- 3) The request is overly broad as it could encompass multiple records involving numerous subjects and thus renders PSP incapable of a full and complete response to protect any potentially responsive records under the properly asserted exceptions.
- 4) Unless every record in the possession of the PSP is examined, PSP remains unable to confirm whether all potentially responsive records have been located.
- 5) Nevertheless, I attempted to construe the request as specifically as possible.
- 6) Utilizing the information contained in the request, I searched of all Departmental databases, to which we have access, for evidence of any PSP records that may potentially respond to the request.

- 7) The searches, have identified and located one responsive record designated G07-1146135, a record assembled by PSP that was created to document a PSP investigation into Jerry Sandusky.
- 8) From my review of the record that responds to the request, I determined the entire record, including its components, clearly relates to or resulted in a PSP investigation. Furthermore, G07-1146135 contains the following components:
 - a) a record containing all or part of a person's driver's license number; home, cellular or personal telephone number;
 - b) a record of an agency relating to or resulting in a criminal investigation;
 - c) a record comprising complaints of potential criminal conduct;
 - d) a record comprising investigative materials, notes, correspondence, . . . and reports;
 - e) a record that includes the identity of a confidential source;
 - f) a record that includes information made confidential by law;
 - g) a record that includes, . . . victim information;
 - h) a record that, if disclosed, would reveal the institution, progress, and result of a criminal investigation;
 - i) a record that, if disclosed, would endanger the life or physical safety of an individual;
 - j) a record identifying the name, home address or date of birth of a child 17 years of age or younger;

- k) a record of an agency relating to a noncriminal investigation; and
 - l) a record that is **NOT** a chronological compilation of original records of entry.
- 9) Additionally, disclosing the report or its components would violate Pennsylvania's *Criminal History Record Information Act* (CHRIA), 18 Pa.C.S. §§ 9101-9183, which prohibits criminal justice agencies from disseminating investigative information, except to other criminal justice agencies. 18 Pa.C.S. § 9106(c)(4). CHRIA defines "*investigative information*" 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 CHRIA from providing access to the report. In closing, I determined G07-1146135 or any components are not a "public record," because it is exempt from disclosure by RTKL Section 708 and by CHRIA. Therefore, I have determined the records are not public and will not be publicly disclosed.

I understand false statements made in this verification are subject to the penalties under 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



William A. Rozier, J.D.
Agency Open Records Officer
Pennsylvania State Police

4/11/13
2013-0151

MAR 25 13 AM 8:11

Morissette, Leigh C

From: Ryan Bagwell <ryan@ryanbagwell.com>
Sent: Saturday, March 23, 2013 6:06 PM
To: SP, PSP RIGHT TO KNOW
Subject: RTKL Request

To whom it may concern:

This is a request made pursuant to the Pennsylvania Right-to-Know Law.

I hereby request copies of e-mails, memos, faxes, letters, and reports that were sent or received between November 1, 2011, and Dec 31, 2012, between members of your agency and the following individuals or entities:

1. employees of Freeh International Solutions
2. employees of The Freeh Group
3. employees of the law firm of Freeh, Sporkin & Sullivan, LLP
4. employees of the law firm of Pepper Hamilton, LLP
5. Louis Freeh (freeh@freehgroup.com)
6. Omar McNeil (mcneil@freehgroup.com)
7. Tom Cloud (cloud@freehgroup.com)
8. Greg Paw (paw@freehgroup.com)
9. any other individual whose email address contains the freehgroup.com domain (i.e. somename@freehgroup.com).

Whenever possible, please provide the responsive records in electronic format.

Thank you for your assistance.

Ryan Bagwell
5219 Shorecrest Drive
Middleton, WI 53562
(608) 466-6195 (v)