

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Javier Antonetty Rodriguez,	:
Petitioner	:
	:
v.	: No. 739 C.D. 2025
	: Submitted: July 24, 2026
Pennsylvania State Police (Office of	:
Open Records),	:
Respondent	:

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE

FILED: October 6, 2026

Javier Antonetty Rodriguez (Requester), representing himself, petitions this Court for review of the Office of Open Records' (OOR) Final Determination, dated May 29, 2025, which denied his request under the Right-to-Know Law (RTKL)¹ on the basis that the record he requested involved a criminal investigation. After careful review, we affirm.

BACKGROUND

The Pennsylvania State Police (PSP) received RTKL requests from Requester on February 4, 2025, which stated as follows:

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

Please send a copy of the “DNA PROFILE” [(DNA Profile)] that was a mixture of multiple contributors and entered into the state[']s version of CODIS. This DNA mixture profile was submitted on approximately December 17, 2010 and concerning the criminal case of Commonwealth v. Javier Antonetty Rodriguez,[]# CP-06-CR-0003057-2009,[²] out of Berks County, Reading Pennsylvania[.] The DNA mixture profile must consist of: (1) The chemical structure of all samples as recovered. (2) The combinations of chromosomes that make up the DNA mixture profile. (3) The DNA strands that are compared to other DNA samples to identify the primary.

I would like to receive a full, complete, and up-to-date copy of your agency policies concerning the retrieval of DNA Profiles that are stored with this department.

Certified Record (C.R.) at 12.^{3,4}

By letter mailed March 13, 2025, the PSP granted Requester’s requests in part by enclosing a “responsive two-page record, Section B 2.0 through 2.8.2 of the *BFS Codis and DNA database Procedures Manual*.” C.R. at 12-13. The PSP otherwise denied the requests, explaining the information Requester was seeking regarding the DNA Profile was “contained within PSP Lab Report No. B08-01966-3 for Incident No. 2008-17981 [(Lab Report)] which fails to meet the definition of the term ‘public record.’” *Id.* at 13. The PSP reasoned the Lab Report was not a public record under RTKL’s exceptions regarding criminal investigations and DNA records. *See* Section 708(b)(16)(ii), (vi)(A), (19) of the RTKL, 65 P.S. § 67.708(b)(16)(ii), (vi)(A), (19). The PSP also reasoned the Lab Report was not a public record because the Criminal

² Requester explains he has been convicted of first-degree murder, and the DNA Profile “was used as evidence against [him]” in his criminal case. Requester’s Br. at 5.

³ Because the certified record lacks page numbers, this decision uses electronic pagination.

⁴ The RTKL request form in the certified record includes the first paragraph of the request quoted above. C.R. at 9. We take the second paragraph from the PSP’s responsive letter, which indicates it received multiple requests from Requester on the same day. *See id.* at 12.

History Record Information Act (CHRIA) permits the dissemination of investigative information only to a “criminal justice agency.”⁵ *See* Section 9106(c)(4) of CHRIA, 18 Pa.C.S. § 9106(c)(4).

Requester appealed to the OOR. The PSP submitted a letter, again arguing the Lab Report was exempt from disclosure under the RTKL’s exceptions and CHRIA. C.R. at 29. The PSP provided a Verification from its open records officer, William Rozier (Rozier). *Id.* at 31. Rozier explained in his Verification that he examined the Lab Report, determining it was “manifestly related to a homicide investigation” and documented “the testing results of sealed evidence presented to the [PSP] Bethlehem Regional Library.” *Id.* at 32.

Requester submitted a letter in support of his appeal, asserting the Lab Report was not exempt from disclosure under the RTKL.⁶ C.R. at 35. Requester contended the criminal investigation at issue had concluded and releasing the Lab Report “will not harm anyone or impede on a crimin[a]l investigation.” *Id.* In addition, Requester argued the Lab Report would prove “[R]equester is innocent of charged crimes.” *Id.* Requester submitted a Verification, conceding the Lab Report “and its components

⁵ The PSP noted, to the extent the requests sought or could be construed to seek “records involving covert law enforcement investigations, including intelligence gathering and analysis,” that it could not confirm or deny the existence of such records “without risk of compromising investigations and imperiling individuals” and such records if they exist would be exempt from disclosure under the RTKL and CHRIA. C.R. at 14.

⁶ Before the OOR, Requester distinguished the Lab Report from the DNA Profile that it contained, contending he requested the DNA Profile and “[a]t no time was the PSP Lab Report mentioned or requested for release.” C.R. at 35. The certified record does not indicate the DNA Profile exists in any form other than the Lab Report, and Requester does not argue the DNA Profile and Lab Report should be treated differently for purposes of disclosure. Therefore, for ease of discussion, we refer to the “Lab Report” when summarizing Requester’s arguments in this case, even if Requester uses the term “DNA Profile.”

constitute a record relating to or resulting in a criminal investigation” but reiterating the arguments in his letter. *Id.* at 38.

The OOR issued a Final Determination dated May 29, 2025, which denied the appeal. Quoting Rozier’s Verification at length, the OOR concluded the Lab Report “details a PSP investigation into a criminal matter” and was exempt from disclosure under the RTKL’s criminal investigation exception. C.R. at 43-44. Moreover, the OOR acknowledged Requester’s contention that the criminal investigation at issue was over but explained “the outcome and open/closed status of the PSP investigation does not change its criminal nature.”⁷ *Id.*

Requester timely filed a petition for review. Once again, Requester argues the Lab Report will allow him to prove his innocence. Requester’s Br. at 6-7. Requester contends the Lab Report must be released because the criminal investigation against him has concluded, the case is now closed, and “no one will be harmed.” *Id.* at 7-8. In addition, Requester proposes the PSP could redact the Lab Report “to protect what may be damaging” if harm to others poses a concern. *Id.* at 8. Requester directs this Court’s attention to several decisions in support of this appeal, including *DiMartino v. Pennsylvania State Police* (Pa. Cmwlth., No. 340 C.D. 2011, filed Sept 19, 2011); *Mahoney v. Pennsylvania State Police* (Pa. Cmwlth., No. 339 C.D. 2011, filed Sept. 19, 2011); and *Mezzacappa v. Northampton County* (Pa. Cmwlth., No. 1229 C.D. 2021, filed Apr. 6, 2023), *reargument denied* (May 30, 2023), *rev’d*, 334 A.3d 268 (Pa. 2025).⁸

⁷ The OOR noted it was unnecessary to address the PSP’s other grounds for denying access to the Lab Report, given its conclusion that the Lab Report was exempt under the criminal investigation exception. C.R. at 44.

⁸ This Court issued two *Mezzacappa* decisions on the same date. The first decision addressed the relevant claims at length. The second decision simply relied on the first decision. *See Mezzacappa* **(Footnote continued on next page...)**

DISCUSSION

This Court serves as the ultimate finder of fact and conducts *de novo* review of the OOR’s Final Determination regarding public records of a state-level agency, meaning we do not defer to the OOR when reaching a decision. *See Am. C.L. Union of Pa. v. Pa. State Police*, 232 A.3d 654, 662-63 (Pa. 2020). However, we may adopt the OOR’s findings and conclusions if appropriate. *Id.* The Court may also “expand the record to fulfill its statutory role as the ultimate finder of fact.” *Id.* at 663.

Under the RTKL, a “public record” is “[a] record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under [S]ection 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.” Section 102 of the Law, 65 P.S. § 67.102. It is the agency’s burden to prove by a preponderance of the evidence that a requested record is exempt from disclosure. Section 708(a)(1) of the RTKL, 65 P.S. § 67.708(a)(1).

The RTKL’s criminal investigation exception applies to, among other things, “[a] record of an agency relating to or resulting in a criminal investigation, including: . . . [i]nvestigative materials, notes, correspondence, videos and reports.”⁹ Section 708(b)(16)(ii) of the RTKL, 65 P.S. § 67.708(b)(16)(ii). CHRIA provides:

Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request

v. Northampton Cnty. (Pa. Cmwlth., No. 1312 C.D. 2021, filed Apr. 6, 2023), *reargument denied* (May 30, 2023), *rev’d*, 334 A.3d 268 (Pa. 2025). Requester does not identify which of the two *Mezzacappa* decisions he is citing in his brief, but we presume Requester is citing the first decision.

⁹ As explained above, the PSP also relies on Section 708(b)(16)(vi)(A) of the RTKL, which applies to “[a] record that, if disclosed, would . . . [r]eveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.” 65 P.S. § 67.708(b)(16)(vi)(A).

is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

Section 9106(c)(4) of CHRIA, 18 Pa.C.S. § 9106(c)(4). “Investigative information” is “[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 and may include modus operandi information.” Section 9102 of CHRIA, 18 Pa.C.S. § 9102.

Requester does not dispute that the Lab Report is a report relating to a criminal investigation under the RTKL and investigative information under CHRIA. Instead, Requester contends the Lab Report should be disclosed because the investigation is over and no one will be harmed. Our case law belies Requester’s position. In *Barros v. Martin*, 92 A.3d 1243, 1245 (Pa. Cmwlth. 2014), the requester sought a variety of records relating to criminal cases against him and another individual, including PSP forensic lab reports. The requester was already convicted, meaning the investigation against him was over. *See id.* We explained “[c]riminal investigative records remain exempt from disclosure under the RTKL even after the investigation is completed” and ultimately concluded the forensic lab reports were exempt from disclosure under the criminal investigation exception and CHRIA. *Id.* at 1250.

Furthermore, in *Castillo v. Pennsylvania State Police*, 310 A.3d 831, 835 (Pa. Cmwlth. 2024), this Court concluded a PSP incident report relating to the requester’s criminal case was exempt from disclosure under the RTKL’s criminal investigation exception. The requester contended the case against him was over and releasing the report “would not result in a substantial and demonstrable risk of physical harm to, or personal security of, the victim or any individual.” *Id.* at 833. The Court reasoned that, although “the criminal action has long since concluded, and [the r]equester has completed his sentence, the status or ‘staleness’ of a criminal matter is not relevant

for disclosure purposes.”¹⁰ *Id.* at 835. For the same reason, we hold the Lab Report is exempt from disclosure in this case.

The cases that Requester cites do not compel a different result. *DiMartino* and *Mahoney* were related appeals in which this Court determined the RTKL’s criminal investigation exception and CHRIA exempted from disclosure records relating to the deaths of the appellants’ respective sons. *See DiMartino*, slip op. at 9-14; *Mahoney*, slip op. at 8. *Mezzacappa* addressed public records requests for mugshots. 334 A.3d at 270-71. Our Supreme Court reversed this Court’s decision and concluded “a mug shot is an ‘identifiable description’ under CHRIA, and, thus, may be disseminated to individuals only by a police department.” *Id.* at 270. These cases do not stand for the proposition that criminal investigative records become subject to disclosure once an investigation has ended or when there is not a risk of harm.¹¹

CONCLUSION

For all the foregoing reasons, the Lab Report is exempt from disclosure under the RTKL’s criminal investigation exception and CHRIA, regardless of whether the criminal investigation at issue is over and whether disclosure of the Lab Report will

¹⁰ Notably, this Court explained the requester was not entitled to redaction of the incident report because, “[w]here a record falls within an exemption under Section 708(b), it is not a public record as defined by the RTKL and an agency is not required to redact the record.” *Castillo*, 310 A.3d at 836 (quoting *Pa. State Police v. Off. of Open Recs.*, 5 A.3d 473, 481 (Pa. Cmwlth. 2010) (en banc)).

¹¹ Requester’s contention that no one will be harmed presumably relates to language in the RTKL exempting from disclosure records that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual” or, with respect to criminal investigations, would endanger the victim or other individual. *See* Section 708(b)(1)(ii), (16)(v), (vi)(E) of the RTKL, 65 P.S. § 67.708(b)(1)(ii), (16)(v), (vi)(E). Here, the Court relies on Section 708(b)(16)(ii) of the RTKL and Section 9106(c)(4) of CHRIA in reaching its conclusion, which are separate provisions and do not contain language regarding a risk of harm.

result in a risk of harm.¹² Thus, we affirm the OOR’s Final Determination dated May 29, 2025.

STACY WALLACE, Judge

¹² We observe Requester does not develop any argument regarding the PSP’s position that the Lab Report is exempt from disclosure under the RTKL’s DNA exception, relating to “DNA and RNA records.” See Section 708(b)(19) of the RTKL, 65 P.S. § 67.708(b)(19). Accordingly, Requester has waived any challenge regarding the exception, which provides an additional basis for affirming the OOR’s Final Determination. See *Ward v. Potteiger*, 142 A.3d 139, 143 n.7 (Pa. Cmwlth. 2016) (quoting *Commonwealth v. Johnson*, 985 A.2d 915, 924 (Pa. 2009)) (“[W]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority[,] or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived.”) (alterations in original). To the extent Requester has not waived any such challenge, it is beyond dispute that he is seeking the DNA Profile, which is a DNA record under the plain language of the RTKL.

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ORDER

AND NOW, this 6th day of October 2026, the Office of Open Records' Final Determination, dated May 29, 2025, is **AFFIRMED**.

STACY WALLACE, Judge