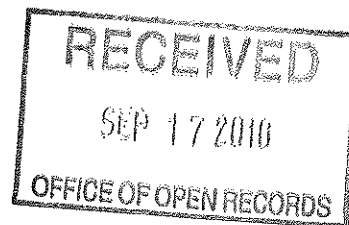


# Pennsylvania State Police

Office of Chief Counsel  
 1800 Elmerton Avenue  
 Harrisburg, Pennsylvania 17110  
 (717) 783-5568



Fax: (717) 772-2883

### FAX TRANSMISSION COVER SHEET

September 17, 2010

**Date:**  
**To:** Lucinda Glinn, Esquire, Appeals Officer  
**Fax:** 717.425.5343  
**From:** Keli Neary, Assistant Counsel *KNN*  
**Re:** *Zloczower v. PSP*, OOR Dkt AP 2010-0722  
 PSP Petition for Reconsideration  
**Memo:**

<input type="checkbox"/>	PLEASE CALL TO DISCUSS	<input type="checkbox"/>	REVIEW AND APPROVE
<input type="checkbox"/>	AS REQUESTED	<input type="checkbox"/>	REVIEW AND COMMENT
<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	PREPARE RESPONSE
<input checked="" type="checkbox"/>	NECESSARY ACTION	<input type="checkbox"/>	

YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (717) 783-5568

**Confidentiality Note:** The documents accompanying this facsimile transmission contain information that is confidential and privileged and is intended only for the use of the addressee designated above. If you are not the intended recipient, you are hereby notified that disclosure, copying, distribution or taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you receive this facsimile in error, please notify the Pennsylvania State Police, Office of Chief Counsel, at (717)783-5568, and return the original message to our office by mail.

*An Internationally Accredited Law Enforcement Agency*

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 17, 2010

*Sent Via Facsimile Transmission Only*Lucinda Glinn  
Appeals Officer  
Office of Open Records  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17120-0225Re: *Zloczower v. Pennsylvania State Police*, AP 2010-0722 (PSP/RTKL 2010-0278)  
Right-to-Know Law (RTKL), 65 P.S. §§ 67.101-67.3104

Dear Appeals Officer Glinn:

Please accept the enclosed Petition for Reconsideration, filed on behalf of the Pennsylvania State Police. Should you require additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Keli M. Neary".

Keli M. Neary  
Assistant Counsel for the  
Pennsylvania State Police  
Governor's Office of General Counsel  
717.346.8135 | [kneary@state.pa.us](mailto:kneary@state.pa.us)

Enclosure

cc. Dina Zloczower (w/ encls.)  
Jonathan Leader (w/ encls.) (*sent via electronic transmission only*)  
Cynthia L. Fisher (w/ encls.) (*sent via electronic transmission only*)



### **Criminal Investigative Exemption**

- a. OOR rejected PSP's position that the records sought by Paragraphs 1, 2, 5-10, 12, 13, and 15 of the Zloczower request were exempt under the criminal investigative exemption, RTKL section 67.708(b)(16), despite the fact that, on its face, the request is blatantly limited to records in the "criminal justice" context and "regardless of whether named as a suspect, defendant, informant, witness and/or complainant."
- b. OOR found the records sought in Paragraphs 1, 7, and 8 of the request cannot be protected under the criminal investigative exemption, 65 P.S. § 67.708(b)(16), insofar as "the Affidavit does not support the criminal investigative character" of the records sought, notwithstanding the fact that Paragraphs 1, 7, and 8 explicitly request criminal investigative records.

### **Insufficient Specificity**

- c. OOR erroneously rejected PSP's denial of the entire request on the basis of insufficient specificity, adopting a strict interpretation of *Signature Information Solutions, LLC, v. Aston Township*, 995 A.2d 510 (Pa. Commw. Ct. 2010), which directly undermines its express statutory responsibility to "admit into evidence testimony, evidence

and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute." 65 P.S. § 67.1102.

- i. Particularly, in rejecting PSP's denial on the basis of insufficient specificity, OOR entirely disregarded the reality that PSP *cannot* conduct a meaningful search for "all records indicating any of the above individuals' contact with the Pennsylvania State Police and the criminal justice system in Pennsylvania" absent a manual search of conceivably *every* PSP record.
- ii. The Affidavit of Agency Open Records Officer Cynthia L. Fisher ("Affidavit") provided uncontroverted evidence that "PSP cannot determine whether any public records are encompassed by this request without analyzing the content of every potentially responsive record presently maintained by the PSP." Affidavit, Para. N<sup>o</sup> 7. A true and correct copy of the Affidavit is attached as PSP Exhibit "B" and incorporated herein by reference. Given the breadth of this request, the pool of potentially responsive records conceivably extends to nearly every record in the Department's possession.

- d. OOR erroneously directed production of Communications Memos in response to Paragraph 3 despite PSP's uncontroverted evidence that "It is impossible to search Communications Memos by name of the parties to which the calls/transmissions relate. Rather, to locate potentially responsive Communications Memos, at a minimum [PSP] require[s] an incident number, the date of the incident, or the name of the investigating trooper." Affidavit, Para. N<sup>o</sup> 10.
- e. Notwithstanding its holdings in *Kantrowitz v. Great Valley School District*, OOR Dkt AP 2009-0646, and *Mollick v. Methacton School District*, OOR Dkt AP 2009-0180 (holding that a request is not sufficiently specific if it does not set forth a subject matter for the communications, nor identify a specific and relatively limited number of people as senders and/or recipients of the communication), OOR did not require the identification of a particular subject matter, temporal scope, or recipient list when it directed PSP produce *all* correspondence and e-mails referencing, or relating to, any of the six individuals specified in the request.

#### **Criminal History Record Information**

- f. ORR erred by concluding the requests for arrest and charges records sought in Paragraphs 7 and 8 constituted requests for a "police blotter"

because the request bears no reference to a "police blotter," nor does it request a "*chronological listing of arrests*, usually documented contemporaneous with the incident . . . ." 18 Pa. C.S. § 9102 (emphasis added). Rather, the request was for criminal history record information.

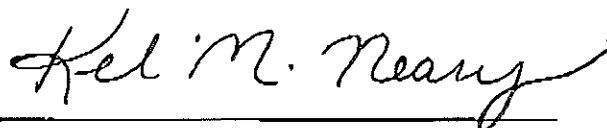
- i. Based upon this incorrect assumption, OOR mistakenly held that "the RTKL offers an alternative to CHRIA [Criminal History Record Information Act, 18 Pa.C.S. §§ 9101 – 9183,] to obtain public records not protected from disclosure by CHRIA." *Compare* *Stoval v. Pennsylvania State Police*, OOR Dkt AP 2010-0259, *and* *Stein v. Pennsylvania State Police*, OOR Dkt AP 2009-1138 (both holding that a "request for criminal history records must be made pursuant to the provisions of CHRIA and not through the RTKL"); *with* *Lebanon News Publ'g Co.*, 451 A.2d 266 (hold that disclosure of police blotters is controlled by the RTKL).
- ii. Subchapter C of CHRIA specifically addresses the dissemination of *criminal history record information*, which "is defined so as to specifically *exclude* records such as police

blotters." *Lebanon News Publ'g Co. v. City of Lebanon*, 451 A.2d 266, 268 (Pa. Commw. Ct. 1982).

- iii. By directing PSP to release arrest and charges records, OOR completely disregarded the statutory definition of "criminal history record information," 18 Pa. C.S. § 9102, and its accompanying disseminations provisions, 18 Pa. C.S. § 9121, and directs PSP to act in direct contravention CHRIA.

For the foregoing reasons, PSP respectfully requests OOR grant reconsideration of its Final Determination, hold a hearing as authorized by RTKL section 67.1102(a)(2), and deny the Zloczower request in its entirety.

FOR THE RESPONDENT,  
PENNSYLVANIA STATE POLICE:



Keli M. Neary (Pa. ID 205178)  
Assistant Counsel for the Pennsylvania State Police  
Governor's Office of General Counsel  
Pennsylvania State Police Headquarters  
1800 Elmerton Avenue  
Harrisburg, Pennsylvania 17110  
717.346.8135 (direct) | 717.772.2883 (fax)  
[kneary@state.pa.us](mailto:kneary@state.pa.us)

Dated: September 17, 2010

**PSP EXHIBIT "A"**



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

**DINA ZLOCZOWER,**  
Complainant

v.

**PENNSYLVANIA STATE POLICE,**  
Respondent

.....

Docket No. AP 2010-0722

AP-7 AM 10:06

POLICE  
CHIEF COUNSEL

OFFICE OF OPEN RECORDS  
2010 SEP 17 11:59 AM

### INTRODUCTION

Dina Zloczower (the "Requester") filed a right-to-know request with Pennsylvania State Police ("PSP"), pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.*, ("RTKL") seeking all police records related to identified persons. PSP denied access under the Criminal History Records Information Act, 18 Pa. C.S. §§9101 *et seq.* ("CHRIA"), criminal investigative and medical records exceptions and insufficient specificity. The Requester timely appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted in part and denied in part** and PSP is required to take action as directed.

### FACTUAL BACKGROUND

On June 10<sup>th</sup>, the Requester submitted a request seeking any and all police records ...referencing or relating to ...Donald Fell, Donald Fell, Sr., Deborah Fell (or Folland or Haydt or McDonald or Pecco) (nee Kotzer), Teri Fell, Ellery Wilcox and Christopher Eike" including but not limited to:

- (1) all records indicating any of the above individuals' contact with [PSP] and criminal justice system in Pennsylvania;
- (2) police reports;

- (3) dispatch logs;
- (4) shift sheets;
- (5) investigatory records;
- (6) search warrants;
- (7) charges which were withdrawn, dismissed or resulted in a conviction;
- (8) arrest records;
- (9) evidence of recovery logs;
- (10) inventory of evidence seized;
- (11) computer files and e-mails;
- (12) photographs, audio and video tapes;
- (13) handwritten notes;
- (14) diaries;
- (15) blood alcohol and drug test results;
- (16) information pertaining to mental disability and suicide screening;
- (17) medical or psychological treatment and/or evaluation  administered or recommended;
- (18) any and all communications, correspondence or documents...relating to above individuals that were transmitted to or received by [PSP]; and
- (19) all other records in your possession associated with the above individuals' contact with your law enforcement agency"

(the "Request").

After invoking a thirty-day extension, Jonathan Leader, Deputy Open Records Officer (ORO), timely denied access asserting that records sought in Paragraphs 1, 2, 5-10, 12, 13, and 15 are exempt under the criminal investigative exception, Section 708(b)(16) and as criminal history records under CHRIA, and exempted the medical records sought in Paragraphs 16-17 under (b)(5), and denied the remainder as insufficiently specific (the "Denial"). PSP included a verification of Leader that he cannot determine whether any public records are sought by Paragraphs 3, 4, 11, 14, 18 and 19 of the Request because it requires analysis of potentially every record at PSP, analysis that would require hundreds of man hours.

The Requester timely appealed, arguing PSP did not satisfy its obligations because only limited material may be available under CHRIA and CHRIA does not protect "court dockets, police blotters, or press releases" from disclosure. She argues the Request meets specificity requirements because it is limited to specific types of records and the subjects of the records are identified ("Appeal").

PSP supplemented the record with an affidavit of Cynthia Fisher substantiating the asserted exceptions and the inability to discern the records requested from the language of the Request ("Affidavit") and a letter from Assistant Counsel Keli Neary explaining PSP's defenses. In the letter, counsel explains that the Request in its entirety is insufficiently specific because PSP cannot search for the records with only the identifiers provided by the Requester, and would need details, like incident date or type of evidence, to find responsive records. Counsel advises that the Requester submitted the CHRIA form with the requisite information enabling it to perform research and provide responsive records.

Fisher attests that from the information supplied by the Requester, "PSP cannot determine whether any public records are encompassed by this request without analyzing the content of every potentially responsive record presently maintained by PSP. Given the breadth of this request, that would conceivably be every record in the Department's possession." She attests that many of the requested records are compiled as part of an investigation and exempt on that basis. Regarding "charges" and "arrests," Fisher attests the information is maintained in a name-search database, but is not permitted to be disclosed under CHRIA. Fisher attests that PSP does not possess in its custody or control any "shift sheets" or "diaries" and that it does not have records called "dispatch logs." She explains that if "dispatch logs" are generally equivalent to PSP's Communications Reports, that the Requester did not supply sufficient information to enable PSP to respond.

### LEGAL ANALYSIS

The RTKL is "designed 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. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). An appeals officer is required "to review all information filed relating to the request." 65 P.S. §67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal.

The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing and the OOR has the necessary, requisite information and evidence before it, presented through sworn, written testimony, to properly adjudicate the matter.

PSP is a Commonwealth agency subject to the RTKL and required to disclose public records. *See* 65 P.S. §67.301. Records in possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. §67.708(b). PSP asserted CHRIA, the criminal investigative exception at (b)(16), the medical records exception at (b)(5) and insufficient specificity.

PSP argued on appeal that the entire Request fails to meet specificity requirements because it cannot search its records for many of the requested records by name and dates of birth alone. However, PSP did not assert insufficient specificity to the entire Request in its initial response. The Commonwealth Court held in *Signature v. Aston Tp.*, 995 A.2d 510 (Pa. Commw. 2010), that agencies are limited to the bases for denial set forth in the original response to the right-to-know

request. Accordingly, the OOR cannot consider the alleged insufficient specificity to the Request except as to Paragraphs 3, 4, 11, 14, 18 and 19 as set forth in the Denial.

PSP also cannot be compelled to disclose records that do not exist. PSP supplied sufficient evidence to demonstrate that the records sought in Paragraphs 4, and 14 do not exist based upon the terms used and descriptor by the Requester. Accordingly, PSP has no obligation to produce them.

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: (1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence. 65 P.S. §67.708(a). Preponderance of the evidence has been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not," Black's Law Dictionary 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001). Each of the exceptions PSP asserted are addressed substantively as to each paragraph in turn.

**1. Criminal investigative exception, (b)(16).**

PSP asserts that the records sought in Paragraphs 1, 2, 5-10, 12, 13 and 15 are exempt as records "relating to or resulting in a criminal investigation" under Section 708(b)(16). The Affidavit from Fisher establishes that the records sought in Paragraphs 2, 5, 6, 9, 10, 12, 13, and 15 are only compiled and maintained in conjunction with an underlying criminal investigation. Thus, these records are exempt on that basis. However, the Affidavit does not support the criminal investigative character of records sought in Paragraphs 1, 7 and 8, so they cannot be protected. As PSP asserted no other exception with respect to Paragraph 1, those records must be disclosed. With regard to the charges and arrest records sought, PSP argues they are protected by CHRIA.

## 2. CHRIA.

PSP asserted CHRIA with regard to the arrest and charges records sought in Paragraphs 7-8. There is no dispute that the records sought are held by a criminal justice agency. CHRIA protects "investigative information" and "treatment information" from disclosure, with the exception of records specified under Section 9104 as "public." Section 9106(c)(4) provides that

investigative information and treatment information shall not be disseminated to any department, agency or individual unless [it] is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, *modus operandi*, genetic typing, voice print or other identifying characteristic.

18 Pa. C.S. § 9016(c)(4) (emphasis supplied). "Investigative information" is defined as "information 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." 18 Pa. C.S. § 9102. "Treatment information" is defined as "[i]nformation concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual charged with or convicted of a crime." *Id.* These types of information are expressly protected from disclosure, and thus exempt as a matter of law.

The Requester argues that CHRIA does not protect a number of records, including press releases, police blotters, and court dockets. 18 Pa. C.S. §9104(b). Section 9102 defines "police blotter" as "A chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses." 18 Pa. C.S. §9102. The information set forth in Section 9104(b), including the listing of arrests, is public and cannot be withheld under CHRIA.

PSP acknowledged that it can locate responsive records as the database permits searches by name. However, it argues the information can only be obtained through CHRIA. The OOR holds that the RTKL offers an alternative to CHRIA to obtain public records not protected from

disclosure by CHRIA. The charges filed against any of the named individuals are not exempt under (b)(16), *see* 65 P.S. §67.708(b)(16)(vi)(A), and charges filed are public. Thus, to the extent that such information sought in Paragraphs 7 and 8 exists as a list of arrests as set forth in 18 Pa. C.S. § 9104(b) and/or the filing of criminal charges, it must be disclosed to the Requester.

**3. Medical records exception, Section 708(b)(5).**

The records sought in Paragraphs 16 and 17 of the Request specifically seek medical information expressly protected by Section 708(b)(5). PSP's Affidavit supports the exemption of those records from disclosure, and PSP properly withholds the records sought in Paragraphs 16 and 17 based upon the exception.

**4. Insufficient specificity, Section 703.**

PSP argues that Paragraphs 3, 11, 18, and 19 are insufficiently specific. Section 703 provides that a request "should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested..." 65 P.S. §67.703. With regard to the 4 remaining paragraphs, the OOR finds that the request for dispatch logs, also known as "Communications Memos," pertaining to the named individuals is sufficiently specific for PSP to discern what records are sought. Likewise, with regard to Paragraph 11, the request for "e-mails" identifies a specific type of record, and is thus sufficiently specific to enable a response. In *PSP v. OOR (George)*, 995 A.2d 515 (Pa. Commw. 2010), the Commonwealth Court held that while a request for "any and all records, files... or communications" was insufficiently specific, the part seeking manuals was sufficiently descriptive to enable PSP to respond. The OOR finds that the term "e-mails" in Paragraph 11 and "correspondence" in Paragraph 18 are sufficient to enable PSP to respond to those parts of the Request, regardless of the effort expended in compiling responsive records.

PSP does not demonstrate that it cannot assess what records are responsive. Rather, PSP argues that it does not organize or maintain its records in a manner that would permit it to locate responsive records without a manual review of each type of records, e.g., dispatch logs/ Communication Memos. The OOR sympathizes with the plight faced by agencies receiving work-intensive requests, such as voluminous requests, but that is not a proper ground for withholding public records. As the Commonwealth Court stated in *Bowling, supra*, "we appreciate the enormity of the task before [the agency]. Nevertheless, the General Assembly's enactment of the new law evidences its commitment to providing greater access to the Commonwealth's public records." 990 A.2d 813, 826 (Pa. Commw. 2010). Thus, the OOR must order release of the dispatch logs in Paragraph 3, the e-mails (not all computer files) in Paragraph 11, and the correspondence in Paragraph 18.

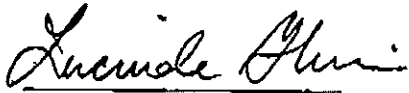
The OOR agrees with PSP that Paragraph 19 was properly denied as insufficiently specific as *George* holds the language "all [other] records" is overly broad and does not comport with Section 703.

#### CONCLUSION

For the foregoing reasons, the appeal is **granted in part and denied in part**. PSP is directed to provide responsive records to the Request at Paragraphs 1, 3, 7 (filed charges), 8 (lists of arrests), 11 (e-mails only), 18 (correspondence only) to the Requester within thirty (30) days.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal or petition for review to the Commonwealth Court. 65 P.S. §67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: September 3, 2010**



**LUCINDA GLINN, ESQ.  
APPEALS OFFICER**

Sent to: Dina Zloczower, Esq.; Keli Neary, Esq. for PSP

# **PSP EXHIBIT "B"**

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
RTKL OFFICE

AFFIDAVIT OF  
CYNTHIA L. FISHER  
AGENCY OPEN RECORDS OFFICER

Commonwealth of Pennsylvania :  
:  
:  
County of Dauphin :

BEFORE ME, the undersigned authority, personally appeared the affiant, Cynthia L. Fisher, on this 18<sup>th</sup> day of August, 2010, who having been duly sworn on her oath by me, stated the following:

1. My name is Cynthia L. Fisher. Being over eighteen years of age, I am fully competent to execute this affidavit, which avers as true and correct only the facts known to me personally and only such opinions as I am qualified to express.

2. I am a Legal Assistant Supervisory for the Pennsylvania State Police ("PSP" or "Department"), presently serving as the Agency Open Records Officer. In this capacity, I am authorized to make this statement on behalf of the Department and its Commissioner, Frank E. Pawlowski, in the interests of the Commonwealth of Pennsylvania and its citizens.

3. I assumed the duties of my present position on January 1, 2009; the effective date of the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-67.3104. My duties encompass the responsibilities specified in RTKL for Agency Open Records Officers.

4. As the Agency Open Records Officer, I am naturally quite familiar with most aspects of RTKL. Nonetheless, I consult regularly with PSP legal counsel regarding those RTKL provisions that impact significantly upon my duties and responsibilities.

5. I am respectful of the objectives embodied by RTKL and personally committed to their realization.

6. I have prepared this affidavit in response to a RTKL appeal filed by Dina Zloczower with the Office of Open Records ("OOR"), which has been docketed by OOR as AP N° 2010-0722. I do so in order to explain the reasons for denying this request.

7. From the information provided (name, date of birth, and social security number), PSP cannot determine whether any public records are encompassed by this request without analyzing the content of every potentially responsive record presently maintained by the PSP. Given the breadth of this request, that would conceivably be every record in the Department's possession.

8. Specifically, this request requires PSP to conduct "name" searches (in some circumstances, manually) of all PSP records indices for records referencing the individuals.

a. In circumstances where records are not indexed, PSP would be required to manually search every single individual record for a potential reference to any of the names in the request.

9. PSP is neither staffed nor funded to conduct such analyses, which could involve hundreds of man-hours.

10. PSP does not maintain or organize all of its records in repositories, searchable by the criteria provided in the request (name, date of birth, and/or social security number).

a. One example is a dispatch log – also referred to as "Communications Memo." The Communications Memo,

Form SP 7-002, is used to record radio transmissions between individual mobile units and the Stations. By regulation, "[t]he Communications Memo shall be prepared by Communications-Desk Unit personnel in an original only. . . The Communications Memo shall be either typed or written with a ballpoint pen. . . . A separate Communications Memo shall be prepared for each mobile unit in service during each tour of duty. . . ." *Operations Manual (OM) 7-2, Chapter 5, Communications Memo*. A complete copy of OM 7-2 is attached to this affidavit and incorporated herein by reference.

- i. Regulation requires that completed Communications Memos be submitted each morning to the station designee; all submissions are then stapled together and filed numerically in ascending order by unit number and shift.
- ii. It is impossible to search Communications Memos by name of the parties to which the calls/transmissions relate. Rather, to locate potentially responsive Communications Memos, at a minimum I require an incident number, the date of the incident, or the name of the investigating trooper.

11. Many of records described in the request are compiled and maintained only in conjunction with an underlying investigation, including

- i. Police reports;
- ii. Investigatory records;
- iii. Search warrants;
- iv. Evidence recovery logs;
- v. Inventory of evidence seized;
- vi. Photographs, audio and video tapes;
- vii. Handwritten notes;

- viii. Blood alcohol and drug test results;
- ix. Information pertaining to mental disability and suicide screening; and
- x. Medical or psychological treatment and/or evaluation either administered or recommended

I cannot search for all potentially responsive records, utilizing only a name, date of birth, and social security number. In order to locate potentially responsive records, I require additional information, including but not limited to, an incident number, date of incident, location of incident, type of incident, type of evidence seized, name of investigating trooper, etc. Absent additional information, I cannot pinpoint the repository to search. This also means that I am unable to confirm whether all potentially responsive records have been located.

12. Without additional information to guide my search, I am similarly unable to conduct a search for "computer files and emails" that relate to the specified individuals.

13. Furthermore, PSP has no records in its possession, custody, or control which are specific known as or generically referred to as "shift sheets."

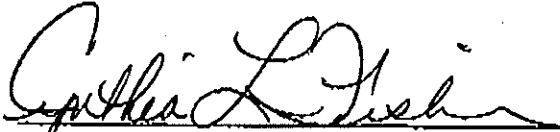
14. Likewise, PSP has no records in its possession, custody, or control which are specifically known as, or generically referred to as, "diaries."

15. Finally, as to the requests for "charges" and "arrests," this information is compiled and maintained in a name-search database. However, I am unable to disclose the results of this search except in strict accord with the provisions of the Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §§ 9101-9183.

- a. In order to comply with the dissemination provisions of CHRIA, requests for criminal history record information must be submitted to the Pennsylvania Access To Criminal History (PATCH).

16. I understand that false statements made in this verification are subject to penalties of 18 Pa. C.S. §4903, relating to false swearing.

FURTHER AFFIANT SAYETH NOT.



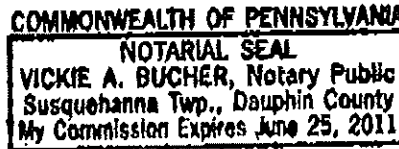
Cynthia L. Fisher  
Agency Open Records Officer  
Pennsylvania State Police

SUBSCRIBED AND SWORN TO BEFORE ME on this 18<sup>th</sup> day of August, 2010, to certify which witness my hand and seal.



Notary Public in and for the  
Commonwealth of Pennsylvania

My Commission expires:





October 5, 2010

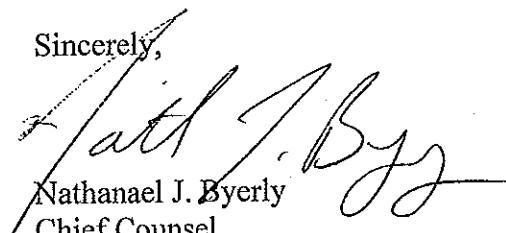
Keli M. Neary  
Assistant Counsel  
Pennsylvania State Police  
Governor's Office of General Counsel  
1800 Elmerton Ave  
Harrisburg, PA 17110

RE: Petition for Reconsideration OOR Dkt. AP 2010-0722

Dear Ms. Neary:

We are in receipt of your Petition for Reconsideration dated September 17, 2010 that was received by this office the same day in connection with the Office of Open Records Final Determination in *Zloczower v. Pennsylvania State Police*, OOR Dkt. AP 2010-0722. We hereby deny your Petition.

Sincerely,

  
Nathanael J. Byerly  
Chief Counsel

cc: Terry Mutchler, Executive Director, Office of Open Records  
Dina Zloczower, Esquire