



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>WALTER ZIMOLONG AND ZIMOLONG,</b>	:	
<b>LLC,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP 2024-2368</b>
	:	
<b>COMMUNITY COLLEGE OF</b>	:	
<b>ALLEGHENY COUNTY,</b>	:	
<b>Respondent</b>	:	

**FACTUAL BACKGROUND**

On July 17, 2024, Walter Zimolong, Esq. and Zimolong, LLC (collectively “Requester”), submitted a request (“Request”) to the Community College of Allegheny County (“Community College”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq*, seeking:

1. All student files, records, or documents for Thomas Michael Crooks.
2. All records and communication related [or] exchanged relating to Thomas Michael Crooks.
3. All disciplinary records or complaints concerning Thomas Michael Crooks.
4. All communication, email, text messages, chat sessions, or other forms of written or electronic communication containing the name “Thomas Michael Crooks.”

On August 19, 2024, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Community College denied the Request, arguing that responsive records “relate to an ongoing criminal investigation, which are exempt from disclosure under Section 708(b)(16) of the RTKL.” 65 P.S. § 67.708(b)(16). Specifically, the Community College argues that “the

records [] requested are within the scope of a grand jury subpoena issued to [the Community College] by the United States District Court for the Western District of Pennsylvania, and which the U.S. Attorney’s Office has confirmed relate to an ongoing criminal investigation.” The Community College further argues that responsive records relate to “academic transcripts and examination materials which are also exempt from disclosure under the RTKL.” *See* 65 P.S. § 67.708(b)(15).

On September 9, 2024, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>1</sup> The Requester argues, among other things, that the Community College’s “mere assertion that the records pertain to an ongoing criminal investigation or are academic in nature does not meet [the Community College’s burden of proof under the RTKL].” The Requester further asserts that “any interest [Mr.] Crook had in the secrecy of his academic records was a personal interest that terminated upon his death.” The OOR invited both parties to supplement the record and directed the Community College to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On September 23, 2024, noting that the submission period closed on September 19, 2024 and the OOR did not receive any submissions from the Community College, the OOR extended the submission period to September 30, 2024.

On September 30, 2024, the Community College submitted its position statement, reiterating its grounds for denial. The Community College further argues that the “Requester seeks all of [Mr.] Crooks’ email communications for the sole reason that they happened to be sent or received at a CCAC email address, with no further specificity as to how or if they might relate to

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<sup>1</sup> The Requester granted the OOR an extension of time to issue a 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).”).

a transaction or activity of the [Community] College.”<sup>2</sup> Finally, the Community College argues that the records are exempt from disclosure under the Family Educational Records Privacy Act (“FERPA”) and that “as a matter of public policy, the educational records of deceased Pennsylvania residents should not be available for anyone to rummage through merely because of the happenstance of their passing, and further asserts that the OOR should adopt such a position in this matter.” In support of its arguments, the Community College submitted the affidavit of Anthony DiTommaso, Esq. (“DiTommaso Affidavit”), the Vice President and Chief Legal and Administrative Officer for the Community College.

On October 25, 2024, the OOR asked the Community College to produce a copy of the referenced subpoena and specifically asked whether there was a “protective order in place or another such order barring disclosure of [the responsive] records.” The OOR further asked the Community College whether any records responsive to any portion of the Request were provided to the Requester.

On October 29, 2024, in response to the OOR’s inquiry, the Community College submitted a copy of the “Subpoena to Testify Before a Grand Jury” (the “Subpoena”),<sup>3</sup> a supplemental position statement, indicating that there “has been no protective order issued with regard to the information sought [in the Request]”, and an email<sup>4</sup> from Jessica Smolar, Esq., Chief, Economic, Cyber, National Security Crimes Section for the U.S. Attorney’s Office for the Western District of Pennsylvania.

On October 30, 2024, the OOR asked the Requester for additional time to issue a final

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<sup>2</sup> The Community College cites to *Pennsylvania Office of Attorney General v. Philadelphia Inquirer*, 127 A.3d 57 (Pa. Commw. Ct. 2015), to support its argument that “blanket requests for all emails connected to an email address are insufficiently specific so as to require a response from [an] agency.”

<sup>3</sup> The OOR notes that the Subpoena does not specifically order that the requested records be exempt from disclosure.

<sup>4</sup> The email states that “all records that [the United States] obtain[s] in response to a federal grand jury subpoena are confidential.”

determination in order to further brief and submit legal argument addressing the Pennsylvania Department of Education’s guidance on whether FERPA protects the education records of students that are deceased.<sup>5</sup> See [Does FERPA protect the education records of students that are deceased? | Protecting Student Privacy.](#)

On November 7, 2024, the Community College submitted a supplemental position statement, arguing that the responsive records are protected by FERPA and the constitutional right to privacy.

To date, the Requester has not submitted any additional argument in support of finding that the responsive records are not protected by FERPA and the constitutional right to privacy.

#### LEGAL ANALYSIS

The Community College is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301; 65 P.S. § 67.102 (defining a “State-affiliated entity” to include “a community college”). Records in the possession of a Commonwealth 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 Community College 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 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)).

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<sup>5</sup> The OOR also wanted to provide both parties the opportunity to submit additional legal argument on the privacy rights of the deceased and how that relates to the responsive records being protected.

## 1. The OOR retains jurisdiction over this appeal

The Community College argues that the requested records are exempt from disclosure pursuant to Section 708(b)(16) of the RTKL. Section 708(b)(16) exempts from disclosure “[a] record of an agency relating to or resulting in a criminal investigation.” 65 P.S. § 67.708(b)(16). Section 503(d)(2) of the RTKL states that the appeals officer designated by the district attorney of a county shall hear appeals “relating to access to criminal investigative records” in the possession of a local law enforcement agency in that county. 65 P.S. § 67.503(d)(2). Section 503(d)(2) adds that “[t]he appeals officer ... shall determine if the record requested is a criminal investigative record.” *Id.* As a result, the OOR ordinarily lacks jurisdiction over appeals involving criminal investigative records in the possession of a local law enforcement agency.

In *Silver v. City of Pittsburgh*, however, the OOR found that it had jurisdiction over records alleged to be exempt under Section 708(b)(16) that were held by the City of Pittsburgh:

Because the City alleges that the records are criminal investigative records, and the Appeals Officer for the Allegheny County District Attorney’s Office has held that the records are criminal investigative records, it appears that the OOR lacks jurisdiction over the present appeal. However, it strains credulity to imagine that the requested records — overtime report forms and correspondence regarding how said forms should be completed — are criminal investigative records and thus exempt under Section 708(b)(16) of the RTKL. The withheld records are related to a criminal investigation only in the sense that they have been obtained by the FBI as evidence during their investigation. The fact that a record becomes evidence in a criminal investigation — especially a nominally public record dealing with the expenditure of public funds — does not transform that record into one exempt from disclosure pursuant to Section 708(b)(16). The investigation at issue is not being conducted by the City, and as such, the records at issue were not created or compiled by the City in relation to a criminal investigation. *See Hayes v. Pennsylvania Department of Public Welfare*, OOR Dkt. AP 2012-0415, 2012 PA O.O.R.D. LEXIS 530 (“[A] review of case law interpreting the RTKL and its predecessor statute indicates that the investigative exemption has only been extended to protect the records of the agency carrying out an investigation”). Further, it cannot be said that these records resulted in a criminal investigation. Chief McDonald’s affidavits explain that the records were obtained by the grand jury only after the federal investigation had already begun.

Section 708(b)(16) of the RTKL protects from disclosure various records that, if disclosed, would jeopardize a criminal investigation or reveal the institution, progress, or result of a criminal investigation. See generally 65 P.S. § 67.708(b)(16); *see, e.g., Danysh v. Pennsylvania State Police*, OOR Dkt. AP 2013-1338, 2013 PA O.O.R.D. LEXIS 767 (“[T]he PSP provides sufficient evidence that the PSP undertook a criminal investigation, the PSP gathered information as part of its investigative activities related to the homicide, and that the requested photographs are a component of the Homicide Investigation Report”); *Donahue v. City of Hazleton*, OOR Dkt. AP 2013-1284, 2013 PA O.O.R.D. LEXIS (involving incident reports and “intelligence analysis” regarding the requester); *American Civil Liberties Union of Pennsylvania v. Allegheny County*, OOR Dkt. AP 2013-0807, 2013 PA O.O.R.D. LEXIS 499 (involving records regarding the County’s SWAT teams). While the withheld records may be critical evidence in the FBI’s investigation of the Bureau of Police, there is no evidence that release of these records would jeopardize the ongoing criminal investigation or reveal the progress or result of the investigation. The purpose of the RTKL is to enable citizens to scrutinize their government and make government officials accountable for their actions. *See Bowling, supra*. As such, the OOR “must ... interpret the RTKL liberally to effect its purpose.” *Allegheny County Department of Administrative Services v. A Second Chance, Inc.*, 13 A.3d 1025, 1034 (Pa. Commw. Ct. 2011). The City’s broad interpretation of the criminal investigative exemption threatens to frustrate the very purpose of the RTKL by shielding records from disclosure when an agency is accused of wrongdoing.

The requested records are incapable of being exempt under Section 708(b)(16), even if they are potentially evidence in a criminal investigation. As such, the OOR has jurisdiction over this matter.

OOR Dkt. AP 2013-1395, 2013 PA O.O.R.D. LEXIS 886.

In the present case, the Community College asserts that the requested records are related to a criminal investigation. However, the Community College has not submitted any proof establishing that the investigation at issue is being conducted by the Community College or that the requested records were created or compiled by the Community College in connection with a criminal investigation. Further, not every document that is used in an investigation is automatically deemed to be investigatory in nature. *See Pa. State Police v. Kim*, 150 A.3d 155, 158 (Pa. Commw. Ct. 2016) (finding that “records connected to a criminal proceeding are not ‘automatically exempt’ as investigative records”). To the contrary, the Community College asserts

that Mr. Crooks is the subject of an investigation and the records were obtained as part of a Grand Jury Investigation. However, the responsive records do not automatically become exempt because they have some connection to a criminal proceeding or is part of a criminal investigation. *See Pa. State Police v. Grove*, 161 A.3d 877 (Pa. 2017). Accordingly, the requested records are not exempt under Section 708(b)(16) of the RTKL, and the OOR finds that it has jurisdiction over this matter.

## **2. Items 2 and 4 of the Request are insufficiently specific**

The Community College argues that “Request[e]r seeks all of [Mr.] Crooks’ email communications for the sole reason that they happened to be sent or received at a [Community College] email address, with no further specificity as to how or if they might relate to a transaction or activity of the College.” In further support of its argument, the Community College cites to *Philadelphia Inquirer, supra*, in arguing that this is a “blanket request[] for all emails connected to an email address [and is therefore] insufficiently specific so as to require a response from the [Community College].”

Section 703 of the RTKL states that “[a] written 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. When determining whether a particular request is sufficiently specific, the OOR uses the multifactor test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* at 1125 (quoting 65 P.S. § 67.102). Second, “[t]he scope of the request must identify ‘a discrete group of documents, either by type ... or by recipient.’” *Id.* (quoting *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)). Finally, “[t]he timeframe of the request should identify a finite period of time for which records

are sought.” *Id.* at 1126 (citing *Carey, supra*). “The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request’s timeframe is narrow enough is generally dependent upon the specificity of the request’s subject matter and scope.” *Id.*

The above factors are intended “to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested.... The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements.” *Pa. Dep’t of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 \*6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting “the valid part of the request was included in a laundry list of requested materials”).

In the instant case, Item 2 seeks “[a]]ll records and communication related [or] exchanged relating to Thomas Michael Crooks[,]” and Item 4 seeks “[a]ll communication, emails, text messages, chat sessions, or other forms of written or electronic communication containing the name ‘Thomas Michael Crooks.’” Items 2 and 4 of the Request do not identify a specific subject matter (i.e. a ‘transaction or activity’ of the Community College) and instead seek instances in which Thomas Crooks’ name was mentioned. However, “[t]he absence of a stated subject matter is but one factor to consider in determining whether [a] request is sufficiently specific[,]” and “[a] requester’s failure to identify a subject matter may be accorded more or less weight depending upon other factors.” *Methacton Sch. Dist. v. Office of Open Records*, 250 C.D. 2021, 2021 Pa. Commw. Unpub. LEXIS 670 (Pa. Commw. Ct. 2021).

The scope of Items 2 and 4 of the Request is also broad in that it seeks, in essence, all forms



of communications; specifically, any “communication, emails, text messages, chat sessions, or other forms of written or electronic communication.” In *Pa. State Police v. Office of Open Records*, the Commonwealth Court held that the portion of a request seeking “any and all records, files or communications” related to vehicle stops, searches, and seizures was insufficiently specific under Section 703 of the RTKL, and that only the portion of the request seeking a particular type of document – manuals related to vehicle stops, searches, and seizures – was sufficiently specific. 995 A.2d 515, 517 (Pa. Commw. Ct. 2010). Here, the Request is not limited by a particular type of document and instead seeks any instance in which any Community College employee, discussed Thomas Crooks.

The Request does not identify potential senders or recipients within or external to the Community College. Thus, the listed potential senders and/or recipients do not aid in limiting the universe of potentially responsive records. *See, e.g., Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (concluding that a request which “does not identify specific individuals, email addresses, or even departments, but requests any applicable emails sent from the County’s domain to four other domains” was insufficiently specific); *Pa. Dep’t of Educ.*, 199 A.3d at 1124-126 (“A request for a broad category of documents, such as all records, may be sufficiently specific if confined to a particular recipient or recipients”); *see also Carey*, 61 A.3d at 372 (concluding that the scope of the request must identify “a discrete group of documents, either by type ... or by recipient”).

Finally, the Request does not include a finite timeframe that would limit the search for responsive records. Accordingly, based on the foregoing and the multifactor test employed by the Commonwealth Court in *Pa. Dep’t of Educ.*, the OOR finds that Items 2 and 4 are insufficiently

specific, given the broad scope, lack of a defined subject matter and lack of a finite timeframe.<sup>6</sup>  
*See* 65 P.S. § 67.703.

However, nothing in this Final Determination prevents the Requester from filing a more specific request for the same information, and, if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

**3. The Community College has not demonstrated that the requested records are exempt from disclosure under the Investigating Grand Jury Act**

The Community College argues that it is prohibited from providing the requested records under the Investigating Grand Jury Act (“Act”), 42 Pa.C.S.A. §§ 4541 *et seq.* Specifically, the Community College claims that:

...[T]he AUSA<sup>7</sup> for the Western District informed the [Community] College that the records provided by the [Community] College to the [AUSA] in response to the grand jury Subpoena were to be kept confidential as they were part of an active FBI criminal investigation, (*See* DiTommaso Affidavit, Exhibit C, paragraph 4). That remains true today, and the [Community] College believes it is obligated to follow the dictates of the [AUSA] unless and until it is informed by the [AUSA] and/or the FBI that the information is no longer to be considered confidential.

Federal Rule of Criminal Procedure 6(e) states that “[r]ecords, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.” In federal law, it is well settled that “if the information sought is secret grand jury material, or even ‘affects’ or ‘relates to’ grand jury proceedings, no presumptive right of access exists.” *United States v. Chang*, 47 F. Appx. 119, 121 (3d Cir. 2002) (non-precedential); *see United States v. Smith*, 123 F.3d 140,

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<sup>6</sup> Because the Community College has identified those records requested by the Subpoena (i.e. “the subject individual’s application records, academic records, student conduct records, advising records and notes, demographic information, unofficial transcripts and course schedule, and information regarding emails sent or received using Crooks’ [Community College] email address”) as being responsive to the Request, the OOR need not discuss the specificity of Items 1 and 3.

<sup>7</sup> Assistant United States Attorney.

143 (3d Cir. 1997). It is equally well-settled, however, that “information does not become a matter occurring before a grand jury simply by being presented to the grand jury, particularly where it was developed independently of the grand jury.” *Chang*, 47 F.Appx. at 121-22; see *In re Grand Jury Matter*, 697 F.2d 511, 513 (3d Cir. 1982). In *Unites States v. OMT Supermarket, Inc.*, the U.S. District Court for the Eastern District of Pennsylvania explained this reasoning as follows:

Indeed, it has been well-established in this Circuit for over 14 years that if documents exist independently of the grand jury process, they are not matters occurring before the grand jury for purposes of Rule 6(e)... The mere fact that a particular document is reviewed by a grand jury does not convert it into a ‘matter occurring before a grand jury’ within the meaning of Rule 6(e). Documents such as business records sought ... here are created for purposes independent of grand jury investigations, and such records have many legitimate uses unrelated to the substance of grand jury proceedings.

995 F.Supp. 526, 532 (E.D. Pa. 1997) (quoting *In re Grand Jury Investigation*, 630 F.2d 996, 1000 (3d Cir. 1980)).

In the instant matter, the requested records exist independently of any grand jury investigation. The Request seeks student files, records, or documents for Thomas Crooks (Item 1) and disciplinary records or complaints concerning Thomas Crooks (Item 3). There is no evidence demonstrating that any of the requested records were created for use by the grand jury or that the records did not exist prior to the grand jury investigation. Further, there is no evidence to suggest that the records are subject to a protective order issued by a supervising grand jury judge or otherwise barred from disclosure. Accordingly, there is no evidence brought forth by the Community College demonstrating that the requested records involve a “matter occurring before a grand jury.” As a result, the requested records are not prohibited from disclosure under the Act. See *Hockeimer v. City of Harrisburg*, OOR Dkt. AP 2015-1852, 2015 PA O.O.R.D. LEXIS 1654, *aff’d* Nos. 2015-CV-9102, 9288, 9289 (Dauphin County Court of Common Pleas, March 11, 2016) (holding that the Act did not serve as a basis to withhold records under the RTKL where the records

relate to agency operations and existed independently from any grand jury investigation).

#### **4. The responsive records are not protected by FERPA and the constitutional right to privacy**

As noted above, the OOR attempted to further develop this issue by providing both parties the opportunity to submit additional argument. The Community College argues, among other things, that “[g]enerally speaking, FERPA *precludes* disclosure of educational records, subject to certain exceptions which *may allow* an educational institution to disclose such records. FERPA, however, never *requires* that such records be provided, at least not to anyone other than the rights’ holder.” (emphasis in original).

Our research has revealed little authority on point concerning the application of the right to FERPA records as it relates to deceased individuals, and the Community College has not cited to any specific cases in support of its position. However, the United States Department of Education has put forth guidance on the issue of whether FERPA protects the education records of students that are deceased:

Consistent with our analysis of FERPA and common law principles, *we interpret the FERPA rights of eligible students to lapse or expire upon the death of the student. Therefore, FERPA would not protect the education records of a deceased eligible student (a student 18 or older or in college at any age) and an educational institution may disclose such records at its discretion or consistent with State law. However, at the elementary/secondary level, FERPA rights do not lapse or expire upon the death of a non-eligible student because FERPA provides specifically that the rights it affords rest with the parents of students until that student reaches 18 years of age or attends an institution of postsecondary education. Once the parents are deceased, the records are no longer protected by FERPA.*

(Emphasis added); see [Does FERPA protect the education records of students that are deceased? | Protecting Student Privacy.](#)

While the OOR recognizes the Community College’s argument that “[i]t might strike one as odd, and indeed it strikes the [Community] College as such, that a statute, which owes its very

existence to Congress' broad desire to protect students' private, personal information, ... should somehow cease to offer *any protection at all* once a student becomes deceased" (emphasis in original), the critical factor in the instant case is that there is a deceased individual who is an eligible student (a student 18 or older or in a college at any age). Accordingly, we find the United States Department of Education's guidance persuasive and find that FERPA does not prevent disclosure of the identified student records.

However, our analysis does not end here, as the Community College has raised the right to privacy argument as it relates to information concerning a deceased individual. The Pennsylvania Supreme Court has held that an individual possesses a constitutional right to privacy in certain types of personal information. *Pa. State Educ. Ass'n v. Commonwealth*, 148 A.3d 142 (Pa. 2016) ("*PSEA*"). Although the Court did not expressly define the types of "personal information" subject to the balancing test, the Court recognized that certain types of information, by their very nature, implicate privacy concerns and require balancing. *Id.* at 156-57; *see also Tribune-Review Publ. Co. v. Bodack*, 961 A.2d 110, 117 (Pa. 2008) (finding telephone numbers to constitute personal information subject to the balancing test); *Pa. State Univ. v. State Employees' Retirement Bd.*, 935 A.2d 530 (Pa. 2007) (finding home addresses, telephone numbers and social security numbers to be personal information subject to the balancing test); *Sapp Roofing Co. v. Sheet Metal Workers' International Assoc.*, 713 A.2d 627, 630 (Pa. 1998) (plurality) (finding names, home addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test).

To determine whether the constitutional right to privacy precludes disclosure of an individual's personal information, the OOR must apply the balancing test enunciated in *Denoncourt v. Pa. State Ethics Comm'n*, 470 A.2d 945 (Pa. 1983), and applied in the public

records context in *Times Publ. Co., Inc. v. Michel*, 633 A.2d 1233, 1237 (Pa. Commw. Ct. 1993), “weighing privacy interests and the extent to which they may be invaded, against the public benefit which would result from disclosure.”

Again, we note that there is little authority on point concerning the application of the right to privacy as it relates to deceased individuals, and the Community College has not cited to any specific cases in support of its position (specifically to the rights of a deceased individual). The OOR examined the expectation of privacy for a deceased individual in *Ciavaglia and The Bucks Courier Times v. Bucks Cnty.*, OOR AP Dkt. 2020-0761, in an appeal of the denial of a request for records of the County’s Health Department and Coroner’s Officer showing deaths resulting from complications of COVID-19. 2020 PA O.O.R.D. LEXIS 1528. In determining whether the responsive records were protected by the constitutional right to privacy, the OOR looked to the Lancaster County case of *County of Lancaster v. Walker and LNP Media Group*, which is persuasive in this regard. See NO. CI-18-09547 (Lancaster County Court of Common Pleas, August 23, 2019). In *Walker*, the Coroner argued that the constitutional right to privacy prohibited him from complying with the statutory obligation to deposit his records with the Prothonotary for public inspection. In addressing this argument, the Court of Common Pleas noted that there was “no case law to support the proposition that any constitutional or common-law rights to privacy apply to the dead” and explained the following:

...Under the Restatement (Second) of Torts § 6521:

The right protected by the action for invasion of privacy is a personal right, peculiar to the individual whose privacy is invaded. The cause of action is not assignable, and it cannot be maintained by other persons such as members of the individual’s family, unless their own privacy is invaded along with his.

Restatement (Second) of Torts § 6521(a). Furthermore, the right to privacy under the Pennsylvania Constitution is a “personal right.” *PSEA*, 148 A.3d at 161 (Wecht,

J., concurring) (“We have recognized that the personal right to privacy emanating from Article I, Section 1 protects one’s home address or other personal information from being disclosed by state actors unless the public interest in the dissemination of that information outweighs the potential invasion of any privacy interest.”); *see also Clayman v. Bernstein*, 38 Pa. D. & C. 543,548 (C.P. Phila. 1955) (quoting [ ] Cooley on Torts (4th ed.) 449, § 135) (“It may be conceded that [the right to privacy] is a personal right and ‘One has no right of privacy with respect to his relatives, living or dead.’”).

*Ciavaglia*, 2020 PA O.O.R.D. LEXIS at \*37 (citing *Walker* at \*10). Based on the Court’s analysis in *Walker*, the OOR rejected the County’s right to privacy argument as it related to information concerning a deceased individual. *Id.* at 37-38.

The analyses employed in *Walker* and *Ciavaglia* are instructive here. The records responsive to the Request relate to a deceased individual. The OOR has concluded that a deceased individual has no expectation of privacy that would be protected by Art. 1, § 1 of the Pennsylvania Constitution. *See Ciavaglia, supra*. In this matter, it is not necessary to balance the Requester’s asserted interest in obtaining the responsive records against the Community College’s interest in preserving the privacy interest of a deceased individual because that individual does not maintain an expectation of privacy in this information once they are deceased. *See Butler Area Sch. Dist. v. Pennsylvanians for Union Reform*, 172 A.3d 1173, 1184 (Pa. Commw. Ct. 2017) (describing factors to determine whether a privacy interest exists, including whether there is a reasonable expectation of privacy in that information). Accordingly, while the OOR recognizes the policy concerns raised by the Community College, the OOR finds that the identified records are not protected by the constitutional right to privacy and must be disclosed.

The OOR recognizes that some of the records are likely to contain personal identification information. Section 708(b)(6) of the RTKL expressly exempts from disclosure “[a] record containing all or part of a person’s Social Security number, driver’s license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses,

employee number or other confidential personal identification number.” See 65 P.S. § 67.708(b)(6)(i)(A). This exemption applies regardless of an individual’s expectation of privacy in this information. Accordingly, insofar as the identified records contain any personal identification information that is expressly exempt from disclosure under Section 708(b)(6) of the RTKL, the Community College may redact that information. See 65 P.S. § 67.708(b)(6)(i)(A).

### CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Community College is required to provide the identified records responsive to the Request (i.e. “the subject individual’s application records, academic records, student conduct records, advising records and notes, demographic information, and unofficial transcripts<sup>8</sup> and course schedule”) within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal 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 as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>9</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: November 19, 2024**

*/s/ Lyle Hartranft*

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LYLE HARTRANFT, ESQ.  
APPEALS OFFICER

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<sup>8</sup> To the extent the Request seeks academic transcripts and are identified as “unofficial transcripts”, such records are expressly exempt under Section 708(b)(15) of the RTKL. See 65 P.S. § 67.708(b)(15).

<sup>9</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).



Sent via e-file portal to: Walter Zimolong, Esq.; Robert Kelley, Esq.;  
Tony DiTommaso, Esq.