

**IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PENNSYLVANIA**

JAMES E. NOTTINGHAM,	: No. CV 2024-00420
Petitioner,	:
VS	: CIVIL ACTION - LAW
	:
COUNTY OF LYCOMING,	:
Respondent.	: Petition for Review

**OPINION AND ORDER ON
PETITION FOR REVIEW FILED PURSUANT TO 65 P.S. § 67.1302**

On May 23, 2024, this matter came before the Court for hearing on a Petition for Review filed by Petitioner James E. Nottingham (hereinafter “Nottingham”) from the Final Determination of the Pennsylvania Office of Open Records, filed April 11, 2024, (hereinafter the “Final Determination”) pursuant to 65 P.S. § 67.1302. The Final Determination was entered to Pennsylvania Office of Open Records (docket number AP 2024-0451). Nottingham testified in support of his Petition for Review by remote technology. The facts of this matter are substantially undisputed. Based upon the evidence submitted at the hearing conducted on May 23, 2024, including the testimony of Nottingham, the Court finds as follows:

Findings of Fact:

1. Nottingham is an inmate at SCI-Camp Hill.
2. On January 22, 2024, Nottingham submitted a request to Lycoming County pursuant to the Right to Know Law, 65 P.S. §§ 67.101 *et. seq.* (hereinafter the “Request”).
3. The Request consists of six (6) general descriptions for material, including the following:
 1. All criminal history information entered within 48 hours of arrest.
 2. Proof of probable cause where fog lights violate the law for identification of arrest.
 3. Weapon used to commit aggravated assault.
 4. Elements needed to prove aggravated assault.
 5. Provide elements/failure to establish elements.
 6. Provide law to hold a person never arrested.

4. Lycoming County is a local agency, which is subject to the Right to Know Law.
5. Since records in the possession of a local agency are presumed to be public, Lycoming County must establish by a preponderance of the evidence that the requested records are exempt from public access. 65 P.S. §§ 67.302, 67.305, and 67.708(a)(1).
6. Within the body of the Final Determination, the Pennsylvania Office of Open Records reached the conclusion that the Nottingham Request number 4 and 5 and 6 are not requests for specific documents, but requests for legal research.
7. During his testimony on May 23, 2024, Nottingham provided responses to questions from the Court which confirm that Nottingham Request number 4 and 5 and 6 are not requests for specific documents, but requests for legal research. The Court inquired of Nottingham what particular records he sought. In each case, Nottingham's response suggested to the Court that he sought to have Lycoming County review records available to them and determine which, if any, of those records satisfied his listed area of inquiry. Thus, Nottingham sought to have Lycoming County conduct legal research and provide him with any and all records which were identified in the course of that research.
8. Within the body of the Final Determination, the Pennsylvania Office of Open Records reached the conclusion that the Nottingham Request number 1 and 2 and 3 are requests for records which are the product of a criminal investigation.
9. During his testimony on May 23, 2024, Nottingham provided responses to questions from the Court, which confirm that Nottingham Request number 1 and 2 and 3 are requests for records which are the product of a criminal investigation. In fact, what Nottingham is requesting at Request number 1 and 2 and 3 are information which is the product of the criminal investigation which resulted in a criminal prosecution of Nottingham. Thus, Nottingham is actually seeking criminal prosecution discovery from the Office of the Lycoming County District Attorney, long after his arrest, prosecution, and conviction.
10. Lycoming County First Assistant District Attorney Martin L. Wade (hereinafter "ADA Wade") appeared at the hearing conducted on May 23, 2024. ADA Wade confirmed that Nottingham Request number 1 and 2 and 3 are information which is

the product of the criminal investigation which resulted in a criminal prosecution of Nottingham.

11. At the hearing conducted on May 23, 2024, ADA Wade identified and submitted into evidence Respondent Exhibit 1, which is his letter to Nottingham with attachments, dated May 1, 2024 (hereinafter “Exhibit 1”). Under the cover of Exhibit 1, ADA Wade provided to Nottingham his criminal history information from his 1989 arrest.
12. Within Exhibit 1, ADA Wade explains that Nottingham Request number 2 is both the results of a criminal investigation, and a request for research. Specifically, Nottingham Request number 2 seeks “proof of probable cause where fog lights violate the law for identification of arrest,” which seeks legal research on the question of whether the Commonwealth had probable cause for his arrest.
13. Within Exhibit 1, ADA Wade explains that Nottingham Request number 3 is both the results of a criminal investigation, and a request for research. Specifically, Nottingham Request number 3 seeks “Weapon used to commit aggravated assault,” which seeks legal research on the question of what instrumentality constituted a weapon for purposes of the offense of aggregated assault.

Question Presented:

1. Whether Lycoming County is required to produce to Nottingham the criminal investigation material described at Request number 1 and 2 and 3.
2. Whether Lycoming County is required to produce to Nottingham any records which resulted from research conducted by Lycoming County in response to Request number 4 and 5 and 6.

Answers to Question Presented:

1. Lycoming County is not required to produce to Nottingham the criminal investigation material described at Request number 1 and 2 and 3.
2. Lycoming County is not required to conduct research in response to Request number 4 and 5 and 6.

Discussion:

1. Lycoming County is not required to produce to Nottingham the criminal investigation material described at Request number 1 and 2 and 3.

ADA Wade appeared at the hearing conducted on May 23, 2024, and explained that the records referred to at Nottingham Request number 1 and 2 and 3 are information which is the product of the criminal investigation which resulted in a criminal prosecution of Nottingham, and that Request number 2 and 3 require legal research. That fact notwithstanding, ADA Wade provided to Nottingham a redacted version of this criminal history information from his 1989 arrest, pursuant to Request number 1.

65 P.S. § 67.708(b)(16) provides that—except as provided in subsections c and d—“A record of an agency related to or resulting in a criminal investigation” is exempt from disclosure. Further, our Commonwealth Court has held that:

[A] request necessitating the performance of traditional legal research and analysis to form the basis of a legal opinion makes the request unspecific in nature.[] Indeed, a request that explicitly or implicitly obligates legal research is not a request for a specific document; rather, it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request.

Askew v. Pa. Office of the Governor, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013).

Because Nottingham Request number 1 and 2 and 3 are either a request for records related to or resulting from a criminal investigation, or a request for legal research, or both, Nottingham is not entitled to production of those records.

2. Lycoming County is not required to conduct research in response to Request number 4 and 5 and 6.

Within the Final Determination, the Pennsylvania Office of Open Records accurately observed that Nottingham Request number 4 and 5 and 6 require legal research. As more fully set forth above, a request which requires legal research is not a request for a specific document. 65 A.3d at 993. Because Nottingham Request

number 4 and 5 and 6 are requests which require legal research, Nottingham is not entitled to production of any records pursuant to those requests.

Conclusions of Law:

1. The records described at Nottingham Request number 1 and 2 and 3 constitute criminal investigation material, which are exempt from public access. 65 P.S. § 67.708(b)(16). That fact notwithstanding, Lycoming County has produced the record related to Request number 1.
2. The records described at Nottingham Request number 2 and 3 require legal research. A records request which requires legal research is not a request for a specific document. 65 A.3d at 993. Because Nottingham Request number 2 and 3 are requests which require legal research, Nottingham is not entitled to production of any records pursuant to those requests.
3. The records described at Nottingham Request number 4 and 5 and 6 require legal research. A records request which requires legal research is not a request for a specific document. 65 A.3d at 993. Because Nottingham Request number 4 and 5 and 6 require legal research, Nottingham is not entitled to production of any records pursuant to those requests.

AND NOW, this 31st day of May, 2024, for the reasons more fully set forth above, Nottingham's Petition for Review (filed April 11, 2024) is denied.

By the Court,

William P. Carlucci, Judge

WPC/aml

CC: C.A.

District Attorney of Lycoming County

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