



**THROOP
POLICE DEPARTMENT**

201 Charles Street
Throop, Pa 18512

General Order X
Special Order
Administrative Order
Personnel Order

4.11.1

Subject:

Right to Know and Record Dissemination

Date of Issue/Reissue:

5/18/23

Rescinds:

G.O. 4.11.1 issued 10/21/22

Revision Dates:

8/7/22, 10/21/22

PLEAC References:

4.11.1

By Authority of:

Chief of Police: Andy Kerecman

Signature:

I.Purpose

The purpose of this general order is to establish guidelines necessary to comply with the Pennsylvania Right to Know Act.

II.Policy

It is the policy of the Throop Police Department to comply with the requirements of the Pennsylvania Right to Know Act (Act 3 of 2008), 65 P.S. Sections 67.101, et seq. (PLEAC 4.11.1a)

III.Procedure for Right to Know

- A. The Chief of Police serves as the Open Records Liaison for the Throop Police Department. Designated Open Records Officers for Throop Borough are:
 1. Renee O'Malley (romalley@throopboro.com) (PLEAC 4.11.1b)
- B. Borough Open Records Officer will consult with the Chief of Police on release of department records.
- C. The Chief of Police will forward all Open Records requests received by the police department to the borough open records officers for processing.

D. Unless otherwise noted in this policy, public records must be requested on the approved form submitted by regular or electronic mail or dropped off at the Throop Borough Office during normal borough business hours or at the Throop Police Station Between the hours of 9:00 a.m. to 5:00 p.m. Appropriate fees must be paid to Throop Borough prior to receiving any documentation. If a police record request is granted, the following fee scheduled will apply, on a per-item basis:

1. Accident Report - \$15.00
2. Burglary or Theft Report - \$25.00
3. Incidents Report (other than Burglary or Theft) or other documentation – \$15.00
4. Photographs - \$30.00 for the first, \$10.00 each additional

E. There shall be no limitation on the number of public records which may be requested or made available for inspection or duplication. Fees will be assessed per copy requested. (PLEAC 4.11.1d1)

F. There shall be no requirement to disclose the purpose or motive in requesting access to records which are considered public. (PLEAC 4.11.1d2)

G. Appeals

1. First appeal for police records is the Chief of Police
2. The next level of appeal for police records is the Lackawanna County District Attorneys Office, 135 Jefferson Ave, Scranton Pa, phone 570-963-6717.
3. All other appeals will be through the borough manager, then the Pa Office of Open Records.

H. Under the "Right to Know Law," exceptions are permitted under section 708. That section is repeated here, verbatim, and is incorporated into this policy:

"Section 708. Exceptions for public records.

(1) A record the disclosure of which:

(i) would result in the loss of Federal or State funds by an agency or the Commonwealth; or

(ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

(2) A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or

preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.

(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(ii) lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments; and

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

(4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.

(5) A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

(6) (i) The following personal identification information:

(A) A record containing all or part of a person's Social Security number; driver's license number; personal financial information (except as enumerated in ii below); home, (personal) cellular or

personal telephone numbers; personal email addresses; employee number or other confidential personal identification number.

(B) A spouse's name; marital status, beneficiary or dependent information.

(C) The home address of a law enforcement officer or judge.

(ii) Nothing in this paragraph shall preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and length of service of a public official or an agency employee.

(iii) An agency may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.

(7) The following records relating to an agency employee:

(i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.

(ii) A performance rating or review.

(iii) The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.

(iv) The employment application of an individual who is not hired by the agency.

(v) Workplace support services program information.

(vi) Written criticisms of an employee.

(vii) Grievance material, including documents related to discrimination or sexual harassment.

(viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.

(ix) An academic transcript.

- (8) (i) A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.
- (ii) In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.
- (9) The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency.
- (10) (i) A record that reflects:
- (A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.
- (B) The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.
- (ii) Subparagraph (i)(A) shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7. A record which is not otherwise exempt from access under this act and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record.
- (iii) This paragraph shall not apply to a written or Internet application or other document that has been submitted to request Commonwealth funds.
- (iv) This paragraph shall not apply to the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinion.
- (12) Notes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.

(13) Records that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

(15) (i) Academic transcripts

(ii) Examinations, examination questions, scoring keys or answers to examinations. This subparagraph shall include licensing and other examinations relating to the qualifications of an individual and to examinations given in primary and secondary schools and institutions of higher education.

(16) A record of an agency relating to or resulting in a criminal investigation, including:

(i) Complaints of potential criminal conduct other than a private criminal complaint.

(ii) Investigative materials, notes, correspondence, videos and reports.

(iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.

(iv) A record that includes information made confidential by law or court order.

(v) Victim information, including any information that would jeopardize the safety of the victim.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

(B) Deprive a person of the right to a fair trial or an impartial adjudication.

(C) Impair the ability to locate a defendant or codefendant.

(D) Hinder an agency's ability to secure an arrest, prosecution or conviction.

(E) Endanger the life or physical safety of an individual.

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. 9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa.C.S. 3754(b) (relating to accident prevention investigations).

(17) A record of an agency relating to a noncriminal investigation, including:

- (i) Complaints submitted to an agency.
- (ii) Investigative materials, notes, correspondence and reports.
- (iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.
- (iv) A record that includes information made confidential by law.
- (v) Work papers underlying an audit.
- (vi) A record that, if disclosed, would do any of the following:
 - (A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.
 - (B) Deprive a person of the right to an impartial adjudication.
 - (C) Constitute an unwarranted invasion of privacy.
 - (D) Hinder an agency's ability to secure an administrative or civil sanction.
 - (E) Endanger the life or physical safety of an individual.

(18) (i) Records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.

(ii) This paragraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.

(19) DNA and RNA records.

- (20) An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.
- (21) (i) Draft minutes of any meeting of an agency until the next regularly scheduled meeting of the agency.
- (ii) Minutes of an executive session and any record of discussions held in executive session.
- (22) (i) The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to the following:
- (A) The leasing, acquiring or disposing of real property or an interest in real property.
- (B) The purchase of public supplies or equipment included in the real estate transaction.
- (C) Construction projects.
- (ii) This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.
- (23) Library and archive circulation and order records of an identifiable individual or groups of individuals.
- (24) Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.
- (25) A record identifying the location of an archaeological site or an endangered or threatened plant or animal species if not already known to the general public.
- (26) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offer requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of

agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).

(27) A record or information relating to a communication between an agency and its insurance carrier, administrative service organization or risk management office. This paragraph shall not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.

(28) A record or information:

(i) identifying an individual who applies for or receives social services;
or

(ii) relating to the following:

(A) the type of social services received by an individual;

(B) an individual's application to receive social services, including a record or information related to an agency decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the agency and the identity of a caregiver or others who provide services to the individual; or

(C) eligibility to receive social services, including the individual's income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

(29) Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services.

This paragraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbyist disclosure).

(30) A record identifying the name, home address or date of birth of a child 17 years of age or younger."

B. Records protected by the attorney-work-product doctrine, attorney-client privilege, or other privilege recognized by a court interpreting the laws of the Commonwealth of Pennsylvania (i.e., Statute or case law).

C. Records exempt from disclosure under any other federal or state law or regulation, judicial order, or decree."

- F. Juvenile Records: Refer to General Order 4.7.1 for further information on juvenile records. Unless a charge of juvenile delinquency is transferred for criminal prosecution under section 6355 of the Juvenile Act, or the court otherwise orders, the records and files of a juvenile shall not be open to public inspection or their contents disclosed to the public.
- G. The Open Records Officer will make a good faith effort to determine if the record requested is a public record and respond as promptly as possible under the circumstances existing at the time of the request.
- H. This policy shall be posted for public view in the lobby of the police station as well as on the police department's website. Additionally, the following information shall also be made available: (PLEAC 4.11.1c)
 - 1. Contact information for the open-records officer
 - 2. Contact information for the Office of Open Records and the District Attorney for appeals.
 - 3. The Right to Know / Open Records Request Form

IV. Procedure for Dissemination of Records Outside of Right to Know Requests

- A. Purpose: to provide guidance for the dissemination of accident reports and related materials. Such dissemination is to be done by command staff or records personnel. All requests of this nature are to be referred to those personnel.
- B. Accident Requests (ONLY)
 - 1. Non-reportable Accidents
 - a. Incident reports for involved parties (driver, owner, insurance company) can be released without a Right to Know request, however, medical information and juvenile information will be redacted unless the juvenile is a driver or owner of the vehicle.
 - b. Incident reports for requestors who are not involved are only available via a written Right to Know request. Medical, juvenile and criminal history/arrest information, with the exception of DUI and citations for actions directly contributing to the crash will be redacted. Narratives are not provided to uninvolved parties.
 - c. An unredacted incident report, does not get released as part of a request for a Non-Reportable Accident, nor do any re- construction reports. These items are available under subpoena only.
 - d. CAD information is not Throop Police Department generated information and must be obtained from Lackawanna County Communications.
 - e. RIGHT TO KNOW form is NOT required for parties to the accident or their insurance companies. Other parties must fill out the RTK request. We will

not do this for them. We will assist if they are infirm or are confused by the form.

- f. Third-party requestors will receive only the first and last pages of the accident report form, and no personally identifiable information (such as dates of birth, driver's license numbers, or vehicle registration information).

2. Reportable Accidents

a. Reportable Crash Form:

- 1) INVOLVED PARTIES: Available to all parties of the crash (and their insurance companies) with medical information relating to the other party redacted. Juvenile operator/owner information does not have to be redacted. Also, all investigative information relating to crimes or arrest, with the exception of those that directly contributed to the accident (such as DUI), shall be redacted.
- 2) UNINVOLVED PARTIES: All juvenile and medical information will be redacted. All investigative information relating to crimes or arrest, shall be redacted.

- b. Incident reports are only available via a written Right to Know request. Medical, juvenile and criminal history/arrest information, with the exception of DUI and citations for actions directly contributing to the crash will be redacted. Narratives are not provided. Only the synopsis, redacted as appropriate, is provided.
- c. The incident report does not get released as part of a request for a Reportable Accident, nor do any re-construction reports. These items are available under subpoena only.
- d. CAD information is not Throop Police Department generated information and must be obtained from Lackawanna County Communications.
- e. RIGHT TO KNOW form is NOT required for parties to the accident or their insurance companies. Other parties must fill out the RTK request. We will not do this for them. We will assist if they are infirm or are confused by the form.
- f. Third-party requestors will receive only the first and last pages of the accident report form, and no personally identifiable information (such as dates of birth, driver's license numbers, or vehicle registration information).

C. A subpoena for any accident will result in the whole document being released.

D. With regards to criminal matters outside of DUI and traffic tickets relating to the crash, command staff discretion will prevail with regard to redaction.

E. MEDICAL INFORMATION: The fact that a subject was assessed by EMS personnel, was transported to a medical facility or was assessed by ER personnel is not medical information. References to a specific condition or injury will be redacted. Legal blood draws for DUI are not medical information.

F. If a request is more complicated than stated in this section, records personnel or command staff shall seek clarification from the Chief of Police, who may consult the solicitor or District Attorney, as needed.

- G. Telephonic requests are NOT considered right-to-know requests until such time as they are presented in writing. All requests except for initial issuance of exchange sheet are subject to fees.
- H. Accident reconstruction and total station information is not subject to right to know and must be subpoenaed from the agency who originally generated the document (i.e., PSP or other assisting agency).
- I. In all cases, when a crash report is disseminated, all dates of birth shall be redacted
- J. Identity theft victims, by law, may receive a redacted copy of their incident report or a summary or receipt of that report at no charge.

V. Act 22 Video Requests

- A. Body-worn and in-car camera requests are not subject to right to know. Instead, these are governed by Act 22 and, as such require a different request process.
- B. Borough offices shall obtain the request on an Act 22 form.
- C. The Chief of Police or his designee shall review video for applicability and shall render a decision based on the provisions of Act 22.
- D. If the request is granted, a fee of \$100 per video shall be charged.

VI. Verification of Incident Report

- A. When a party to an incident requests an incident report from an officer the following will be followed.
 - 1. Locate the "VERIFICATION OF INCIDENT REPORT" form (TPD 16) in PowerDMS.
 - 2. Print and fill out the form including:
 - a. Nature of incident
 - b. Victim (if victim is requestor)
 - c. Incident number
 - d. Date of incident
 - e. Synopsis (leaving out names of non-requesting parties)
 - f. Investigating officer's name
 - 3. Pass on that form to the requesting person
 - 4. Scan the completed Verification form in the incident in multimedia
- B. This will be the only form reflecting the Throop Police department has an incident report on file.

- C. If this form is insufficient for the requestor, they shall be advised to file a Right-to-Know request with the borough office.