

**IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION**

**THE MORNING CALL and
LINDSAY WEBER,**

Petitioners,

v.

CITY OF ALLENTOWN,

Respondent.

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NO. 2026-C-2695

CIVIL ACTION

ASSIGNED TO:

The Honorable J. Brian Johnson

**BRIEF IN SUPPORT OF PETITION FOR REVIEW
UNDER THE RIGHT TO KNOW LAW**

HISTORY OF THE CASE

On July 10, 2026, Petitioners Lindsay Weber and The Morning Call filed with this Court a Petition (“Petition”) for Review Pursuant to 65 P.S. § 67.1302(a). Petitioner Lindsay Weber is an adult individual employed as a reporter at The Morning Call, an online and print news outlet serving the Lehigh Valley. Both Ms. Weber and The Morning Call’s business address is PO Box 1260, Allentown, PA 18105. The City of Allentown (“City” or “Allentown”) is the Respondent. Its address is 435 Hamilton Street Allentown, PA 18101.

The Petition stems from an April 20, 2026 public records request made by Ms. Weber and the Morning Call (together, “Requesters”) requesting records from the City pursuant to the Pennsylvania Right to Know Law (hereinafter “RTKL”), 65 P.S. §§ 67.101 *et seq.* (the “Request,” Ex. 2 to Petition). The Request sought, among other records, “all existing raw aggregated data of the Allentown Police Department’s searches on its Flock Safety License Plate Reader systems, including the dates and reasons logged for the search, not including confidential information like License Plate numbers or personal identities.” Ex. 2 to Petition. On April 20, 2026, the City’s Right to Know Law officer, Bridget Winter, sought clarification from Requesters about the nature of the request. In an email dated April 20, 2026, Weber clarified that she was seeking the “organization audit” for the Flock cameras. Pammer Affidavit, Ex. 5 to Petition. On April 27, 2026, Ms. Winter issued a final determination denying the Request, asserting that the requested information was exempt from disclosure under Section 708 of the RTKL and the Criminal History Records Information Act (“CHRIA”), citing 18 Pa.C.S. §§ 9102 and 9106. Final Determination, Ex. 3 to Petition.

On May 7, 2026, Requesters appealed the City’s denial of the Request to the DA Appeals Officer. Under RTKL Section 503(d)(2), appeals that allegedly include criminal investigative records are appealed to the county District Attorney’s office rather than the state Office of Open

Records. Before the DA Appeals Officer, the City submitted the affidavit of City of Allentown Police Department Captain of Administration Kyle Pammer. On June 11, 2026, the DA Appeals Officer affirmed the City's denial of the requested records.

After the Petition was filed on July 10, 2026, the City filed its Answer to the Petition for Review on July 29, 2026. On July 30, 2026, Judge J. Brian Johnson issued an order scheduling oral argument for September 30, 2026 and directing filing of briefs in advance. This brief is filed in accordance with the July 30, 2026 order.

STATEMENT OF PERTINENT FACTS

With their national network of automatic license plate readers ("ALPRs") and gunshot-detection technology, Flock Group, Inc. d/b/a Flock Safety (hereinafter "Flock") has captured national attention over the past few years and found itself the heart of a larger debate about privacy, modern technology, and law enforcement. *See, e.g.,* Kashmir Hill, *How Flock Cameras Took Over America*, N.Y. Times, <https://bit.ly/3TuKnp7> (Aug. 31, 2026). Allentown's partnership with Flock began in 2024 with the installation of 67 ALPRs, as well as gunshot-detection technology. *See* Lindsay Weber, *Police Say Surveillance Technology a Real Help*, the Morning Call (June 24, 2024), attached news coverage, Exhibit A.¹ Flock is a corporation formed in Delaware with its principal office based in Atlanta, Georgia. *See* attached Pennsylvania Department of State business registration, Exhibit B. Allentown's contract with Flock states that it is providing, for a 60-month term, a "connected platform, comprised of License Plate Reader (LPR), live video, audio detection and a suite of integrations (AVL, CAD

¹ Pa.R.E. 902(6) ("The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted: . . . Newspapers and Periodicals. Material purporting to be a newspaper or periodical"). The PDFs of the cited news stories published in The Morning Call may be found in Exhibit A, attached.

& more), [that] alerts law enforcement when an incident occurs and turns unbiased data into objective answers that increase case clearance, maximalize resources and reduce crime – all without compromising transparency or human privacy.” Flock and Allentown contract, Exhibit B to Joint Stipulations at 2. The five-year contract will cost the City nearly one million dollars. *Id.* at 6.

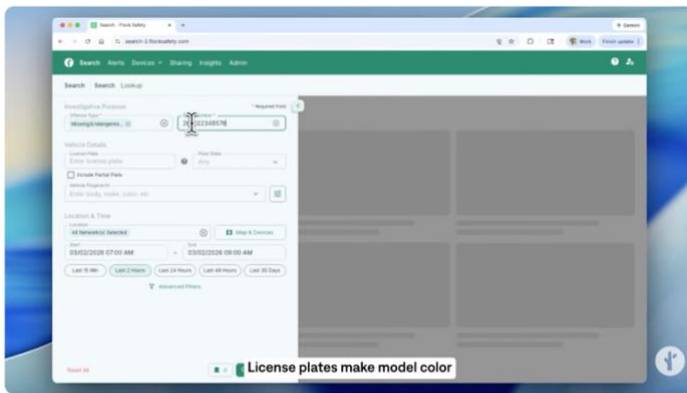
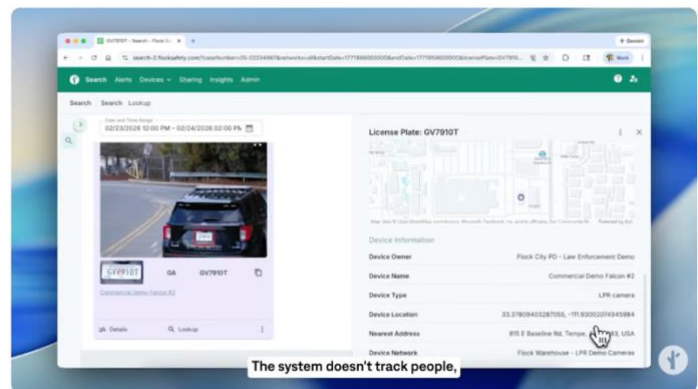
Flock’s ALPRs “capture license plates and vehicle characteristics, creating objective, searchable evidence that helps investigators identify leads and connect related incidents.” *License Plate Recognition Cameras*, Flock (Aug. 13, 2026) <https://perma.cc/EW7H-ZBBC>.² These cameras run automatically, creating a visual record of every vehicle that drives past the camera, regardless of any connection to a criminal investigation. As of last year, the cameras do not capture the speed of the vehicle, nor can they identify the occupants of the vehicle. Mem. and Order at 3, *United States v. Jackson*, 24-CR-10010-JWB (D. Kan. May 29, 2025), attached as Ex. C. The photos taken are then uploaded to an encrypted cloud system that law enforcement can search. *Id.*

The Flock system selects the best photo taken by the ALPR and saves it to the online system. *Id.* Once the data is captured, the Flock system creates a “vehicle fingerprint” of the vehicle and uses artificial intelligence to flag vehicle identifiers such as make, model, color, and

² Requesters include the information in this section, all of which comes from Flock’s own website and promotional information, and which is properly subject to judicial notice, to provide the Court with the general context underlying this dispute. At least one federal district court has taken judicial notice of similar information from Flock’s website. See Mem. and Order, *United States v. Jackson*, 24-CV-10001-JWB (D. Kan. May 29, 2025) (Exhibit C). In Pennsylvania, whose rule matches that of the federal court system, a judge may take judicial notice when the fact “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” 225 Pa. Code Rule 201(b). This is true of factual information that comes directly from the Flock website and videos posted to the Flock website. In the *Jackson* case, an attorney representing Flock stated that it was his understanding that the information on the Flock website is generally accurate. A true and correct copy of the transcript from that case is attached as Exhibit D. The statements from Flock attorney Michael Molina can be found on page 119, lines 1–11.

other defining features. *Id.* It also tags the footage with the geographic location of the camera, allowing for officers to narrow their searches to specific geographic locations. *Id.* The data is stored on Flock's network, where it can be searched from anywhere in the country by agencies that opt into data sharing. *Id.* A "broad, searchable network of aggregated data" exists for each agency that utilizes Flock cameras. *Id.* at 4.

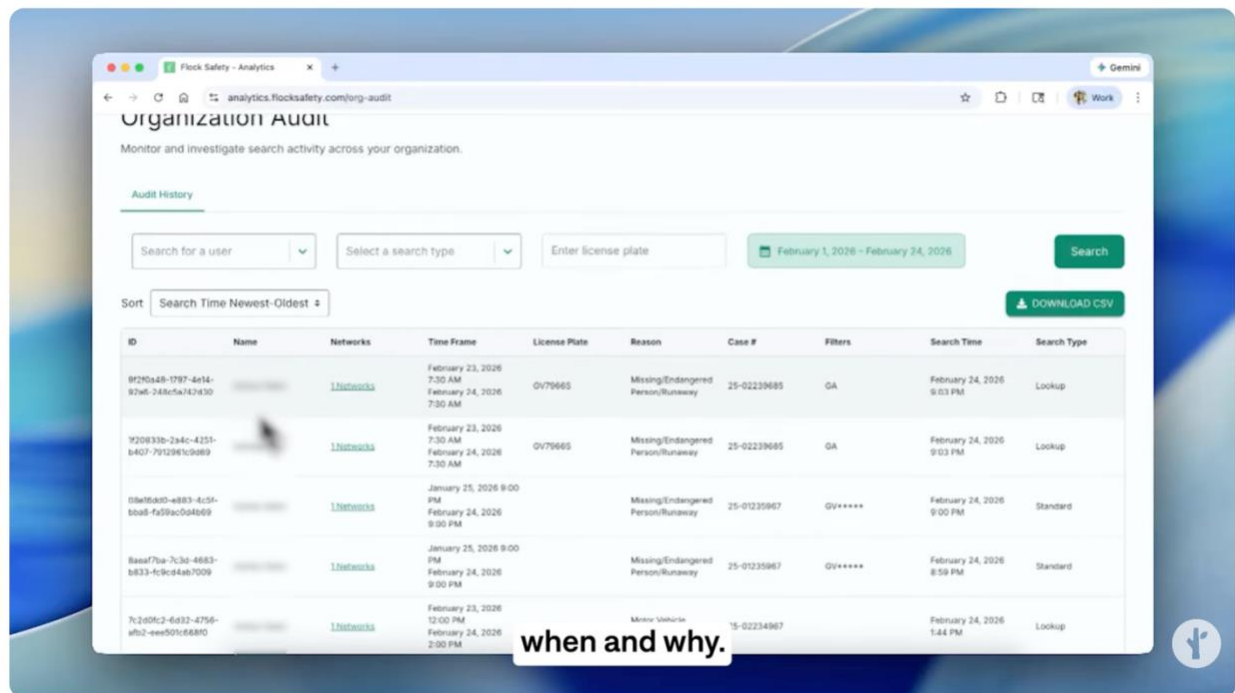
When a Flock search is conducted, visual footage from Flock cameras helps officers track the movement of vehicles. Flock, *What Flock License Plate Readers Actually Do (and What They Don't)*, YouTube (Apr. 14, 2026) <https://bit.ly/4h819ED>. Screenshots from Flock's online tutorial show what the interface looks like when an officer is searching for a specific car. *Id.* at 0:25–34. On the page, an officer is prompted to enter information such as the license plate (if they know it), identifying information about the vehicle, and the geographic location they are searching. Alternatively, an officer can pull up a camera's feed and watch for the cars that drove by at a specific point in time.



The Flock system automatically generates what are called "organization audits," which collate information about each search performed by a member of each agency. Flock describes these audits as a "record that everyone can trust." Flock, *How Flock Ensures Transparency and Accountability in Public Safety Technology*, YouTube (Apr. 21, 2026) <https://bit.ly/471aRlb>.

Flock explains that the audit is intended to give agency administrators an “understanding [of] how their users are using the system” to ensure that “users are staying within agency policies” and Flock, *Who Can Access Flock Data and How It’s Controlled*, YouTube 1:18, 0:38–40 (Apr. 21, 2026) <https://bit.ly/4hcaRUe>.

A sample of an organization audit from Flock’s YouTube channel shows the fields that are commonly found in the audit log. Flock, *Who Can See Flock Data? How Sharing Controls and Audits Really Work*, YouTube 0:20 (Apr. 14, 2026) <https://bit.ly/3VypvOd>.



The screenshot displays the 'Organization Audit' page in the Flock Analytics interface. The page title is 'Organization Audit' with a subtitle 'Monitor and investigate search activity across your organization.' Below the title, there are search filters: 'Search for a user', 'Select a search type', 'Enter license plate', and a date range 'February 1, 2026 - February 24, 2026'. A 'Search' button is present. Below the filters, there is a 'Sort' dropdown set to 'Search Time Newest-Oldest' and a 'DOWNLOAD CSV' button. The main content is a table with the following columns: ID, Name, Networks, Time Frame, License Plate, Reason, Case #, Filters, Search Time, and Search Type. The table contains five rows of data, all showing 'Missing/Endangered Person/Runaway' as the reason for the search.

ID	Name	Networks	Time Frame	License Plate	Reason	Case #	Filters	Search Time	Search Type
8f205a5b-1797-4e14-826e-248c5a7d7d30	[REDACTED]	1 Network	February 23, 2026 7:30 AM February 24, 2026 7:30 AM	GV79665	Missing/Endangered Person/Runaway	25-02239685	GA	February 24, 2026 9:03 PM	Lookup
920833b-294c-4251-b407-7912961c9d89	[REDACTED]	1 Network	February 23, 2026 7:30 AM February 24, 2026 7:30 AM	GV79665	Missing/Endangered Person/Runaway	25-02239685	GA	February 24, 2026 9:03 PM	Lookup
08a6f6a0-e883-4c5f-b0a8-fa59ac0a4b69	[REDACTED]	1 Network	January 25, 2026 9:00 PM February 24, 2026 9:00 PM		Missing/Endangered Person/Runaway	25-01235967	GV*****	February 24, 2026 9:00 PM	Standard
8a0a77ba-7c3d-4883-b833-4c9c84ab7009	[REDACTED]	1 Network	January 25, 2026 9:00 PM February 24, 2026 9:00 PM		Missing/Endangered Person/Runaway	25-01235967	GV*****	February 24, 2026 8:59 PM	Standard
7c3d9fc3-4d32-4756-af02-ee0501c6880	[REDACTED]	1 Network	February 23, 2026 12:00 PM February 24, 2026 2:00 PM		Missing/Endangered Person/Runaway	25-02234967		February 24, 2026 1:44 PM	Lookup

Who can See Flock Data? How Sharing Controls and Audits Really Work



As reflected in these materials, a standard organization audit includes rows of data showing for each search of the Flock system the search time, stated reason for the search, and the filters the searcher used when conducting the search. The example from the Flock YouTube includes: ID, Name, Networks, Time-Frame, License Plate, Reason, Case #, Filters, Search

Time, and Search Type. Columns that include private information, such as the license plate, can be redacted *en masse*, essentially creating an entirely anonymized log. *See, e.g.*, Org. Audit from Forest Park., Ex. B to Proposed Finding of Facts.

STATEMENT OF QUESTIONS INVOLVED

1. Did the District Attorney Appeals Officer (“Appeals Officer”) err when she determined the City had met its burden to show that CHRIA and the RTKL applied to the Flock organization audit?

Suggested answer: yes.

2. Is the Flock organization audit a criminal investigative record for the purposes of CHRIA?

Suggested answer: no.

3. Is the Flock organization audit a record related to a criminal investigation for the purposes of the RTKL?

Suggested answer: no.

ARGUMENT

In denying the request, the City relies on provisions of CHRIA that preclude disclosure of certain “criminal history record information,” “intelligence information,” and “investigative information” (18 Pa C.S. § 9106), and section 708(b)(16) of the RTKL, which exempts “record of an agency relating to or resulting in a criminal investigation” from the statute’s disclosure obligations. Under both statutes, the agency withholding otherwise public records has the burden to establish that the records may (or must) be withheld. *See Toland v. Pa. Bd. of Prob. & Parole*, 311 A.3d 649, 670 (Pa. Cmmw. Ct. 2024) (“[agency] has the burden of showing that CHRIA applies”), *aff’d on other grounds*, 344 A.3d 744 (Pa. 2025); 65 P.S. § 67.708(a) (“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”).

As further explained below, the City has not remotely met its burden to show that either statute applies. And, moreover, because the Flock organization audit is not an investigatory tool, the City cannot possibly meet that burden. As a matter of law, neither the CHRIA nor RTKL provisions the City relies on apply to the records of a Flock organization audit. Moreover, even if a Flock organization audit somehow did contain or reflect material related to a criminal investigation, the RTKL expressly provides that the exceptions to disclosure “shall not apply to aggregated data” that “relate to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories.” 65 P.S. § 67.102; 65 P.S. § 67.708(d). That is precisely what a Flock organization audit contains.

Accordingly, for all of these reasons, the Court should order the City to disclose the requested records.

I. The City did not meet its burden in establishing that the Flock organization audit is protected criminal investigation information under CHRIA or investigative material under the RTKL.

The Appeals Officer’s ruling should be overturned in the first instance because the City did not meet its burden of establishing that either the CHRIA provisions or RTKL exemptions applied to the requested records. CHRIA regulates how certain categories of criminal background information may be collected and used by employers and agencies. It allows for the release of “criminal history record information” but specifically states that “intelligence information, investigative information, and treatment information” cannot be released. *Toland*, 311 A.3d at 669. The burden of establishing that otherwise public records contain “intelligence information, investigative information, [or] treatment information” falls squarely on the agency. *Id.* Likewise, under the RTKL, an agency can withhold “[a] record of an agency relating to or

resulting in a criminal investigation,” but it is the agency’s burden to establish that this—or any other—exemption applies. 65 P.S. § 67.708(a), (b)(16).

Here, the City did not meet its initial burden to show that the organization audit falls within any of three categories of records protected by CHRIA or the narrow exemption under the RTKL.

CHRIA specifically distinguishes “criminal history record information” from “investigative information,” providing that the latter “shall not be disseminated to any department, agency or individual” other than criminal justice agencies acting in their official capacities. § 9106(4). Investigative information is defined as “[i]nformation assembled as a result of the performance of any inquiry, formal or informal, *into a criminal incident or an allegation of criminal wrongdoing.*” 18 P.S. § 9102 (emphasis added). In asserting CHRIA as justification for withholding records, the City must show why the records are exempt by submitting affidavits from employees. *See Toland*, 311 A.3d at 670 (holding that the agency had “not carried its burden of showing any privilege created by CHRIA applies” where the agency’s “memorandum refers broadly to the documents requested as ‘protected information,’” but “at no point ... provide[d] any analysis as to why the information [the requester] seeks amounts to one of the three types of protected information”).

Here, the City provided no information for how the organization audit would actually be used in an investigation. Rather, the only evidence introduced was an affidavit from Allentown Police Department Captain of Administration Kyle Pammer that states in a wholly conclusory manner based on “consultation with the Solicitor’s Office,” that “the Flock Organization Audit consists of criminal history record information, intelligence information, and investigative information which are all exempt from disclosure under the RTKL and the Criminal History

Records Information Act (CHRIA).” Ex. 5 to Petition ¶ 7. But if an attestation simply “mirrors the statutory language and contains no details or facts revealing that the information is *investigative information* exempt from disclosure under ... CHRIA,” the agency has not met its burden in showing CHRIA applies. *Boyle v. Dep’t of Corr.*, 349 A.3d 244, *5 (Pa. Cmmw. Ct. Oct. 23, 2025) (unpublished table opinion) (emphasis in original).

In his attestation, Captain Pammer simply recites the definitions found in CHRIA and the RTKL and concludes, without any factual basis or meaningful analysis, that the audit falls within those definitions. Pammer attests that the Flock audit “is the searches conducted internally by the Allentown Police Department Officers and staff pertaining to criminal investigations being conducted by the Allentown Police Department.” Ex. 5 to Petition at 1. The next paragraph consists only of definitions from CHRIA and the RTKL that are copied and pasted from the denial Allentown’s Right-to-Know Officer initially sent Ms. Weber. Ex. 5 to Petition at 2; *compare* Ex. 3 to Petition at 2. Simple re-statements of the law do not meet the burden imposed on the agency to show *how* these records are used in an investigation. *See Toland*, 311 A.3d at 670.

The City fares no better in establishing that an RTKL exemption applies. An affidavit from an officer *may* meet an agency’s burden of showing that the exception applies, but “[t]he affidavit must be detailed, nonconclusory, and submitted in good faith,” and an affidavit that, like Captain Pammer’s, “merely tracks the language of the exception it presupposes is insufficient to demonstrate that the responsive records are exempt from disclosure.” *Pa. State Police v. Muller*, 124 A.3d 761, 765 (Pa. Cmmw. Ct. 2015).

Outside of the conclusory assertions in Captain Pammer’s affidavit, the City has given no explanation for how a list of “searches conducted internally” contains any investigative material,

65 P.S. § 67.708(b)(16), nor is there any explanation for how the aggregated audit itself would be used in the course of any investigation. Accordingly, Allentown has not met its burden of showing that CHRIA or the RTKL applies to these records.

As discussed below, publicly available information about Flock organization audits (from Flock itself) suggests that the City could not meet this burden in any event, since the creation and function of organization audits place the records well outside of these definitions. But the Court need not even go down that road to conclude that the Appeals' Officer's ruling in favor of the City was in error. All the City has presented is conclusory recitation of language from the statute. That is insufficient under both CHRIA and the RTKL. For that reason alone, the Court should overturn the decision and direct the City to produce the requested records.

II. The Flock organization audit is not investigative information under CHRIA and any potential investigative information can be redacted.

Even setting aside the City's failure to meet its burden of proof, based on information of which the Court take judicial notice, the Court should find as a matter of law that the requested Flock organization audit records do not constitute "investigative information" under CHRIA. And even if they contained some information that fell within those provisions, that information may be redacted, with the remainder of the records disclosed to the public.

A. The records sought are not "investigative information."

The Flock organization audit is not protected "investigative information" under CHRIA and therefore must be released. 18 P.S. § 9106. To be sure, it is conceivable that some information from within a Flock organization audit could somehow end up being used in an investigation—but, under Pennsylvania law, that does not mean the information automatically falls within the CHRIA definition of "investigative information."

Under CHRIA, investigative information is “[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing.” 18 P.S. § 9102. This definition is not so broad that “the mere fact that a record has some connection to a criminal proceeding” becomes exempt; rather, it applies to “records *created* to report on a criminal investigation or set forth or document evidence in a criminal investigation.” *Pa. State Police v. Grove*, 119 A.3d 1102, 1108 (Pa. Cmmw. Ct. 2015) (“*Grove I*”) (emphasis added). Examples of records that courts recognize would contain investigative information are “reports of death investigations, criminal complaint files, witness statements, [and] incident reports.” *Lebanon Cnty. v. Hoyer*, 2016 WL 7118980, at *6 (Pa. Cmmw. Ct. Dec. 7, 2016) (collecting cases).

In *Grove I*, the court found that dash camera video recordings “are created to document troopers' performance of their duties in responding to emergencies and in their interactions with members of the public, not merely or primarily to document, assemble or report on evidence of a crime or possible crime.” *Grove I*, 119 A.3d at 1108. The cameras automatically turn on when the officers' lights or sirens are turned on, “[which is] a ‘non-investigative event.’” *Id.* This is true even where dash camera videos may become evidence in individual criminal investigations after the fact. The routine monitoring of how a police officer interacts with the public is not an investigatory tool. *Id.* Similarly, there is no dispute that organization audits are automatically created by Flock regardless of whether the police department initiates any type of investigation.

Flock organization audits are not created or used for an investigative purpose; they are automatically generated and maintained to ensure that officers are using Flock in accordance with agency policies. An organization audit is therefore unlike, for example, a list of convicted sexual offenders, which the police department creates and maintains for the specific purpose of

aiding potential future investigations. *See Dep't of Auditor Gen. v. Pa. State Police*, 844 A.2d 78, 83 (Pa. Cmmw. Ct. 2004) (finding that the list of names was compiled “as an investigatory tool”). If an officer were to utilize Flock during an investigation, the officer would conduct a search in the Flock *system*, not in the Flock organization audit.³ The investigative material is the actual visual depiction of the vehicle searched or the camera feed reviewed by law enforcement, which Ms. Weber is not seeking.

B. Organization audits are routinely released to the public and demonstrate how redaction can be used sparingly to comply with privacy laws.

Public reporting confirms that the sole function of the Flock organization audits is to monitor abuse of the technology and help police, and in some instances the public, learn about potential misuse. *See e.g.*, Douglas MacMillian, Drew Hawell, & Aaron Schaffer, *How Rogue Officers Turned a Nationwide Camera Network into a Tool for Stalking*, Wash. Post (Aug. 2, 2026) <https://bit.ly/4rc3fWc> (including an example of a Leechburg, Pennsylvania woman whose police officer husband used Flock to stalk and threaten her). Flock itself highlights “Audit Assistance” as a way the company can help prevent abuses by reviewing the audits and flagging for concerning behavior. Garrett Langel, *Flock Updates Privacy, Accountability, Security and Transparency Safeguards*, Flock (Aug. 13, 2026), <https://perma.cc/6DQP-7JRA>.

³ A video posted on Flock’s website offers some insight for how Flock envisions its products being used in an investigation. *What Do Flock Cameras Actually Capture?*, Flock (May 22, 2026) <https://perma.cc/7UM6-5C27>. Examples Flock touts on its website of officers using their systems to catch suspects similarly do not include a step of visiting the Flock organization audit. Flock, *Two Families, One Frightening Night, and How Flock Helped Bring Answers*, Youtube 1:05–11 (Feb. 3, 2026) <https://bit.ly/4cP2dtu> (explaining how the camera feeds were reviewed for cars that were not from the neighborhood); Flock, *Flock Stories, Your Voice: A Pinecrest Family Finds Safety After the Terror of a Home Invasion*, 0:40–44 YouTube (May 13, 2026) <https://bit.ly/3Tdsc74> (explaining how the officers watched footage from local cameras to find the car that had parked near the house where a burglary occurred). The officers simply search the Flock database for the details of the car they are looking for or watch footage from cameras near the scene of the crime. At no point do they consult the organization audit.

Notably, organization audit information is routinely released to the public.⁴ Agencies have the option to make their “Transparency Portal” public through Flock’s website and some agencies, such as Appalachian State University Police Department and the Forest Park, Ohio Police Department, proactively post versions of their organization audits to the Portal for the public to review. *See* Sep. 9, 2026 Appalachian State Org. Audit, Ex. A to Proposed Finding of Facts; Sep. 9, 2026 Forest Park Org. Audit, Ex. B to Proposed Finding of Facts.

As confirmed by the data these agencies make available to the public, the information in a Flock organization audit does not reveal any information about criminal investigations and does not implicate CHRIA’s purpose of protecting individual dignity. For example, in the audit from Forest Park, Ohio the only information that is released is the time frame searched, the time the search occurred, and the stated reason for the search. Ex. B to Proposed Finding of Facts. Officers use vague terms to describe the reason for the search, such as “INVESTIGATE,” “stolen” and “inv.” *Id.* Some of the “reason” spaces are left completely blank. *Id.* Even if the underlying Flock search were done in connection with an investigation, broad category labels for the reasons behind a search like “INVESTIGATE” and “stolen” are fundamentally different from the type of information that CHRIA has been held to protect, such as DNA evidence, photos from criminal investigations, and police reports. These records are all tied to a specific

⁴ In fact, some Allentown Police Department searches are already public. Part of what makes Flock’s ALPRs unique to other brands is the vast data sharing network Flock has built across the country. Gideon Epstein, *Flock Gives Law Enforcement All Over the Country Access to Your Location*, ACLU of Mass. (Oct. 7, 2025) <https://bit.ly/3T3x6Uo>. When officers conduct a search in Flock, they can also search all of the cameras that their agency shares data with. *Id.* If, for example, an Allentown officer searched for a vehicle in Harrisburg, that search would be reflected in the Harrisburg network audit. Websites such as Have I Been Flocked compile network audits obtained by public records requests. Have I Been Flocked, <https://bit.ly/4hyEgIz> (last visited Sep. 16, 2026). A search for Allentown PA PD on the agency tab of the website comes back with hits from police departments in Lindale, Texas, Lowell, Arkansas, and West Seneca, New York. The network audit also gives the stated reason for the search, such as “robbery invest” and “Traffic Infraction.”

individual or investigation. An audit list like Forest Park’s demonstrates that no investigation information is released and the privacy of individuals is maintained. The release of this basic information does not harm an individual’s privacy and dignity—the values CHRIA was enacted to protect. Rather, it serves an individual privacy-protective purpose, acknowledged by Flock itself, by revealing and deterring misuse that violates individual privacy and dignity.

CHRIA was enacted to “control the collection, maintenance, dissemination, or receipt of criminal history record information.” *Toland*, 311 A.3d at 669 (internal citation omitted). It does this to “protect individual privacy and dignity,” *Taha v. Bucks Cnty. Pa.*, 172 F. Supp. 3d 867, 871 (E.D. Pa. 2016) (internal citation omitted), not to give the government a gratuitous mechanism to shield non-investigative records that should be public and, in fact, are routinely public in many jurisdictions.

C. Even if the records contain protected information, the solution is redaction rather than withholding.

Even if the records of an organization audit contain some core investigative information covered by CHRIA, that does not justify full withholding; rather, it justifies *redaction* of that information. *Pa. State Police v. Grove*, 161 A.3d 877, 896 (Pa. 2017) (“*Grove II*”). For example, in the case of police dashboard cameras, audio portions of officer’s witness investigations may be redacted, but the remainder of the video must be released if it otherwise contained no investigative element to the footage of officers conducting their routine business. *See id.* (affirming the lower court’s redacting of only witness interviews). Here too, the solution to any hypothetical personally identifiable investigatory information appearing in the audit would be to redact it, rather than to withhold such a record completely.

Such an outcome aligns with Section 706 of the RTKL, which provides:

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as

well as information which is not subject to access, the agency's response *shall* grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. *The agency may not deny access to the record if the information which is not subject to access is able to be redacted.*

65 P.S. § 67.706 (emphasis added).

This provision makes clear that an agency “shall”—not “may”—grant access to any information that is subject to access. *Id.* To extinguish any remaining ambiguity, the provision states that “[t]he agency may not deny access to the record if the information which is not subject to access is able to be redacted.” *Id.*; *Sch. Dist. of Phila. v. Calefati*, 272 A.3d 995 at *4 (Pa. Cmmw. 2022) (unpublished table decision).

III. Because the Flock organization audit does not contain investigative information subject to CHRIA, it falls within the scope of the RTKL and must be released.

A. The organization audit is not exempt under the RTKL as investigative materials.

Because CHRIA does not bar release of a Flock organization audit, it *must* be released under the RTKL. The RTKL has a broad policy in favor of disclosure and requires that the exceptions be construed narrowly. *Grove II*, 161 A.3d at 892. The statute’s objective is “to empower citizens by affording them access to information concerning the activities of their government,” *id.*; releasing public records that fall outside CHRIA can easily be reconciled with CHRIA’s goal of protecting interests of “privacy and dignity” that would arise in connection with information related to criminal history. *Taha*, 172 F. Supp. 3d at 871.

The RTKL exempts “[i]nvestigative materials, notes, correspondence, videos, and reports” from being disclosed. 65 P.S. § 67.708(b)(16). Like CHRIA, the RTKL does not

exempt all records that are in some way related to any criminal investigation; as such, “courts apply the same analysis in determining whether records qualify as investigative of criminal activity.” *See Bentley v. Allegheny Cnty. Police Dep’t*, 258 A.3d 1163 at *4 (Pa. Cmmw. Ct. June 24, 2021) (unpublished table decision). Records that have found to be “investigative” under the RTKL include “statements compiled by district attorneys, forensic reports, and reports of police, including notes of interviews with victims, suspects and witnesses assembled for the specific purpose of investigation. *Grove II*, 161 A.3d at 893. These examples are all “useful in showing whether a violation or crime occurred.” *Bentley*, 258 A.3d 1163 at *5.

Flock organization audits, like body camera footage, are not useful in showing whether a violation occurred, because the audit itself is not evidence. In a criminal prosecution, the Commonwealth might seek to introduce the results of the search, not the bare fact that an officer conducted a search at all. This tracks with the purpose of the audit, which is not investigation or prosecution; it exists to guard against abuse by providing transparency into what officers are doing in the course of performing their duties. The organization audit simply provides information about officers’ use of the system; the records do not show whether a crime occurred, nor do they provide any meaningful information about any single investigation. As explained above, the audit is an aggregation tool for police administration to maintain oversight of officers. It creates an overview of *how* officers are using a particular piece of department technology. That overview is not in itself investigative material.

B. Even if the organization audit contains some investigative material, it is an aggregate collection of data and must specifically be released under the RTKL.

Even if the organization audit is deemed to contain investigative material, its form here would still require release. The RTKL specifically includes a provision that provides for the release of “aggregated data,” which the statute defines as “[a] tabulation of data which relate to

broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups, or categories.” 65 P.S. § 67.102; 65 P.S. § 67.708(d).

The Flock organization audit is a paradigmatic example of this aggregated data that was contemplated by the legislature and therefore must be released under the RTKL for this additional reason even if it contained some incidental investigatory information. The audit compiles all searches from City police officers and creates a “tabulation of data” that shows search patterns without revealing any protected personally identifying information. *Id.* The only non-public personal information that appears in the audit is the license plate number, which can be easily redacted. The legislature’s clear demarcation of aggregated data as a special category of records highlights the critical nature of this information to the public, which can show troubling trends of surveillance, as evidenced in reporting from other news outlets. *See e.g.,* Eric Levenson, *Inside the Growing Police Use and Misuse of Flock’s License-Plate Reader Cameras*, CNN (July 26, 2026) <https://bit.ly/4cK6e2q>; Jason Koebler, *Cops Keep Getting Arrested for Using Flock to Stalk People*, 404 Media (June 10, 2026) <https://perma.cc/LR8N-YK4P>; Kenny Jacoby, Austin Fast, & Jack Lemnus, *Our Flock Camera Investigation Sparks Police Firings, Arrests*, USA Today (Sep. 3, 2026) <https://perma.cc/5ABF-Y9XV>.

For this reason, the City’s claim that producing responsive records would violate Section 708 of the RTKL is incorrect and the records must be released.

CONCLUSION

The District Attorney’s office erred when it held that the Flock organization audit was subject to CHRIA. The audit does not contain investigative material or information and should be released as a public record.

DATED: September 16, 2026

Respectfully submitted,

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CERTIFICATES OF SERVICE AND COMPLIANCE

I, Paula Knudsen Burke, hereby certify that a true and correct copy of the foregoing Brief was served upon the following via e-filing:

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Furthermore, I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: September 16, 2026 Submitted by:

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