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DISTRICT ATTORNEY



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County of Allegheny

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May 19, 2022

Mr. Kevin F. McCarthy, Esquire
Open Records Officer
Office of District Attorney
401 Courthouse
436 Grant Street
Pittsburgh, PA 15219-2489

In re: Right to Know Law Appeal

Dear Mr. Bailey and Mr. McCarthy:

I am the Open Records Appeals officer for Allegheny County. On May 19, 2022, I received an appeal from the decision of Mr. McCarthy, invoking an exemption under the Right To Know Law. Requester had sought the following:

1) All records regarding docket number CP-02-CR-0008915-2004. Any and all communications between the District Attorney's Office and any outside parties.

(See Mr. Bailey's Right To Know Request dated 4/27/22).

In denying the request, Mr. McCarthy stated, *inter alia*, that the records were exempt from disclosure under the Right To Know Law due to their classification as criminal investigative materials. Mr. McCarthy also stated,

The District Attorney's files are created solely for the purpose of criminal investigation and prosecution, which includes, but is not limited to, police reports and accompanying information contained in an affidavit of probable cause, photographs or recordings, or any other evidence relevant to a case. Accordingly, such files are exempt from disclosure pursuant to 65 P.S. §§67.708 (b)(16) and CHRIA. Moreover, the fact that a criminal investigation is closed is of no moment, because, as the Office of Open Records has explained, Section 708(b)(16) expressly protects relating to the result of a criminal investigation and thus remain protected even after the investigation ends. See *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP2009-0196. See also *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa. Cmwlth 2011).

(See Mr. McCarthy's letter dated May 3, 2022).

Requester is reminded that the Right to Know Law exempts certain materials from disclosure and 65 P.S. § 67.708(b)(16) provides as follows:

- (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 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.

Mr. McCarthy was correct in stating that the Office of Open Records ruled in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196 that records pertaining to a closed criminal investigation remain protected because Section 708(b)(16) expressly protects records relating to the result of a criminal investigation and thus remain protected even after the investigation ends. See also, *State Police v. Office of Open Records*, 5 A.3d 473 (Pa. Cmwlth. 2010); *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa. Cmwlth. 2011).

As a result, I must decline the request and affirm denial of access. Please be advised that pursuant to Section 65 P.S. §67.1302 the parties have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer