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August 8, 2022

Jessica Garofolo, Director
Open Records Officer
Allegheny County Dept. of Administrative Services
202 Courthouse
436 Grant Street
Pittsburgh, PA 15219

In re: Transferred Appeal-*Hollihan v. Allegheny County*,
Dkt. No: AP 2022-1315

Dear Mr. Hollihan and Open Records Officer Garofolo:

I am the Open Records Appeals officer for Allegheny County. On August 5, 2022, I received the current transferred appeal from the Office of Open Records (OOR). As the parties are aware, as to the narrow issue before me, Mr. Hollihan had requested the following from the Agency:

All records, documents, reports, evaluations, assessments, photographs, or other things regarding any forensic examinations, toxicology reports, ballistic reports, autopsy reports, reports and communications provided to Allegheny

County District Attorney's Office or received from, or similar regarding Janet E. Hollihan.

See Final Determination of OOR at p.2.

The Agency informed requester that these items were exempt from disclosure under 65 P.S. §67.708(b)(16)(ii) due to the fact that they were prepared as part of a criminal investigation. *See Final Determination at p.2.* The Agency further informed OOR that:

5. Janet Hollihan's manner of death was homicide. The cause of death was multiple lacerations of the aorta, lungs and great vessels due to shotgun wound of the chest.
6. The Allegheny County District Attorney's Office charged [the Requester] with homicide, and he was convicted of homicide in the resulting criminal case.
7. Janet Hollihan was the victim of the homicide. The District Attorney had access to the contents of the [Allegheny County Office of the Medical Examiner ("ACOME")] investigative file. The contents of the ACOME's file, therefore, are related to a criminal investigation.

See Final Determination at p.7. Although not deciding the issue, OOR did note that "the responsive records clearly pertain to a criminal investigation[.]" *See Final Determination at p.8, footnote #1.*

I have read Mr. Hollihan's correspondence and all the relevant attachments. It is clear that what he requests is classic criminal investigative material. I realize that he wants the items because he asserts that the documents will prove that he did not receive a fair trial and is innocent of the murder, but I have no equity powers and cannot consider the motivations of a requester.

The Right to Know Law exempts certain materials from disclosure and in regards to those exemptions, 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.

As the Office of Open Records explained in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196 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