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DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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Joseph E. Hudak, Esquire
505 Court Place
Pittsburgh, PA 15219

March 17, 2014

In re: Open Records Appeal

Dear Attorney Hudak:

I am the Open Records Appeals Officer for the District Attorney of Allegheny County. On March 11, 2014 I received from you an appeal of a denial of a Right To Know Request. That denial was from the City of Pittsburgh. In your request you were seeking:

1. Police report regarding entry and search of residence at 612 Lillian Street, Pittsburgh, PA 15210 on Friday, January 31, 2014 at approximately 8:00 a.m.; and 2) application for search warrant, if any; and 3) search warrant, if any.

You indicated that your request was denied by Mr. Benjamin Smith, Open Records Officer for the City of Pittsburgh but contrary to 65 P.S. §67.1101(a)(1) you do not “address any grounds stated by the agency for delaying or denying the request.” With all due respect, you should have addressed Mr. Smith’s determination “that the requested records are not public because criminal investigative reports and other criminal investigative records are exempt from disclosure. See 65 P.S. §67.708(b)(16)(ii).” You do not present any discussion and argument as to why that decision was error except to write that the denial “violates established Pennsylvania law and Federal Law.”

As you know, 65 P.S. §67.708 (a)(16) exempts from disclosure:

- (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.

* * * *

- (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.

As the Office of Open Records explained in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196 even records pertaining to a closed criminal investigation remain protected. 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). The records you request relate to a criminal investigation.

As a result, I must decline your request. Please be advised that pursuant to §67.1302 you 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

cc: Mr. Benjamin Smith, Open Records Officer