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DISTRICT ATTORNEY



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County of Allegheny

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Mr. Anthony Robinson, JZ3537
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September 21, 2021

Kevin F. McCarthy
Assistant District Attorney and Open Records Officer
Office of District Attorney of Allegheny County
401 Courthouse
436 Grant Street
Pittsburgh, PA 15219

In re: Right to Know Law Appeal; OOR Dkt. Nos. AP 2021-1405;
AP 2021-1406 (consolidated)

Dear Mr Robinson and Open Records Officer McCarthy:

I am the Open Records Appeals officer for Allegheny County. On September 21, 2021, I received a transferred appeal from the Office of Open Records. Mr. Robinson had sought the following items/documents from the Office of District Attorney of Allegheny County:

1. Unredacted copies of supplemental reports for Jebron Thomas, Pauline Moran, Danisha Morgan, Charles Burch, Damone Williams and James Fancer.
2. A transcribed copy of the original 911 call.
3. A copy of the memorandum Assistant District Attorney Ilan Zur sent to Detective Lyle Graber regarding Cricket Communications call Detail records of telephone number (412) 758-8136 die (5-19/5-20-09[]) on March 16th, 2011.
4. The investigative reports for Cricket cellphone, the silver Motorola cellphone and the blue and silver cellphone I was arrested with on June 20th, 2009.
5. Investigative reports on Jebron Thomas.
6. A record of the agreement between Jebron Thomas and Assistant District Attorney Ilan Zur in exchange for Thomas' cooperation in the case.

(See consolidated Final Determination of Office of Open Records at p.2).

In a letter dated June 22, 2021 Mr. McCarthy denied the request, invoking, among other reasons, the exemption provided for records involving criminal investigations.

As the parties know, my only authority extends to determining whether a document is exempt from disclosure due to the criminal investigation exemption. 65 P.S. §67.503(d)(2).

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