

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

436 GRANT STREET, 401 COURTHOUSE ♦ PITTSBURGH, PENNSYLVANIA 15219-2489
PHONE (412) 350-4377 ♦ FAX (412) 350-3312

Ms. Kristen Spolter
674 Scenic Ridge Drive
Venetia, PA 15367

September 11, 2020

Chief Jonathan E. Wharton
Police Chief and Open Records Officer
Upper St. Clair Department of Police
1820 McLaughlin Run Road
Upper St. Clair, PA 15241-2332

In re: Right to Know Law Appeal

Dear Ms. Spolter and Chief Wharton:

I am the Open Records Appeals officer for Allegheny County. On September 8, 2020, I received an appeal from the decision of Upper St. Clair denying requester's request for documents involving "Kristen and Aaron Spolter or just Aaron Spolter." The request notes a "PFA hearing." The appeal letter sent to me indicates that the date of occurrence was "6/21/15." The denial letter from Upper St. Clair states in relevant part:

The Township of Upper St. Clair Police Department has denied your request because these records are exempt from disclosure pursuant to Section 708(b)(16) of the Right To Know Law. This section exempts from access any

record that relates to or results in a criminal investigation, including investigative materials, notes, and reports.

Under 65 P.S. §67.1101(b)(1) I have 30 days to decide this appeal unless requester agrees to an extension. From the materials I have received I can't figure out where police responded, what the nature of the call was, whether anyone was arrested, and which reports were generated. Under §67.1102 I can ask the parties to provide further "documents in support of their position." Towards that end, I respectfully ask that Upper St. Clair provide me with a statement explaining the nature of the call, whether police responded, whether anyone was arrested, and whether reports were generated. I also respectfully ask Ms. Spolter to provide a short recitation of the incident and indicate whether anyone was arrested as a result. If I could receive those items by September 22nd, I will be able to dispose of this appeal in a timely fashion without need for an extension of time.

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.

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).

I apologize to both of you if my request adds to your workload during these difficult days but I don't have enough information to decide this appeal.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer