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May 9, 2019

Celia B. Liss, Esquire
Open Records Officer
City of Pittsburgh
Department of Open Records
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

In re: *RTK No. 168-01-2019*

Dear Attorney Watt and Open Records Officer Liss:

I am the Open Records Appeals Officer for the County of Allegheny. On May 7, 2019, I received an appeal from attorney Watt of the decision of the City of Pittsburgh, which partially granted and partially denied a request for production of documents. Specifically, attorney Watt had requested:

City of Pittsburgh Police Department Incidents/Crash Report #19-37598 completed by Officer Shawn Landy, Pittsburgh Police Badge #4169. Date of relevant incident is February 26, 2019. The incident involved a woman being struck by a vehicle at the intersection of Pius Street and Brosville Street off of 12th Street (South Side Slopes).

Attorney Liss subsequently decided the request (in relevant part to my authority to review) as follows:

Upon investigation, your request is granted. Enclosed is a 2.0 Pittsburgh Bureau of Police Offense/Incident Report. I have determined that any other police records you seek are exempt from production under RTKL. These records are investigative in nature. RTKL states that investigative

reports and other records associated with a criminal investigation are not subject to release. See 65 P.S. §§67.708(b)(16)(ii). (...)

As noted in *Barros v. Martin*, 92 A.3d 1243, 1249-1250 (Pa. Cmwlth. 2014):

Section 102 of the RTKL, 65 P.S. § 67.102, defines a “public record,” in relevant part, as a “record ... of a ... local agency that:

- (1) is not exempt under section 708 [of the RTKL]; [and]
- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; ...”

Section 708(b)(16)(ii) of the RTKL sets forth a variety of exemptions from the definition of “public record” and provides:

(b) Exceptions.—Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

...

(16) A record of an agency relating to or resulting in a criminal investigation, including:

...

(ii) Investigative materials, notes, correspondence, videos and reports.

If a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii). See *Coley v. Philadelphia Dist. Attorney's Office*, 77 A.3d 694, 697 (Pa.Cmwlth.2013); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1264 (Pa.Cmwlth.2010). Criminal investigative records remain exempt from disclosure under the RTKL even after the investigation is completed. *Sullivan v. City of Pittsburgh, Dep't of Pub. Safety*, 127 Pa.Cmwlth. 339, 561 A.2d 863, 865 (1989).

As a result, I must decline your request. Please be advised that pursuant to 65 P.S. §67.1302 you have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County. Thank you.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer

cc: Ms. Celia B. Liss, Open Records Officer