



**DISTRICT ATTORNEY'S OFFICE**  
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R. SETH WILLIAMS  
District Attorney

April 25, 2016

*By post (Mr. Wilson) & electronic mail (Ms. Graham-Rubin)*

Kevin Wilson  
Inmate KU-3715  
SCI-Dallas  
1000 Follies Road  
Dallas, Pennsylvania 18612

BJ Graham-Rubin  
Open Records Officer  
Philadelphia District Attorney's Office  
Three South Penn Square  
Philadelphia, Pennsylvania 19107

**Re: Appeal from DA's Office's Denial of Request from Kevin Wilson**

Dear Mr. Wilson and Ms. Graham-Rubin:

This letter constitutes the final determination of the Appeals Officer for the Philadelphia District Attorney's Office concerning Mr. Wilson's appeal of the denial by the District Attorney's Office of his request for public records under Pennsylvania's Right-to-Know Law.<sup>1</sup> For the reasons set forth below, the appeal is denied.

**BACKGROUND**

On or about January 6, 2016, the Open Records Officer for the Philadelphia District Attorney's Office received a request from Kevin Wilson (the Requestor), seeking the following records under the Right-to-Know Law (the RTKL), 65 P.S. §§ 67.101 *et seq.*:

"Records or portions thereof pertaining to a Mr. Terrace Savage, phone records while being incarcerated at the federal detention center in Philadelphia, Pennsylvania."

On or about February 9, 2016, the District Attorney's Office sent its final response, denying the request. The District Attorney's Office based its denial in part on the criminal investigative records exception of the RTKL's Section 708(b)(16).

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<sup>1</sup> The final determination sent on April 4, 2016, appears to have had mailing problems. Accordingly, out of an abundance of caution, its contents are set forth in this letter, which contains a supplemental affidavit from the District Attorney's Office's Open Records Officer.

On March 3, 2016, the undersigned Appeals Officer for the District Attorney's Office of Philadelphia received the Requestor's letter seeking appellate review of the District Attorney's Office's denial based on Section 708(b)(16). *See* Appeal Letter of Requestor Keith Wilson, attached as Appendix A. For its appellate submission, the District Attorney's Office relied on the reasoning set forth in its February 9, 2016 final response and supplemented that response with a declaration from the District Attorney's Office's Open Records Officer attesting that the requested records constituted criminal investigative records under the RTKL's Section 708(b)(16). *See* District Attorney's Office's Final Response, attached as Appendix B, and Supplemental Declaration of Open Records Officer, attached as Appendix C.

### LEGAL ANALYSIS

The RTKL grants the Appeals Officer of the Office of the District Attorney for Philadelphia (the Appeals Officer) jurisdiction to hear and decide this appeal. 65 P.S. §§ 503(d)(2), 1101(a)(1). Under 65 P.S. § 67.503(d)(2), the Appeals Officer is authorized to "determine if the record requested is a criminal investigative record" of a local agency in Philadelphia County.

The District Attorney's Office is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. As such, records in its possession are presumed public, and thus subject to disclosure, unless exempt under the RTKL or other law or protected by a privilege, judicial order, or decree. 65 P.S. § 67.305. The District Attorney's Office bears the burden of proving the applicability of any exemptions it claims. 65 P.S. § 67.708(a).

To support its claim that the Section 708(b)(16) exception applies to the requested records, the District Attorney's Office provides a declaration from its Open Records Officer. *See* Appendix C. For the reasons set forth in the District Attorney's Office's February 9, 2016 final response, which correctly sets forth and applies the relevant law concerning the criminal investigative records exception, this appeal is denied. *See* Appendices B and C; *see also Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011) (an attestation made under the penalty of perjury may serve as sufficient evidentiary support).

This final determination is binding on all parties. Within thirty days of the date of this letter, any party may appeal to the Philadelphia County Court of Common Pleas. 65 P.S. § 67.1302(a). ~~All parties must be served notice of the appeal. The Appeals Officer also shall be served notice and have an opportunity to respond in accordance with applicable court rules.~~ 65 P.S. § 67.1303.

Sincerely,  
/s/ Priya Travassos  
Priya Travassos  
Appeals Officer  
Office of the District Attorney of Philadelphia