

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

Mr. Jared Moore
#HR 2763
175 Progress Drive
Waynesburg, PA 15370

January 8, 2018

Mr. Kevin McCarthy, Esquire
Open Records Officer
Office of District Attorney
401 Courthouse
436 Grant Street
Pittsburgh, PA 15219

In re: Right to Know Law Appeal

Dear Mr. Moore and Attorney McCarthy:

I am the Open Records Appeals officer for Allegheny County. On January 3, 2018 I received an appeal from Mr. Moore. Mr. Moore had sought various documents from Mr. McCarthy in regards to cases filed at Nos. CP-02-CR 18117-2003 and 03215-2004 (in which he was convicted) as well as documents and information regarding cases involving an individual by the name of Randall Scott Stoddard:

1. What psychiatric and/or anti-psychotic medication was Commonwealth witness Randall Scott Stoddard prescribed and/or under the influence of the day he testified against Mr. Moore;

2. Repeat of paragraph One;
3. What psychiatric and/or anti-psychotic medication was Mr. Stoddard prescribed and/or under the influence of when he was interviewed on 3-5-2004 by Allegheny County Police;
4. Under what context did Mr. Stoddard arrive at Police Headquarters on 3-5-2004 (i.e., who initiated the contact) and Requester desires copies of any communication exchanged between Mr. Stoddard and the police leading up to that interview;
5. Requester wants to ask ADA(s) Borkowski, Pelligrini and McCarthy why Stoddard was not charged with any crime in relation to the crimes charged against Mr. Moore;
6. Requester wants all Bail Action information in regards to Mr. Stoddard;
7. Requester wants to ask ADA(s) Barnisin and McCarthy why Stoddard was able to post bail;
8. Requester wants to ask ADA(s) Barnisin and McCarthy why the Commonwealth waived the mandatory minimum sentence for Mr. Stoddard;
9. Requester wants to ask ADA(s) Barnisin and McCarthy why the Commonwealth asked the victim, Elmer Schade, to help Mr. Stoddard with his criminal cases;
10. Requester wants to ask ADA Barnisin how she came to offer Mr. Stoddard a plea agreement of 3 to 6 years' incarceration in exchange for his plea;
11. Requester wants to know if Mr. Stoddard's attorney informed ADA Barnisin that Mr. Stoddard was cooperating with the Commonwealth in Mr. Moore's case or any other case.

See Exhibit 1 which Mr. Moore attached to this current appeal.

On December 13, 2017 Mr. McCarthy wrote a letter in which he stated that the majority of the requests being made by Mr. Moore were requests that interrogatories be answered by attorneys. Mr. McCarthy noted that this is not the

function of the Right To Know Law and that the Office of District Attorney was not in possession of this information in any documentary form; and was not required to create records that did not exist. Mr. McCarthy also noted that the requested information is directly related to a criminal investigation and is exempt under 65 P.S. §67.708(b)(16). He also noted that Mr. Moore had previously requested the same information. Mr. McCarthy did search for bail information requested in item No. 6 above, and sent that documentation to Mr. Moore. (See Exhibit 1 which Mr. Moore attached to this current appeal.)

Initially, I note that on May 15, 2017 Mr. Moore filed a request under the Right To Know Law seeking the following:

1. All offers, inducements, agreements, etc. offered to Mr. Stoddard to secure his testimony against Mr. Moore;
2. All information dealing with whether Mr. Stoddard requested favors or benefits for his testimony against Mr. Moore and whether that was granted;
3. All statements of Mr. Stoddard that were inconsistent with his trial testimony and all police reports and notes related to those statements;
4. All plea bargains and agreements entered into between Mr. Stoddard and the DA's Office;
5. All correspondence between the DA and Mr. Stoddard's lawyer related to plea bargains and immunity;
6. Information on the duration and surrounding circumstances of any police interview with Mr. Stoddard;
7. Any postponement of sentencing for Mr. Stoddard;
8. Disclosure of any proffer made to Mr. Stoddard;
9. Disclosure of any and all cooperation provided by Mr. Stoddard.

(See record which was subject of appeal to Court of Common Pleas of Allegheny County at SA 17-000748). Mr. McCarthy denied that request. I then denied Mr. Moore's appeal of Mr. McCarthy's denial. Mr. Moore then filed an appeal in the Court of Common Pleas which was docketed at SA 17-000748. On December 5, 2017 the Honorable Terrance O'Brien issued an Order dismissing the appeal (See

Order filed at SA 17-000748). Except for the new claims requesting information on bail, the victim Mr. Schade, and any medication Mr. Stoddard may have been taking, this current appeal seeks access to the same information as the prior appeal; albeit by requesting that interrogatories be answered by certain attorneys. Judge O'Brien's ruling is the law of the case as to these documents (and this requested information) and Mr. Moore has no right to disclosure of the information. I am bound by Judge O'Brien's ruling, as would be, another judge. *Commonwealth v. Starr*, 664 A.2d 1326 (Pa. 1995); *Commonwealth v. Hernandez*, 39 A.3d 406 (Pa. Super. 2012). I therefore find that the requests encompassed within items 4, 5, 7, 8, 10, and 11 have already been found to be exempt from disclosure. I would further find that they are exempt from disclosure based on §67.708 (b)(16) as they are records "relating to or resulting in a criminal investigation." I also find that the RTKL does not encompass the situation where a requester can force an agency to submit to deposition-like interrogatories nor does it require an agency to create written answers to interrogatories when it does not have the requested information in any physical/tangible form. See §67.705.

Mr. Moore is respectfully directed to the decision in *Coley v. Philadelphia District Attorney's Office*, 77 A.3d 694, 696 fn.5 (Pa. Cmwlth. 2013):

In support of Coley's position, he cites the First, Sixth, and Fourteenth Amendments to the U.S. Constitution and Article I, Sections 9 and 11 of the Pennsylvania Constitution. However, these provisions have no bearing or relevance to whether the requested records are public records under the Right-to-Know Law.

As a matter of constitutional law, Coley may have had a right to review witness immunity agreements and witness statements in his criminal trial or post-conviction appeal. In *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the United States Supreme Court held that the prosecution's suppression of evidence favorable to the defendant violates due process. However, that is not the legal question before us. The only question is whether materials in an investigation file of the District Attorney are "public records" that must be disclosed under the Right-to-Know Law.

Requester is wrong in his belief that he should be allowed to use the RTKL as a discovery mechanism under the Rules of Criminal Procedure or the Post Conviction Relief Act. Any information concerning medications that Mr. Stoddard might have been prescribed is exempt from disclosure under §67.708(b)(5) ("A record of an individual's medical, psychiatric or psychological history or disability status, including

an evaluation, consultation, prescription, diagnosis or treatment”). “Victim information” concerning Mr. Schade is exempt under §67.708(b)(16)(v) as well as the general prohibition against releasing “criminal investigative” information encompassed in (b)(16). Further, as previously indicated, requester has no right to submit interrogatories to a prosecutor under the RTKL.

I have examined the trial files in the possession of the Office of District Attorney and was only able to secure one document concerning any plea agreement with Mr. Stoddard. It is a letter authored by Mr. Stoddard’s counsel, Charles Van Keuren, dated January 5, 2005, which was sent to ADA Deb Barnisin. I have included that letter as “Attachment A” hereto, as it should be disclosed pursuant to the decision in *Coley, supra*. Mr. Moore is already in possession of the “service plan” referenced in the letter as he attached it to this current appeal and a reading of his pleadings indicates that he might also already have this letter. Be that as it may, I will send it again.

As a result, I must decline Mr. Moore’s request and affirm Allegheny County’s 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