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July 12, 2021

Mr. Jerry Tyskiewicz
Director/Open Records Officer
Department of Administrative Services
202 Courthouse
436 Grant Street
Pittsburgh, PA 15219

In re: Right to Know Law Appeal; AP 2021-1322

Dear Attorney Sorg and Open Records Officer Tyskiewicz:

I am the Open Records Appeals officer for Allegheny County. On July 12, 2021, I received a transferred appeal from the Office of Open Records (OOR) at the above docket number. I must respectfully inform the parties that I am at a disadvantage because the record does not seem to be as complete as it should be. This is what I can discern:

Requester sought the following items:

Police Report for the incident at 58 Howard Street, Millvale PA 15209 regarding the death of Michael Robert Hoehn. County Homicide Detectives were called for possible homicide but determined it was a suicide.

See Letter dated June 24, 2021 from Mr. Tyskiewicz.

It appears that Mr. Tyskiewicz provided requester with a redacted “copy of the general Allegheny County Police Department (ACPD) report pertaining to” the request. *Id.* Mr. Tyskiewicz provided various reasons for the redactions which included “personal identification information,” “criminal investigative” information, and “investigative information” under Criminal History Record Information Act. *Id.* Mr. Tyskiewicz added the following comment:

Second, other than the record provided, the remainder of your request for records must be respectfully denied because they are exempt from disclosure under the RTKL. Section 708(b)(16) of the RTKL exempts from disclosure a “record of an agency relating to or resulting in a criminal investigation, including...(ii) Investigative materials, notes, correspondence, videos and reports. Additionally, the remaining records contain “investigative information” that CHRIA prohibits from disclosure.

Id.

Mr. Tyskiewicz informed the requester that there were two avenues for appeal and that any appeal concerning the criminal investigative exemption should be filed with me. Any appeal not involving criminal investigative exemptions should be made to the Office of Open Records. *Id.*

Requester decided not to appeal to me. Rather, she appealed to the Office of Open Records. 65 P.S. §67.1101 mandates that an “appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.” In her letter to OOR dated July 1, 2021, requester did not provide any grounds and did not specifically alert OOR to the specific actions she was challenging, even though multiple reasons had been invoked by the Agency in its partial denial. In a Final Determination dated July 9, 2021, the Office of Open Records transferred this appeal to me.

I am puzzled as to the actions of OOR because this appeal was denied on multiple grounds (some of which are not criminal investigative), requester was told

there were two avenues of appeal and made a conscious decision not to appeal the criminal investigative finding to me, and requester did not provide any argument or discussion to OOR as to why the agency decision was incorrect. I don't know how OOR could look at this appeal and determine that requester was asserting that the criminal investigative exemption does not apply. Be that as it may, I now have the appeal.

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 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 normally would have 30 days from July 12, 2021 to decide this appeal. See §67.1102 (b)(1), Under §67.1102(a)(1) I have authority to ask the parties to submit documents. With all respect, I need requester to fulfill her duty under 1101 and provide discussion as to whether she is appealing the redactions that purportedly involve criminal investigative material as well as the refusal to provide other records under the umbrella of “criminal investigative” material. And I need a brief discussion from requester as to why the Agency’s decision to withhold was improper. I also need disclosure from the Agency as to what the general nature of the redactions were as it involves the ACPD report as well as disclosure of what other documents it possesses and why they are criminal investigative materials.

As a result, I must postpone my disposition. I ask the parties to submit the requested information to me by August 2, 2021. That will allow me time to decide the appeal within the original 30 day period. I thank the parties in advance for their cooperation and assistance.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer