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R. SETH WILLIAMS
District Attorney

February 11, 2016

By post (Tyrone Holloway) & interoffice mail (BJ Graham-Rubin)

Tyrone Holloway
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BJ Graham-Rubin, Esq.
Open Records Officer
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107

Re: Holloway Appeal from the Philadelphia District Attorney's Office's Denial of Request for Criminal Investigative Files

Dear Mr. Holloway and Ms. Graham-Rubin:

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

BACKGROUND

On December 8, 2015, 2015, Mr. Holloway (the Requestor) submitted a request to the Philadelphia District Attorney's Office (the DAO) under the Right-to-Know Law (RTKL), 65 P.S. §§ 67.101-67.3104. For "Case No. CP-51-CR-1131761-1991—PP# 669810," he sought:

- A. A copy of any and all statements provided by Althea Timmons, A.K.A. Katrina Thomas, residing at . . . including but not limited to any: (1) transcribed Emergency 911 telephone calls; (2) neighborhood survey reports; and (3) police activity sheets relating to Althea Timmons, the "49's" and "52's" concerning this witness statements and/or involvement in the case.
- B. Any and all reports, statements or written communications relating to Gail Brooks in the case.
- C. Any and all reports, statements or written communications relating to Anna Lee Kemp's involvement in the case.

On December 9, 2015, pursuant to Section 902 of the RTKL, the DAO invoked an extension of time until January 7, 2016, to review and respond to the request.

On January 6, 2016, the DAO denied the request. As one of the grounds for its denial, the DAO asserted the criminal-investigative-records exemption in Section 708(b)(16) of the RTKL.

On January 12, 2016, the Requester filed an appeal with the DAO Appeals Officer, alleging that the DAO had not responded to his request. On January 19, 2016, the Requester filed another appeal with the DAO Appeals Officer, acknowledging the DAO's January 6 denial letter and appealing from that denial. Those appeals were received by the DAO on January 20 and 25, 2016, respectively.

LEGAL ANALYSIS

The RTKL grants the DAO Appeals Officer the exclusive jurisdiction to hear and decide appeals related to access to criminal investigative records. 65 P.S. §§ 67.503(d)(2); *see Barros v. Martin*, 92 A.3d 1243, 1246 n.2 (Pa. Commw. 2014) (explaining that where “the appeal . . . relates to access to criminal investigative records, the appeal is heard by an appeals officer designated by the District Attorney and not [the] OOR”).

Under 65 P.S. § 67.503(d)(2), the DAO Appeals Officer is authorized to “determine if the record requested is a criminal investigative record” of a local agency in Philadelphia County. The DAO is a local agency subject to the RTKL and is required to disclose public records. *Id.* § 67.302. However, any record “relating to or resulting in a criminal investigation,” *id.* § 67.708(b)(16), is by definition not a public record subject to disclosure through the RTKL. *See id.* § 67.102 (defining “public record” as record “not exempt under section 708”); *Allegheny Cnty. Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1037 (Pa. Commw. 2011) (“[A] ‘public record’ is, by definition under Section 102, a ‘record’ that is *not exempt*.”).

As a preliminary matter, the Requester's January 12 appeal from an alleged deemed denial is dismissed as premature. The DAO, as the Requester acknowledges in his second appeal, timely responded to his request by letter dated January 6. This is of no consequence, however, as the Requester's second appeal is identical to his first except for the cover page.

The Requester was sentenced to life in prison after being convicted of first-degree murder and related offenses in the shooting death of a Philadelphia Police Officer. Those convictions, as the Requester presumably acknowledges, are recorded at CP-51-CR-1131761-1991.

Here, the plain language of the request establishes that the Requester seeks exempt records “relating to or resulting in a criminal investigation,” 65 P.S. § 67.708(b)(16), namely the criminal investigation of the Requester. The Requester explicitly identifies the criminal docket and police photograph numbers associated with his case before identifying specific records that he seeks “in the case.” Any such documents undoubtedly would “[r]eveal the . . . progress or result of a criminal investigation,” *id.* § 67.708(b)(16)(vi)(A). In addition, all of the requests are for investigatory records related to witnesses who testified at the Requester's murder trial. Therefore, the request falls squarely within the Section 708(b)(16) exemption. *See, e.g., Barros*, 92 A.3d at 1250 (“[I]f

a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii).”); *Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 697 (Pa. Commw. 2013) (“[C]riminal investigative records are still exempt from disclosure under the Right-to-Know Law after the investigation is completed[.]”); *Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473, 479 (Pa. Commw. 2010) (en banc) (holding that criminal-investigative-record exemption of RTKL exempts records of “whether certain investigative tasks have been carried out or whether certain information was discovered”).

For the foregoing reasons,¹ this appeal is denied. This final determination is binding on all parties. Within thirty days of the date of this letter, either 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 DAO Appeals Officer also shall be served notice and have an opportunity to respond in accordance with applicable court rules. *Id.* § 67.1303.

Sincerely,

/s/ Douglas Weck

Douglas Weck
Assistant District Attorney
RTKL Appeals Officer

¹ Because the request is unmistakably precluded by Section 708(b)(16), the Appeals Officer will not address the additional grounds for denial raised by the DAO, including that disclosure would “[e]ndanger the life or physical safety of an individual,” 65 P.S. § 67. 708(b)(16)(vi)(E), and that the Criminal History Records Information Act, 18 Pa.C.S. §§ 9101-9106, bars disclosure in conjunction with RTKL Sections 67.102 and 67.3101.1 (conflicts with state law).