



**DISTRICT ATTORNEY'S OFFICE  
THREE SOUTH PENN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19107-3499  
215-686-8000**

January 14, 2019

*By electronic mail (to Mr. Crotts) and U.S. mail (to Mr. Trivigno)*

Russell Crotts, Esq.  
Assistant City Solicitor  
City of Philadelphia Law Department  
One Parkway Building  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102

Philip Trivigno, #DN-7784  
Requester  
SCI Mahanoy  
301 Morea Road  
Frackville, PA 17932

**Re: Final Determination of RTKL Appeal by Phillip Trivigno**

Dear Mr. Crotts and Mr. Trivigno,

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

**BACKGROUND**

On November 5, 2018, Mr. Trivigno ("the Requester") submitted a request to the Philadelphia Police Department ("PPD") under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-67.3104, seeking:

1. I am requesting a certified copy of homicide detective Manuel Santiago's disciplinary record. He was assigned to my case in December of 1995, I need this record for my appeal.

A final response was issued by the PPD on November 20, 2018, denying the request in part pursuant to the RTKL's criminal investigative records exemption, 65 P.S. § 67.708(b)(16).

The instant appeal was received via U.S. mail in a letter dated December 3, 2018, and was docketed on December 10, 2018, the date of its receipt by the Appeals Officer. Thereafter, the PPD's response to the Requester's appellate submission was received on December 28, 2018.

## LEGAL ANALYSIS

The RTKL grants the DAO Appeals Officer exclusive jurisdiction to hear and decide appeals pertaining 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 Office of Open Records]”).

Pursuant to 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 PPD 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 a record “not exempt under section 708”); Allegheny County Dept. of Administrative Services 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*.”) (emphasis in original). Furthermore, the DAO Appeals Officer retains supplemental jurisdiction to evaluate asserted grounds for exemption beyond Section 708(b)(16).

To the extent the requested records relate to “investigations, inquiries, pending criminal charges, prosecutions and final dispositions,” such records are plainly exempt under Section 708(b)(16) of the RTKL as “criminal investigative records.” The RTKL contains an exemption for any records “relating to or resulting in a criminal investigation.” 65 P.S. § 67.708(b)(16). 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).”). That exemption continues to apply following the completion of an investigation. See Coley v. Philadelphia District 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 RTKL’s criminal-investigative-record exemption exempts records of “whether certain investigative tasks have been carried out or whether certain information was discovered”).

This request also seeks access to records and information expressly exempted under 65 P.S. § 708(b)(16), including: “[c]omplaints of potential criminal conduct,” id. (b)(16)(i); “[i]nvestigative materials, notes, correspondence, videos and reports,” id. (b)(16)(ii); “[a] record that includes information made confidential by law or court order,” id. (b)(16)(iv); and records that “[r]eveal the institution, progress or result of a criminal investigation, except the filing of criminal charges,” id. (b)(16)(vi)(A). For these reasons as well, the Requester is not entitled to relief.

Moreover, even if the contents of Detective Santiago’s personnel file did not constitute “criminal investigative records,” they would undoubtedly be exempt from disclosure as records relating to “noncriminal investigation[s]” pursuant to Section 708(b)(17) of the RTKL. See 65 P.S. § 67.708(b)(17)(i) (“Complaints submitted to an agency.”); id. § (b)(17)(ii) (“Investigative materials, notes, correspondence and reports.”); and id. § (b)(17)(vi)(A) (records that would “[r]eveal the institution, progress or result of an agency investigation”). Likewise, the records are exempt from disclosure pursuant to RTKL Section 708(b)(7) (records related to an agency

employee) and Pennsylvania's Personnel Files Act, 43 P.S. §§ 1321, *et seq.* As the DAO Appeals Officer retains supplemental jurisdiction to evaluate asserted grounds for exemption beyond Section 708(b)(16), the requested information would be shielded on these additional grounds.

### CONCLUSION

For the foregoing reasons, 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 Court of Common Pleas of Philadelphia County. 65 P.S. § 67.1302(a). All parties must be served notice of the appeal. The DAO Appeals Officer shall also be served notice and have an opportunity to respond in accordance with applicable court rules. *Id.* § 67.1303.

Sincerely,



**BRAD M. PARASZCZAK**  
Appeals Officer  
Philadelphia District Attorney's Office  
Three South Penn Square  
Philadelphia, PA 19107-3499  
(215) 686-5754  
Brad.Paraszczak@phila.gov