

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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Mr. Kelvin Ayora
Digistream Investigations
230 N. Maple Avenue, Suite B1-171
Marlton, NJ 08053

September 18, 2020

Ms. Janice C. Adamski
Borough Manager and Open Records Officer
The Borough of Heidelberg
Municipal Building
1631 East Railroad Street
Pittsburgh, PA 15106

In re: Right to Know Law Appeal; OOR Dkt. AP 2020-1620

Dear Mr. Ayora and Ms. Adamski:

I am the Open Records Appeals officer for Allegheny County. On September 11, 2020, I received a transferred appeal from the Office of Open Records at the above referenced docket number. Requester had sought,

Police report for an incident which occurred on 2/17/2020. The arresting officer was Dakota R. Dahler. The charges on the report include burglary, Simple Assault and Harassment. The criminal docket number is Docket

Number: MJ-05222-CR-0000029-2020. Only 1 copy is requested, I don't have to inspect the records, and they do not need to be certified.

See Request filed 8/20/2020.

The request was denied on August 27, 2020. The Open Records Officer stated the following as a basis for said denial:

Your request is denied as permitted by 65 P.S. §67.708(b)(16) Exceptions for public records. A record of an agency relating to or resulting in a criminal investigation.

See Letter from Open Records Officer Adamski dated 8/27/2020.

Requester is reminded that the Pennsylvania 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).

As a result, I must decline the request and affirm 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