

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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Mr. Frederick Banks  
ACJ No. 120759, 8e  
Allegheny County Jail  
950 Second Avenue  
Pittsburgh, PA 15219

November 21, 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. Banks and Attorney McCarthy:

I am the Open Records Appeals officer for Allegheny County. On November 18, 2018, I received an appeal from Mr. Banks. Mr. Banks had sought various documents from Mr. McCarthy in regards to a case involving his deceased father, Milton (Jack) Banks, that occurred sometime between the years 1967-1972. Mr. Banks did not have a case number. His request sought disclosure of the following:

1. the docket;
2. the warrant, criminal complaint, Information or Indictment;

3. the Judgment;
4. all other records in your system related to the above case.

(See RTKL request).

In response to Mr. Banks' request, Mr. McCarthy stated, *inter alia*,

First, your inability to provide a docket number is a significant hindrance to my search, as our data system is based upon docket numbers and not individual names. Nonetheless, I searched the Unified Judicial System of Pennsylvania Web Portal under the name Milton Banks and was unable to find any record matching that time in the time period you described.

Second, even if I had found any records matching your request, I would not have been able to provide them to you because they would be exempt from disclosure under the Right to Know Law. Section 67.708(b)(16), of Title 65, exempts the following from disclosure:

(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.

(See Mr. McCarthy's letter dated October 26, 2018).

Mr. Banks takes issue with the fact that Mr. McCarthy "only" searched the Unified Judicial System of Pennsylvania Web Portal. That however, is the system that would contain any existent information, since it allows a search by defendant's name. Requester needs to realize that without a case number, it is impossible to find a case within a purported 5-year period dating back to 1967-1972. Requester also must realize that an arrest at a Union protest in 1967-1972 does not mean that the case made it to the Court of Common Pleas of Allegheny County. The case could have been handled at the Magistrate level. Mr. McCarthy was unable to find a case during the period of 1967-1972. The Office of District Attorney cannot produce records it does not possess.

As to Mr. Banks' complaint that no exemption was specified, Mr. McCarthy referenced the criminal investigative exemption of §708(b)(16). 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 don't agree that a "docket" or "judgment" would be exempt, but that is not the real reason that this request was denied. The records, if they ever existed, cannot now be located.

As a result, I must decline Mr. Bank's 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,

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Michael W. Streily  
Deputy District Attorney  
Open Records Appeals Officer