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Ms. Judith L. Beljan
507 Arcadia Drive
Pittsburgh, PA 15237

August 9, 2021

Mr. John Bojarski
Open Records Officer
Town of McCandless
9955 Grubbs Road
Wexford, PA 15090

In re: Right to Know Law Appeal

Dear Ms. Beljan and Mr. Bojarski:

I am the Open Records Appeals officer for Allegheny County. On August 6, 2021, I received an appeal from the decision of the Town of McCandless in regards to a request for documents filed by Ms. Beljan. Ms. Beljan had previously called me before mailing her appeal. I note that fact only because I am going to take extra time to deal with some of the concerns that were discussed in that conversation.

I am not an expert on fireworks law in Pennsylvania, and I don't have to be in order to resolve this appeal. I only acknowledge that the law is evolving. What is legal today was not legal a few years ago. The following is an excerpt from an on-line article on fireworks in Pennsylvania:

So, what kind of fireworks can you buy and set off in Pennsylvania?

Pennsylvania residents are legally allowed to purchase — and set off in state — Class C fireworks, also known as "consumer grade" fireworks. This class includes firecrackers, Roman Candles, bottle rockets, and similar products. Fireworks cannot contain more than 50 milligrams of explosive material, according to the new law.

This is the most noteworthy change in the new law, as previously, only the smallest products and "ground-based" material could be legally used.

What's still not permitted: the purchase or use "display" fireworks, which contain professional grade aerial shells.

Pennsylvania is one of 46 states, along with Washington D.C., to allow consumer grade fireworks, according to the American Pyrotechnics Association, though the fine print can differ in important ways from there.

While the new law allows these Class C fireworks to be used in the state, it does restrict where they are allowed to be set off. The restrictions should be obvious, yet they are there anyway. According to state police, fireworks cannot be used in the following locations:

- On any public or private property without the permission of the owner
- Inside a motor vehicle or building
- Toward a motor vehicle or building
- Within 150 feet of a building that is occupied

According to Requester Beljan, the following events were the cause of her request under the Right To Know Law:

When I called on July 2, 2021 my neighbor was setting off fireworks the likes I've never seen. They were set off over power lines, my car and part of my roof. I have video verification as well as fireworks debris which landed on my car. Officer Cerrillos answered my "911" call a few minutes later and announced to me that "fireworks are now legal." I was dumbfounded as these fireworks in my estimation would not be legal. But he reiterated "fireworks are now legal." Like a dumb fool I believed him...After all, he's an officer of the law. When I could see that he would not respond to my home I wanted to make a complaint about all the noise caused by the fireworks. I asked if he would vouch for me at the administration office the Tuesday after the holiday about the noise. He said he couldn't do that but there would be a record of my call. He said "you misunderstand me??"

The next night July 3, I had to endure another barrage of fireworks which lasted only about 20 minutes compared to the night before which lasted 30-40 minutes. I felt I couldn't call "911" since "fireworks were legal." On July 4, itself no fireworks from neighbor were displayed. Unfortunately, that day I had checked the Internet & learned that these fireworks were indeed "not legal." The Officer had lied and deprived me of the satisfaction of having him (my neighbor) cited in the action of setting them off. The fireworks on 7/2/21 were still going off when I spoke with Cerrillos.

McCandless Township is pulling a cover up over this whole incident. They have a lazy and deceitful officer working for them. He should be at least reprimanded ... if not fired.

This incident has morphed into a more serious complaint which I will be making soon against Officer Cerrillos.

In addition, I'm pointing out that their denial of my RTK request calls this (in one instance) "criminal investigation" and (another instance) "non-criminal investigation." I contend there was no investigation at all. There was a cover-up meeting...no investigation was done!

See letter of Ms. Beljan requesting an appeal.

Requester then sought “Police report MCP2106759” and “A letter sent by the Fire Marshall to a resident regarding fireworks.” In a letter dated July 16, 2021 Open Records Officer John Bojarski agreed to send the requester a document the Fire Marshall had sent to the resident “detailing current fireworks laws in Pennsylvania.” He refused to send a copy of the letter, invoking the “noncriminal investigation” exemption under 65 P.S. §67.708(b)(17). He refused to send the police report, invoking the Criminal History Record Information Act (“CHRIA”; 18 Pa.C.S. §§ 9101-9183) and the criminal investigation exemption contained at 65 P.S. §67.708(b)(16). Mr. Bojarski noted,

Because the identified Incident Report documents the Department’s response to a complaint of potential criminal conduct, documents the investigation into the potentially criminal conduct and contains witness statements, and documents the result of the investigation, this portion of your Request is **denied**.

See letter dated July 16, 2021; emphasis in original.

Requester Beljan has also sent me a copy of a letter dated July 20, 2021 written by Robert T. Grimm, Town Manager. In that letter Manager Grimm has asserted that the Fire Marshall did contact the resident regarding fireworks usage and that Police Chief Hawk confirmed that the resident was contacted by the police department.

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) provides in relevant part:

(d) Law enforcement records and Statewide officials.-

* * * *

(2) The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.

I attempted to explain that nuance and my limited ability to address all of requester’s concerns to Requester Beljan, and it appears that requester did file a separate appeal to Office of Open Records to challenge the denial of access to the Fire Marshall’s letter to the resident about setting off fireworks.

Now, as to the police report, the Right to Know Law exempts certain materials from disclosure and in regards to those exemptions, 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).

Contrary to requester's assertion, I do find that the report was generated as the result of a potential criminal investigation. But although the report was initially generated as the result of a potential criminal investigation, what concerns me is that a resident who may have a potential insurance claim if her car was damaged by another resident's use of fireworks is being denied access to a record that could document the incident and prove to an insurance company that she did contact the police in a timely fashion. "Police blotter" information is a public record and I believe that any report in the possession of the Town of McCandless can be redacted to document the fact that requester made a complaint. I direct the Town of McCandless to provide a redacted complaint that provides evidence of requester's complaint about her neighbor's alleged use of fireworks but does not include witness statements or observations made by police during the course of the investigation.

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