

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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April 4, 2017

Jerry Tyskiewicz, Director
Open Records Officer
Department of Administrative Services
202 Courthouse
436 Grant Street
Pittsburgh, PA 15219

In re: Open Records Appeal; AP 2017-0536; 1444-102764

Dear Attorney Pie, Attorney Bentz, and Open Records Officer Tyskiewicz:

I am the Open Records Appeals Officer for the District Attorney of Allegheny County. On March 30, 2017 I received from Attorney Pie, an appeal of a denial of a Right to Know Request. That denial was from the County of Allegheny. On April 3, 2017 I also received a transferal from the Office of Open Records dealing with the same request and denial. As the two appeals involve the same issue, I will take the liberty of addressing them both in this determination. The request from Attorneys Pie and Bentz was as follows:

A copy of the police report regarding the 12/18/16 traffic incident which caused the death of Samuel Fitzpatrick outside of Pugliano's Italian Grill on Golden Mile Highway in Plum.

The County of Allegheny, through Mr. Tyskiewicz, Open Records Officer responded to the request in relevant part as follows:

A copy of the police report is being provided and attached hereto in electronic format. However, pursuant to the exception set forth in Section 708(b)(6)(i)(A) of the RTKL, portions of this record have been redacted to remove “personal identification information.” Therefore, as to the information redacted from this record, your request is respectfully denied. Additionally, records relating to or resulting in a criminal investigation are exempt from disclosure as permitted by Section 708(b)(16) of the RTKL.

(See letter dated March 20, 2017).

As you know, 65 P.S. §67.708 (a)(16) exempts from disclosure:

(16) A record of an agency relating to or resulting in a criminal investigation, including:

* * * *

(ii) Investigative materials, notes, correspondence, videos and reports.

I appreciate the argument of the Requesters that this information is vital to assist a client in pending litigation and I also appreciate their position that “[t]he findings of this report issued as a result of the traffic accident were seemingly not meant to document a criminal investigation, but to ascertain an unfortunate incident where police were called.” (See letter dated March 28, 2017). The un-redacted narrative of the Report makes clear that the Report was prepared by the Allegheny County Police Homicide Unit. It is not clear whether a criminal investigation is still active.

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). Assuming *arguendo* that no criminal charges were filed, the information being sought was prepared during the course (however brief) of a criminal investigation. I exercise no power of equity and although I personally wish that an Agency would disclose the full body of the affiant’s/officer’s narrative in these types of Reports, I believe it is a record relating to a criminal investigation which is exempt from disclosure.

As a result, I must decline the request. Please be advised that pursuant to 65 P.S. §67.1302 parties to this action have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County. Thank you.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer