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DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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Brian Bowling  
Pittsburgh Tribune Review  
503 Martindale St., Third Floor  
Pittsburgh, PA 15212

April 9, 2013

In re: Appeals from denials of Right To Know Requests

Dear Mr. Bowling:

I am the Open Records Appeal Officer for the Office of District Attorney of Allegheny County. On April 8, 2013 I received 2 appeals filed by you. In the first appeal at No. 2013-1-53, you have appealed the decision of Mr. Benjamin Smith which denied you access to:

“The federal subpoena the FBI served on the Bureau of Police Feb. 12 for records from its Special Events, Personnel and Finance Offices.”

In denying your request, Mr. Smith wrote that he had denied your request “because the requested record relates to an investigation. (See 65 Pa.C.S. §§67.708(b)(16)(i)-(vi) and 67.708(b)(17)(i)-(vi)).” As you may know, those provisions provide an exception to disclosure for the following types of records:

- (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 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 trial 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.

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- (17) A record of an agency relating to a noncriminal investigation, including:
- (i) Complaints submitted to an agency.
  - (ii) Investigative materials, notes, correspondence and reports.
  - (iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L. 1559, No.169), [fn.#1] known as the Whistleblower Law.
  - (iv) A record that includes information made confidential by law.
  - (v) Work papers underlying an audit.
  - (vi) A record that, if disclosed, would do any of the following:
    - (A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.
    - (B) Deprive a person of the right to an impartial adjudication.
    - (C) Constitute an unwarranted invasion of property.
    - (D) Hinder an agency's ability to secure an administrative or civil sanction.
    - (E) Endanger the life or physical safety of an individual.

I agree with Mr. Smith's assessment that, at a minimum, the subpoena relates to a criminal investigation and disclosure of the subpoena would reveal an aspect of the progress of the investigation, i.e., the witnesses or documents needed by the Federal Grand Jury to conduct its investigation. I believe that your assertion that a subpoena "is a record of the documents the city turned over to the FBI" proves the correctness of Mr. Smith's decision.

In your second appeal at No. 2013-1-75 you have appealed the decision of Mr. Benjamin Smith which denied you access to:

"All account and transaction records for the ICP account and any other agency accounts held or previously held by the Pittsburgh Bureau of Police or its administrators at the Greater Pittsburgh Police FCU."

In denying your request, Mr. Smith wrote that he had denied your request "because the requested record relates to an ongoing investigation. (...) (See 65 Pa.C.S. §§67.708(b)(16)(i)-(vi) and 67.708(b)(17)(i)-(vi))." I have cited those provisions above and agree with Mr. Smith's determination. I respectfully reject your argument that accounts or notes are "purely factual" and that their nature as "facts" prevent them from being investigative material.

Please be advised that you may appeal my decision and will have 30 days to appeal this decision to the Court of Common Pleas. See 65 P.S. §67.1302.

Very Truly Yours,

Michael W. Streily  
Deputy District Attorney

cc: Benjamin Smith, Open Records Officer