

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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Mr. George Wayne Brooks
#AP-4884
SCI-Coal Township
c/o Smart Communications
P.O. Box 33028
St. Petersburg, Florida 33733

January 18, 2022

Celia B. Liss, Esquire
Open Records Officer
City of Pittsburgh Dept. of Law
City-County Building-Third Floor
414 Grant Street
Pittsburgh, PA 15219

In re: Right to Know Law Appeal; AP 2022-0085

Dear Mr. Brooks and Open Records Officer Liss:

I am the Open Records Appeals officer for Allegheny County. As you know, the Office of Open Records (OOR) referred the present case to me to determine whether the Agency properly invoked the criminal investigative exemption in denying Mr. Brooks' request for the following items:

Supplemental report prepared by Detective James Conn; Copy of report prepared by Detective Phare Hytton, [sic] dated 11-14-7 to Detective Lt. Ralph

Pampeha. [sic] Probable Affidavit, arrest warrant, Death Certificate of Michael Miller on died, (sic} 11-5-75 in case of Commonwealth v. Brooks: cc: 750-8889 and cc: 750-9210.

See letters sent to Requester Brooks by Open Records Officer Liss, dated 11/19/21 and 12/27/21.

In denying the request, Ms. Liss stated the following:

Upon investigation, I have determined that the records you seek are not public records under the RTKL. This includes Supplemental Reports and Arrest Reports. Those records are investigative in nature. RTKL states that investigative reports and other records associated with a criminal investigation are not subject to release. See 65 P.S. §67.708(b)(16)(ii). Further, to the extent that this request is protected under the Criminal History Record Information Act, 18 Pa.C.S. §9101 *et seq.*, the City is prohibited from forwarding this information to you.

No other records exist. The Probable Cause Affidavit was not in the police file, nor was a Death Certificate. Death Certificates, however, can be obtained from the Commonwealth of Pennsylvania Department of Health.

See letter dated 12/27/21.

Under 65 P.S. §67.708(b)(16) the following records are exempt 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.

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 Mr. Brook's request and affirm the 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. I want to thank all parties for their cooperation.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer