

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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April 14, 2020

Honorable Jonathan E. Wharton  
Chief of Police  
Upper St. Clair Police Department  
1820 McLaughlin Run Road  
Upper St. Clair, PA 15241-2332

In re: Right to Know Law Request of William Elliott

Dear Attorney Mantella and Chief Wharton:

Pursuant to my letter of March 20, 2020, Chief Wharton confirmed that he is the Open Records Officer for Upper St. Clair Police Department. He also explained that the requested items were prepared in response to his officers being called to investigate a possible criminal incident. And he also asserted that the items were exempt as criminal investigative materials.

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.

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 have no power to act in equity but must follow the letter of the law.

As a result, I must decline the 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