

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

436 GRANT STREET, 401 COURTHOUSE ♦ PITTSBURGH, PENNSYLVANIA 15219-2489
PHONE (412) 350-4377 ♦ FAX (412) 350-3312

Noah Paul Fardo, Esquire
Flaherty Fardo Rogel Amick
812 Ivy Street
Pittsburgh, PA 15232

August 1, 2019

Mr. Kevin McCarthy, Esquire
Open Records Officer
Office of District Attorney
401 Courthouse
436 Grant Street
Pittsburgh, PA 15219

In re: Right to Know Law Appeal; Commonwealth v. Paszkiewicz

Dear Attorney Fardo and Open Records Officer McCarthy:

I am the Open Records Appeals officer for Allegheny County. Attorney Fardo had sought the following documents from the Office of District Attorney:

Any and all documents and evidence concerning the arrest and conviction of Paul Joseph Paszkiewicz, docket number CP-02-CR-0013684-2018.

In denying the request Mr. McCarthy noted that the requested items are exempt as “criminal investigative materials” covered by 65 P.S. §67.708(b)(16):

First, the Right to Know Law exempts certain materials from disclosure, and 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.

Notably, much of the material contained in the file, including, but not limited to, police reports and accompanying information contained in an affidavit of probable cause, seized photographs or recordings, or any other evidence, would have been provided to or obtained by the Allegheny County District Attorney’s Office as part of the criminal investigation and trial and are, therefore, exempt for disclosure pursuant to 65 P.S. §§67.708(b)(16). Moreover, the fact that a criminal investigation is closed is of no moment, because, as the Office of Open Records has explained, Section 708(b)(16) expressly protects [materials] relating to the result of a criminal

investigation and thus remain protected even after the investigation ends. See *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP2009-0196. See also *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa.Cmwlt. 2011).

See letter of Mr. McCarthy dated July 15, 2019.

Mr. McCarthy went on to note that disclosure was also prohibited by the provisions of the Criminal History Record Information Act, 18 Pa.C.S.A. §9101 *et seq.* It appears that he did send requester a copy of the Criminal Information.

I believe that Mr. McCarthy is correct in that the materials involving the arrest and conviction of a criminal defendant are certainly criminal investigative materials.

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,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer