

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

Ms. Theresa Fetterolf
528 Scaife Road
Sewickley, PA 15143

November 30, 2021

Ms. Katie M. Stringent
Agency Open Records Officer
Sewickley Heights Borough
238 Country Club Road
Sewickley Heights, PA 15143

In re: Theresa Fetterolf v. Sewickley Heights Borough; Docket No. AP 2021-2027

Dear Ms. Fetterolf and Open Records Officer Stringent:

I am the Open Records appeals officer for Allegheny County. On November 30, 2021 I received a transferred appeal from the Office of Open Records at the above captioned number. As you both know, the Office of Open Records dealt with and resolved the issues of attorney client and work product privilege as well as the asserted non-existence of other requested items. I am tasked solely with deciding whether the requested items that were not turned over are exempt from disclosure under 65 P.S. §67.708 (16) (criminal investigation exemption).

Pertinent to my responsibility, requester requested copies of police reports generated as a result of her making a complaint about alleged trespassers as well as copies of citations “that were issued to Mayor Oliver and/or his wife.” (See letter of Farneth Law Group dated October 5, 2021 at p.5). It appears that

redacted copies of certain documents in regards to police reports were turned over as I have been given a report of some kind that states that,

John Oliver III informed officer that he and his wife, Sylvia Dallas were testing out the new e-bikes that they had just purchased on the private lane before taking them on the road and were on Fetterolf's portion of the driveway. He said he did not think that this was a big problem because they were only on the driveway with the bikes.

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.

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).

The issue that concerns me is that under 16 (i), private criminal complaints appear to be exempted from the exemption and this is a private complaint situation. Further, although the Office of Open Records notes that requester has stated that she is a “victim” and that “a request under the RTKL must be construed without regard to the identity of the requester[,]” (See Final Determination at p.2; fn.#3), I take issue with OOR insinuating that victim status is always irrelevant. The problem with that broad statement is that victims have rights in the Commonwealth of Pennsylvania that go beyond the Right To Know Law, which itself recognizes the special circumstance of a private complaint. A victim who summons police to assist with a possible criminal situation is entitled to have police reports and copies of official charges levied as a result of her or his complaint.

As a result, I must grant Ms. Fetterolf’s request and reverse the denial of access. I direct that Sewickley Heights Borough provide requester with all police reports (with any redactions deemed necessary by Police Chief Harrison) and copies of citations or communications sent to Mr. Oliver and Ms. Dallas as a result of this alleged trespassing incident. 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