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Ms. Terry Fetterolf
528 Scaife Road
Sewickley, PA 15143

July 18, 2019

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

In re: Terri Fetterolf v. Borough of Sewickley Heights; Docket No. AP 2019-0854

Dear Ms. Fetterolf and Open Records Officer Stringent:

I am the Open Records appeals officer for Allegheny County. On July 16, 2019 I received a transferred appeal from the Office of Open Records at the above captioned number. As you both know, I am tasked with deciding whether the requested police report is exempt from disclosure under 65 P.S. §67.708 (16) (criminal investigation exemption).

I note that the Final Determination in this case states at p.2:

On June 18, 2019, the Borough submitted a position statement reiterating its grounds for denial under Section 708(b)(17)(ii), 65 P.S. § 67.708(b)(17). For the first, however, the Borough also argued that the report is exempt under Section 708(b)(16) of the RTKL, which pertains to records related to a criminal investigation. 65 P.S. §67.708(b)(16). In

support of its position, the Borough submitted the affidavit of Katie Stringent, the Borough's Manager and Open Records Officer. A supplemental affidavit was filed on June 26, 2019.

In the affidavit dated June 18, 2019 Ms. Stringent attests that the police report was prepared as part of an official probe into violations "of the Borough's ordinances, some of which are civil in nature and others of which are criminal in nature, (the "Complaint")."

The Right to Know Law places an evidentiary burden on the agency seeking to deny access to a record or document, even when privileges are involved. *See Department of Transportation v. Drack*, 42 A.3d 355 (Pa. Cmwlth. 2012). The Borough has not provided a copy of, or citation to, any applicable Ordinance that would make the behavior being investigated a crime. I certainly attribute no bad faith to the Borough in its belated reliance on (b)(16) but if an 11th hour explanation is to be asserted and relied upon, it should at least discuss which crimes were being investigated, given the Borough's initial reason for denial which did not include that exemption. The Borough has provided nothing of substance, beyond the statement of Ms. Stringent, to support its assertion that a criminal investigation was taking place.

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 the police report at issue herein. 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