

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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Curtis Gilbert
American Public Media
480 Cedar Street
St. Paul, MN 55101

May 2, 2018

In re: Open Records Request

Dear Mr. Gilbert:

I am the Open Records Officer for the District Attorney of Allegheny County. On April 20, 2018, you sent a request to the Office of District Attorney for information/records/recordings involving the "1/31/16 shooting of Bruce Kelley in Wilkinsburg." Your request did not reach me until April 30, 2018. Specifically, you requested the following:

1. Any records summarizing the investigation's findings (for instance, an executive summary by investigators or any letter from the district attorney's office detailing whether charges were warranted and why).
2. Any video or audio recordings, such as body camera, dash camera, surveillance camera, bystander footage or other video recorded during the shooting or the events leading up to it.
3. Recordings and transcripts of any interviews with the officer(s) present during the shooting or events leading up to it.
4. Any data retrieved from TASER brand stun guns used during the incident; if this data is unavailable, I request records documenting the model and date of purchase of any Tasers discharged during the incident.

(See email to Mike Manko dated April 20, 2018).

As to item #1, enclosed please find a copy of the June 10, 2016 memo on the death of Bruce Kelley, Jr. compiled by The Office of the District Attorney after a review of the investigative

materials. By way of explanation, a memo of this sort would ordinarily be addressed to counsel for the family. At the time of the issuing of this memo, The Office of the District Attorney was not aware of the particulars of the Kelley family being represented and chose to send the memo to Bruce Kelley, Sr. at a residential address that we had for him and at the Allegheny County Jail.

As to your request at number 2, The Office of the District Attorney was in possession of video evidence during its review of the investigative materials and chose, pursuant to Pa Rule of Ethics 3.8(e), to release a portion of what was in our possession to the public. See 65 P.S. §67.506 (c) which permits an Agency to exercise discretion in situations where a document/information is exempt from disclosure. We are no longer in possession of such video evidence and the Agency which possesses it is not an agency that “has contracted to perform a governmental function on behalf of the” District Attorney. See §506 (d), *Id.* Further, if we were in possession of such evidence we would be required to direct you to the original investigating agency as we are prohibited from secondary dissemination of such materials *see generally* 18 Pa.C.S §9101 as well as 65 P.S. §67.708(b)(16)(iv) (exempting from disclosure records made confidential by law). An internet search for the video will reveal what media outlets at the time received it. <http://www.post-gazette.com/video/?v=4739630883001> is a link still available on the Post Gazette’s (a local newspaper’s) website as of the writing of this letter. By way of explanation it does not capture the shooting itself, but rather a portion of the foot pursuit and officer’s efforts to take Kelley, Jr. into custody prior to the shooting. Finally, if we had it, we would at this time invoke §708(b)(16) as it is a “record of an agency relating to or resulting in a criminal investigation” and videos are exempt from disclosure under the circumstances in which these were compiled. See §708(b)(16)(ii). But again, we do not possess it.

As to your requests at numbers 3 and 4, The Office of the District Attorney is no longer in possession of any recordings or interviews of any officers present during the shooting death of Bruce Kelley, Jr. Further, if we possessed such records, we would invoke the exemption under §708(b)(16):

(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.

* * * *

- (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.

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).

Finally, we are not in possession of any Taser data to the extent that it existed to begin with. In this regard, I would encourage you to make a similar right to know request of the investigating

agency if you have not already done so. In Allegheny County at the time of this incident, the Allegheny County Police Homicide Unit was tasked with investigating police involved shootings involving the Port Authority Police and/or municipal police departments. Their current address is; 875 Greentree Road, Ten Parkway Center, Pittsburgh, PA 15220.

As a result, I will grant your request as to item #1 but as to the other items, I must decline your request. Please be advised that pursuant to Section 1101 you have 15 business days to appeal my decision to the Office of Open Records.

Very truly yours,

Lawrence N. Claus
Deputy District Attorney
Open Records Officer