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DISTRICT ATTORNEY



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County of Allegheny

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February 19, 2019

Celia B. Liss, Esquire
Open Records Officer
City of Pittsburgh
Department of Law
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

In re: Open Records Appeal

Dear Attorney Hardin and Open Records Officer Liss:

I am the Open Records Appeals officer for the District Attorney of Allegheny County. On February 11, 2019, I received from Attorney Hardin, an appeal of a denial of a Right to Know Request. Mr. Hardin had requested access to:

**2701 Simple Assault-CCR#219564-DOI 11/12/2017-Officer Davis, Ryan 4428
Location of Incident, 1500 E. Carson Street, Pittsburgh, PA 15203
Please produce any and all reports, records, photographs, witness statements, videos
and/or recordings, and any and all investigative reports and/or records.*

The Open Records Officer provided a 2.0 Pittsburgh Bureau of Police Offense/Incident Report but withheld other documents citing 65 P.S. §67.708(b)(16)(ii) as well as the Criminal History Record Information Act, 18 Pa.C.S. §9101.

65 P.S. §67.708 (a)(16) exempts from disclosure:

(16) A record of an agency relating to or resulting in a criminal investigation, including:

* * * *

(ii) Investigative materials, notes, correspondence, videos and reports.

Under §67.1101(a) “[t]he appeal shall state the grounds upon which the requester asserts that the record is a public record...and shall address any grounds stated by the agency for delaying or denying the request.” Requester has not provided any argument in support of the appeal. “[I]f a record on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii).” *Barros v. Martis*, 92 A.3d 1243, 1250 (Pa. Cmwlth. 2014). “[N]o matter what is contained in an incident report, incident reports are considered investigative materials and are covered by that exemption.” *Hunsicker v. Pennsylvania State Police*, 93 A.3d 911, 913 (Pa. Cmwlth. 2014). “[U]nder the investigative exemption, the entire investigative report falls within the investigative exemption.” *Id.*, at 913. 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 an 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).

As a result, I must decline the request for disclosure and affirm the decision of the Open Records Officer. Please be advised that pursuant to 65 P.S. §67.1302 parties to this action have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County. Thank you.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer