

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

Mr. Aaron Henderson
#KL-3008
SCI Houtzdale
P.O. Box 1000
Houtzdale, PA 16698

January 19, 2021

Jerry Tyskiewicz, Director
Open Records Officer
Department of Administrative Services
202 Courthouse
436 Grant Street
Pittsburgh, PA 15219

In re: Right to Know Law Appeal; OOR Dkt. 2020-2635

Dear Mr. Henderson and Open Records Officer Tyskiewicz:

I am the Open Records Appeals officer for Allegheny County. As you know, the Office of Open Records (OOR) referred the present case to me for disposition of the issue concerning the status of certain requested items. Specifically, Mr. Henderson had requested that he be provided with “all information and documents in case #H:292-10.” Mr. Tyskiewicz denied that request after determining the records did not exist. During litigation before the Office of Open Records, the Agency argued that the records were exempt criminal investigative records, 65 P.S. §67.708(b)(16)[.]” See OOR Final Determination at p.2.

Under 65 P.S. §67.708(b)(16) the following records are exempt from disclosure:

- (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).

As a result, I must decline Mr. Henderson's request and affirm the 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. I want to thank all parties for their cooperation.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer