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Mr. Jeffrey Kennedy
612 Moreland Drive
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July 12, 2022

Dennis R. Biondo
Suite 1201 Manor Building
564 Forbes Avenue
Pittsburgh, PA 15219

In re: Right to Know Law Appeal; OOR Dkt. AP 2022-1453

Dear Mr. Kennedy and Attorney Biondo:

I am the Open Records Appeals officer for Allegheny County. On July 11, 2022, I received a transferred appeal from the Office of Open Records (OOR). The parties are familiar with the procedural history. Requester had sought production of the following information from the Borough of Castle Shannon Police Department:

Any and all police reports involving Cameron Kennedy (DOB 10/30/99) including reports from May 25th and any other reports prior to May 25th involving Cameron Kennedy which is in your records management system. Please include the complete reports with complainant information if applicable.

See *Final Determination of OOR at p.1.*

The Borough did not provide a proper response and the request was deemed denied. *Id., at p.1.*

65 P.S. §67.1101 **Filing of appeal** place a burden on a requester to: “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 done so, arguing: “[n]o cases are under investigation and are not criminal in nature. Chief of Police phoned me and told me he would not give me reports and would drag this on so I did not get the reports. He said it would be turned over to their solicitor but I have not received anything in writing. (...) [T]he records do not qualify for any exemption under §708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation, and the request was sufficiently specific.”

See *Requester’s response to OOR.*

In the appeal before OOR, the agency asserted that “[t]he police report includes the investigative material and notes of Borough police officers investigating a potential criminal matter including victim information and which would reveal the institution, progress or result of that criminal investigation.” See *Answer and Position Statement at paragraph 9.*

Requester is reminded that the Right to Know Law exempts certain materials from disclosure and 65 P.S. § 67.708(b)(16) makes the following documents unavailable to public access:

- (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 deny the request and affirm denial of access to the police report. 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