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October 25, 2017

Chief Kenneth I. Davies
Chief of Police and Open Records Officer
West Mifflin Borough Police Department
1020 Lebanon Road
West Mifflin, PA 15122

In re: Request of Joanne Klotzbaugh

Dear Chief Davies and Attorney Pietz:

I am the Open Records appeals officer for Allegheny County. On October 23, 2017 I received an appeal from the denial of a request for a copy of a police complaint, that was prepared after Ms. Klotzbaugh (the requester) reported an incident of identity theft. The denial was made by Chief Davies. The reason for the denial, as stated in correspondence dated October 20, 2017, was that release of the information would violate 18 Pa.C.S.A. §9106:

“Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is

based upon a name, fingerprints, modus operandi, genetic typing voice print or other identifying characteristic.”

See letter dated October 20, 2017.

It is noted that Chief Davies did not specifically invoke material exempted as “relating to or resulting in a criminal investigation” pursuant to the language of 65 P.S. §67.708 (16). It is clear, however that the denial was made because of the Chief’s belief that the material is of a criminal investigative nature.

“Investigative information” is defined at 18 Pa.C.S.A. §9102 as,

Information assembled as a result of the performance of any inquiry, formal for informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.

I certainly understand Chief Davies’ reasoning; but I believe that the present case involves a situation where the Legislature would want the information to be disclosed. Although this is not a classic private criminal complaint (See Pa.R.Crim.P. 506), it is in the nature of a private criminal complaint, since Ms. Klotzbaugh went to the West Mifflin Police Department to provide information about criminal behavior which injured her; thus becoming an affiant of sorts. Private criminal complaints are not exempt from disclosure under 65 P.S. §67.708 (16) (i). That rationale is not controlling of my decision. But I do note it because the police complaint would only contain information which the victim volunteered. The disclosure of what the victim told the police would not divulge anything the victim doesn’t already know; and it would not have any negative impact on any investigation that the Department might pursue on Ms. Klotzbaugh’s behalf.

Additionally, and more importantly, under the Crime Victims Act, a victim has the right “[t]o receive basic information concerning the services available for victims of crimes.” 18 P.S. §11.201. As requester notes, a copy of a police report is essential to a victim of identity theft. See 73 P.S. §2509 *et seq*; 18 Pa.C.S.A. §4120 (e); as well as “The Federal Trade Commission memo” that requester has attached to her appeal. It is essential that a victim of identity theft be given a copy of the police report detailing her or his criminal victimization. If The Right To Know Law prohibits a victim of identity theft from securing an accurate copy of a police complaint detailing the victim’s reporting of identity theft, the statute infringes on due process and should be found unconstitutional.

As a result, I must grant Ms. Klotzbaugh's request and reverse the denial of access. I direct that the West Mifflin Police Department provide a copy of the police complaint to the requester within 7 days of the date of this decision. 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