

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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Renee Konias  
409 Euclid Avenue  
Dravosburg, PA 15034

June 8, 2017

Deputy Chief Sean Greene  
Opens Records Officer  
Pleasant Hills Police Department  
410 East Bruceton Road  
Pittsburgh, PA 15236-4500

In re: Open Records Appeal

Dear Ms. Konias and Deputy Chief Greene:

I am the Open Records Appeals officer for Allegheny County. On June 5, 2017 I received an appeal from Ms. Konias. The appeal was from the decision of Deputy Chief Greene, Open Records Officer, Pleasant Hills Police Department, which denied Ms. Konias' request for "police report from 2-28-12 where a Daniel McDonald found my son's (Kenneth J. Konias, Jr.) cell phone on route 51." In denying the request Deputy Chief Greene stated "The Pleasant Hills Police Department has denied your request because criminal investigative reports [are] exempt from disclosure pursuant to section 708(b)(16) of the Right To Know Law." (See letter dated May 31, 2017).

The cell phone which was recovered by Mr. McDonald was actually introduced at the trial of Commonwealth v. Kenneth Konias, No. CC 201207539, as

Commonwealth Exhibit 36 (See notes of testimony, 11/6/13-11/19/13 at pp. 254-262). Testimony at that trial (as well as the verdict that was rendered) indicated that the defendant, Mr. Konias, was in possession of that phone on the day he committed criminal homicide. Testimony also indicates that shortly after Mr. McDonald found the phone, he met with detectives from the City of Pittsburgh at the Pleasant Hills Police Station, and gave them the phone. Contrary to the requester's assertion, that cell phone was involved in a criminal investigation and became a piece of evidence at trial. Any report relating to its discovery would necessarily relate to the criminal investigation.

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 Ms. Konias' 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.

Very truly yours,

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Michael W. Streily  
Deputy District Attorney  
Open Records Appeals Officer