

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



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County of Allegheny

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Michael Laub
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September 20, 2019

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

In re: Docket No.: AP 2019-1259

Dear Mr. Laub and Open Records Officer Tyskiewicz:

I am the Open Records Appeals Officer for the County of Allegheny. On September 17, 2019, I received a referral from the Office of Open Records. The parties are aware of the procedural history of this case so I will confine myself to the merits of the issue.

On July 16, 2019, Mr. Laub filed a request in which he asserted the following:

I request that a copy of any and all documents containing information on the investigation concerning the homicide of Maryann Fullerton-Boczkowski on November 7, 1994 in Ross Township, Pennsylvania be provided to me, including but not limited to police reports, any audio/video/photos, suspect interviews, medical examiner's reports, crime scene photos, 911 call audio, lab reports/technical studies etc.

The request was denied on July 26, 2019, by Mr. Tyskiewicz, for the following reasons:

Your request must be respectfully denied. The records that you requested are exempt from disclosure because they are related to a criminal investigation. Section 708 (b) (16) of the RTKL exempts from disclosure a "record of an agency relating to or resulting in a

criminal investigation, including ... (ii) investigative materials, notes, correspondence, videos and reports.”

As noted in *Barros v. Martin*, 92 A.3d 1243, 1249-1250 (Pa. Cmwlth. 2014):

Section 102 of the RTKL, 65 P.S. § 67.102, defines a “public record,” in relevant part, as a “record ... of a ... local agency that:

- (1) is not exempt under section 708 [of the RTKL]; [and]
- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; ...”

Section 708(b)(16)(ii) of the RTKL sets forth a variety of exemptions from the definition of “public record” and provides:

(b) Exceptions.—Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

...

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

...

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

If a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii). *See Coley v. Philadelphia Dist. Attorney's Office*, 77 A.3d 694, 697 (Pa.Cmwlth.2013); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1264 (Pa.Cmwlth.2010). Criminal investigative records remain exempt from disclosure under the RTKL even after the investigation is completed. *Sullivan v. City of Pittsburgh, Dep't of Pub. Safety*, 561 A.2d 863, 865 (Pa. Cmwlth. 1989).

As a result, I must decline your request. Please be advised that pursuant to 65 P.S. §67.1302 you 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