

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

Gerald S. Lepre, Jr., Esquire
4015 Fairfield Avenue
Munhall, PA 15120

August 1, 2022

Celia B. Liss, Esquire
Open Records Officer
City of Pittsburgh Dept. of Law
Third Floor City-County Building
414 Grant Street
Pittsburgh, PA 15219

In re: Transferred Appeal-*Lepre v. City of Pittsburgh*; OOR Dkt. AP 2022-1271

Dear Attorney Lepre and Open Records Officer Liss:

I am the Open Records Appeals officer for Allegheny County. On July 27, 2022, I received the current transferred appeal from the Office of Open Records (OOR). As the parties are aware, Mr. Lepre had requested the following from the Agency:

Any and all complete and unfettered information, documents, records or photographs of a Hit and Run Accident reported on March 27, 2022 at Lindberg and Interboro Avenues, Zone 4, approximately between the hours of 9:00 pm and 10:00 pm, which would include any and all information, documents, records, photographs, identifying information of the parties involved in such accident.

See Final Determination of OOR at p.1.

The Agency provided an incident report but informed requester that all other records were exempt under 65 P.S. §67.708(b)(16)(ii) due to the fact that they were prepared as part of a criminal investigation. See *letter of Ms. Liss dated May 24, 2022*. Ms. Liss informed requester that any appeal regarding a claimed exemption for criminal investigative materials should be filed with me. Requester chose to by-pass me and filed his appeal with OOR. Thus, this transfer.

In his appeal to OOR requester stated that “[t]he investigation has been closed and is no longer ongoing.” See *requester’s appeal to OOR*.

I have reviewed the record sent to me by OOR which includes an affidavit from Deputy Chief of Police Thomas Stangrecki detailing why the undisclosed information is exempt as criminal investigative material. And I find that reasoning to be controlling.

The Right to Know Law exempts certain materials from disclosure and in regards to those exemptions, 65 P.S. § 67.708(b)(16) provides as follows:

- (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 the request and affirm 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,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer