

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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Ms. Ellen Reinsdorf  
1520 Ashbury Lane  
Pittsburgh, PA 15237

March 18, 2020

Regis J. Ebner, Jr.  
Township Manager  
Open Records Officer  
Franklin Park Borough  
2344 W. Ingomar Road  
Pittsburgh, PA 15237

In re: OOR Docket No. AP 2019-1970

Dear Ms Reinsdorf and Mr. Ebner:

I am the Open Records Appeals officer for Allegheny County. On March 17, 2020, I received a transferred appeal from the Office of Open Records. Requester had sought, *inter alia*, documents “identified in the Exemption Log as Document Numbers 000087-000096 and 000099-000194.” See *Final Determination of Office of Open Records at p. 11*. As indicated in the Final Determination, Franklin Park Borough claimed an exemption under 65 P.S. §67.708(b)(16) because the documents were prepared during an investigation into whether the Borough’s Stormwater Management Ordinance was violated. As indicated in the Final Determination and accompanying correspondence and pleadings, a violation of the Ordinance is a summary offense. See *Final Determination at pp. 10-13*.

Section 67.708(b)(16), of Title 65, exempts the following from disclosure:

(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).

I have no power to act in equity but must follow the letter of the law. I mention this because I think that a court might find that a Borough Ordinance such as the one at issue is not meant to be included in the definition of a criminal investigation. But there is no case law to support that belief at this time and I would be usurping my authority to make such determination.

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,

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Michael W. Streily  
Deputy District Attorney  
Open Records Appeals Officer