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Mr. Matthew Sandler
5504 Harriet Street
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Pittsburgh, PA 15232

May 9, 2019

Celia B. Liss, Esquire
Open Records Officer
City of Pittsburgh
Department of Open Records
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

In re: *Matthew Sandler v. City of Pittsburgh*; OOR Dkt. AP#2019-0215

Dear Mr. Sandler and Open Records Officer Liss:

I am the Open Records Appeals Officer for the County of Allegheny. As you both know, on April 25, 2019 the Office of Open Records transferred part of this appeal to me in order to determine whether the City of Pittsburgh properly invoked the exemption for documents that relate to a criminal investigation contained in 65 P.S. §67.708(b)(16). I have read the affidavit of Deputy Police Chief Thomas A. Stangrecki that is referenced at pp. 7-9 of the Final Determination. Based on that affidavit, it is my opinion that these records are exempt from disclosure because they relate to a criminal investigation. See *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.

Thus, 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*, 127 Pa.Cmwlth. 339, 561 A.2d 863, 865 (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

cc: Ms. Celia B. Liss, Open Records Officer