

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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Mary Sheibani  
44 Blue Productions  
3900 W. Alameda Avenue, 7<sup>th</sup> Floor  
Burbank, CA 91505

June 8, 2018

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

In re: Open Records Appeal

Dear Ms. Sheibani and Attorney Liss:

I am the Open Records Appeals Officer for the District Attorney of Allegheny County. On June 6, 2018, I received from Ms. Sheibani, an appeal of a denial of a Right to Know Request. Ms. Sheibani had requested access to:

Pittsburgh Police records pertaining to the DAKOTA JAMES case. Mr. James was found to have suffered a drowning death. James went missing January 25, 2017 from downtown Pittsburgh, and his body was recovered from the Ohio River (in Robinson, PA) on March 6, 2017. I'm hoping to find out the cost for purchasing copies of any records from his case file, such as the incident report, supplementary reports, Witness Statements, recovery photographs, evidence photographs, and footage that may exist in the file, etc. (such as surveillance footage showing him, etc.)

Open Records Officer Liss provided requester with a copy of the "City of Pittsburgh Bureau of Police Offense/Incident Report." (See Attorney Liss' letter dated 5/16/18). Attorney Liss further stated,

Any other record is not subject to public release, as it relates to a criminal investigation. RTKL states that investigative reports are not subject to release. See 65 P.S. §§67.708(b)(16)(ii). Further, to the extent that this request is protected under the Criminal History Record Information Act, 18 PA C.S. §9101 *et seq.*, the City is prohibited from forwarding this information to you.

No other responsive records exist.

*Id.*

65 P.S. §67.708 (a)(16) exempts from disclosure:

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

\* \* \* \*

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

\* \* \* \*

(v) Victim information, including any information made confidential by law or court order.

\* \* \* \*

(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.

The fact that Allegheny County's Communications Director may have told one of your colleagues that this case is not a criminal case, is not controlling. First, it is the City of Pittsburgh's decision on the case that is at issue. And second, this case began as a criminal investigation when a missing person report was made to the City of Pittsburgh Police Department. "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)." *Barros v. Martis*, 92 A.3d 1243, 1250 (Pa. Cmwlth. 2014). "[N]o matter what is contained in an incident report, incident reports are considered investigative materials and are covered by that exemption." *Hunsicker v. Pennsylvania State Police*, 93 A.3d 911, 913 (Pa. Cmwlth. 2014). "[U]nder the investigative exemption, the entire investigative report falls within the investigative exemption." *Id.*, at 913. 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 for disclosure and affirm the decision of the Open Records Officer. Please be advised that pursuant to 65 P.S. §67.1302 parties to this action

have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County. Thank you.

Very truly yours,

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Michael W. Streily  
Deputy District Attorney  
Open Records Appeals Officer