

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

Mr. Malcom Simmons
2600 Bartold Street
Pittsburgh, PA 15212

November 16, 2021

Darth M. Newman, Esquire
1140 Thorn Run Road #601
Coraopolis, PA 15108

Honorable Sean R. Greene
Deputy Chief and Open Records Officer
Pleasant Hills Police Department
410 East Bruceton Road
Pittsburgh, PA 15236

In re: Right to Know Law Appeal; OOR Dkt. AP 2021-2232

Dear Mr. Simmons, Attorney Newman, and Deputy Chief Greene:

I am the Open Records Appeals officer for Allegheny County. On November 16, 2021, I received a transferred appeal from the Office of Open Records. Requester had sought the following:

I was pulled over on 9-10-21 by North Strabane Police saying the U-Haul van I was driving was reportedly stolen by Pleasant Hills U-Haul so it ended up being an error on U-Haul end and I was let go after being detained. I need a police report verifying the specifics and North Strabane police advise me I could come here to receive the report.

See Right To Know Law Request Form dated 9-24-21.

Open Records Officer Greene responded by releasing a copy of Incident Report # 202108-02279 that was redacted. According to the Agency, the redacted information “is exempt from disclosure under section 708(b)(16)(i); 708(b)(16)(ii); 708(b)(16)(iii) & 708(b)(16)(vi)(A) respectively, of the PA Right-To-Know law.” (See Letter from Deputy Chief Greene dated September 24, 2021). In an affidavit submitted to Office of Open Records Deputy Chief Greene asserted, *inter alia*:

The Pleasant Hills Police Department’s report, which is the subject of this appeal, contains the identity of possible suspects in this case who have not been charged with an offense. There is also investigative information contained in this Pleasant Hills Police Department incident report that is likely not contained in the police reports of other departments since they are not the original investigating agencies with respect to the initial stolen vehicle report.

* * * *

I understand that Mr. Simmons desires to know when and how he figured into this incident. His desire for redress however does not necessarily make this investigative police report a public document without noting the exceptions contained in Section 708(b) of the PA Right To Know Law that I have listed above.

See Affidavit of Deputy Chief Greene dated October 27, 2021.

Requester, through attorney Newman articulated his objection in a letter to Office of Open Records dated November 1, 2021. He indicated that requester “is willing to accept the redaction of the names of these suspects.” He argued:

His submission contained no authority for the wholesale redaction of large portions of the police report and added no facts other than the assertion that the names of uncharged subjects appear in the unredacted report(s). No factual or legal justification was presented for the continued redaction of the names of the investigating officers or the U-Haul personnel (fn.#1) who communicated with the police. Nor is there a justification for withholding the information U-Haul provided about the circumstances of when, how, and why the vehicle was reportedly stolen when it was not in fact stolen or any steps U-Haul took to update the police on the status of the vehicle. No justification has been

presented for withholding what action, if any, the police took with respect to U-Haul's shifting information or what data police system(s) showed for the vehicle at various points in time.

See Letter to Erin Burlew, Esquire, dated November 1, 2021.

The Right to Know Law exempts certain materials from disclosure and 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.

In its Final Determination at p.3, the Office of Open Records noted that in the present case "it is undisputed that the redacted information could relate to a criminal investigation, as the Request, on its face, seeks a copy of a police report related to a specific incident." I must agree with that observation. Requester wants the report in the hope that it will detail all the occurrences that led up to him being improperly detained. He wants to know what information came from U-Haul to police, who provided that information, and how did the police react during the investigation. In essence, he wants documents that "reveal the institution, progress

or result of a criminal investigation” which is exempted from disclosure as indicated above.

I have examined the incident report. The first block of redaction contains a handwritten notation: “Redacted Investigative Information” as well as the following typed sentence: “On 8/29/21 I Officer Barr was dispatched to U-Haul for a vehicle which had not been returned.” (See page A.1). The second block of redacted information contains the name of the author of the report: Gary P. Barr, has a typed notation that Deputy Chief Greene reviewed the Report, and has the following typed information: “On 9/10/21 I was notified that Peters Twp. had stopped the suspected stolen van. During the stop they determined the male in possession of the van, Malcom Simmons, had legitimately rented the van from the Western Ave. UHaul Location. Simmons had a UHaul rental agreement and all the information matched. Simmons and the van were both released on scene by Peters Twp.” (See page A.2). Page A.3 also appears to be a report authored by Officer Gary Barr and reviewed by an individual named Bryan A. Frankenfield as well as a report authored by Officer Steven Onorad that was reviewed by Chief Brian Finnerty.

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 understand requester’s frustration. I have no power in equity, however. Requester appears to have suffered through a police stop and investigation that resulted when U-Haul mistakenly reported a vehicle that had not been returned and sought police assistance. Everything that flowed thereafter, was related to the criminal investigation. 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