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Mr. Matthew Sullivan
175 Washington Park
Brooklyn, New York 11205

June 3, 2022

Ms. Judy Miller
Borough Manager/Open Records Officer
Borough of Green Tree
10 W. Manilla Avenue
Green Tree, PA 15220-3310

In re: Right to Know Law Appeal; AP 2022-0850

Dear Mr. Sullivan and Open Records Officer Miller:

I am the Open Records Appeals officer for Allegheny County. On June 3, 2022, I received a transferred appeal from the Office of Open Records (OOR) at the above docket number.

OOR noted the following procedural history in regards to Mr. Sullivan's request for information:

"On April 5, 2022, the Request was filed, seeking "[a]ny and all court records (including but not limited to Green Tree criminal complaint) related to the June 2013 arrest (including the June 7, 2013 arraignment) of Levi Weaver ... [s]eeking police reports and court records leading up to current case status." Fn.#1

Fn.#1: On appeal, the Requester narrowed the Request to the criminal complaint and updated status of arrest (for Levi Weaver). Accordingly, only the part of the Request seeking the criminal complaint will be addressed in the Final Determination.

See Final Determination of OOR at pp. 1-2; footnote included.

After providing requester with a redacted copy of the Call Sheet related to this arrest, Ms. Miller denied further access to the Investigative Report, claiming an exemption for criminal investigative material and records: "We withheld the Investigative Report. These records are exempt from disclosure by the RTKL under Chapter 7, Section 708(b)(16), records relating to or resulting in a criminal investigation." *See letter of Ms. Miller dated April 6, 2022.*

As the parties know, my only authority extends to determining whether a document is exempt from disclosure due to the criminal investigation exemption. 65 P.S. §67.503(d)(2). I have no power in equity.

The Right to Know Law protects certain records of an Agency from public access. Specifically, 65 P.S. § 67.708(b)(16) exempts the following items/materials 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).

Out of curiosity I accessed the data base of the appellate and post-conviction Units of the Office of District Attorney and could find no record of this individual taking an appeal or filing for post-conviction relief. I then attempted to access the Pennsylvania PACfile system to search for the case but did not have sufficient information about the case to conduct an adequate search. I note this only because there are other ways of obtaining documents that become part of a court case, besides applying to local police agencies for access.

As a result of the mandate of 65 P.S. § 67.708(b)(16) I must decline Mr. Sullivan's request and affirm the 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