

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

Ms. Cynthia L. Waeltermann
376 Wagon Wheel Trail
Wexford, PA 15090

April 3, 2018

Mr. Regis J. Ebner, Jr.
Open Records Officer/Assistant Town Manager
Town of McCandless
9955 Grubbs Road
Wexford, PA 15090

In re: Dkt. No.: AP 2018-0498; Cynthia Waeltermann v. Town of McCandless

Dear Ms. Waeltermann and Mr. Ebner:

I am the Open Records Appeals officer for Allegheny County. On April 2, 2018, I received a referral from the Office of Open Records in the referenced case. The parties are familiar with the procedural history and the reason why this appeal was referred to me. On March 16, 2018, Ms. Waeltermann requested the following:

Record of Police Report from harassment complaint against Steve Mertz dated March 1, 2018.

In denying the request, Mr. Ebner found that disclosure of the report was foreclosed by both CHRIA and the fact that the document was criminal investigative material. As the parties know, information relating to or resulting in a criminal investigation is exempt from disclosure pursuant to 65 P.S. §67.708 (b) (16) of the RTKL.

It is unfortunate that the RTKL does not recognize that victims who report crimes should be given access to the police reports that are prepared in response to their complaints of criminal conduct. I have often been troubled by this fact as well as the fact that many Agencies cannot voluntarily provide this type of information to citizens complaining of criminal conduct, because even though the RTKL provides a mechanism for discretionary disclosure, see §67.506 (c), CHRIA appears to foreclose that exercise of discretion. If I had Powers of Equity, I would order release of this information. But, case law does not support such action on my part. See *Barros v. Martin*, 92 A.3d 1243 (Pa. Cmwlth. 2014); *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). To that end, I am waiting for litigation asserting constitutional infirmity with the RTKL; it is inevitable. And it will most likely come from a litigant who has been a victim of crime, reported the incident to police, requested a copy of the police report prepared as a result of her complaint, and been denied access to that report. Indeed, I have seen instances where a homeowner has had her home burglarized, requested a copy of the police report to submit to her insurance company, and been denied access to the police report. The RTKL is ripe for a finding of unconstitutionality.

As a result, I must decline Ms. Waeltermann'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