

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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Ms. Diana Wagner
P.O. Box 3144
Homestead, PA 15120

September 11, 2020

Mr. George Zboyovsky
Borough Manager and Open Records Officer
The Borough of Brentwood
Municipal Building
3624 Brownsville Road
Pittsburgh, PA 15227-3199

In re: Right to Know Law Appeal; OOR Dkt. AP 2020-1132

Dear Ms. Wagner and Mr. Zboyovsky:

I am the Open Records Appeals officer for Allegheny County. On September 8, 2020, I received a transferred appeal from the Office of Open Records. Requester had sought "all police records on Diana Wagner 02/26/1981." In denying the request, Mr. Zboyovsky stated, *inter alia*,

The Borough located one criminal case report and several event reports that are responsive to your Request. However, your Request is denied because the event reports and case report constitutes "investigative material" under the Criminal History Record Information Act ("CHRIA"). 18 Pa.C.S. §§

9101-9183, and also criminal and noncriminal investigation records under Section 708(b)(16) and 708(b)(17) of the RTKL.

I have also review Chief Adam Zeppuhar's submission to the Office of Open Records.

Requester is reminded that 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.

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 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