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Taji Walsh
298 2nd Street
Pitcairn, PA 15140

July 5, 2022

Scott Andrejchak, Esquire
Open-Records Officer
Municipality of Penn Hills
102 Duff Road
Penn Hills, PA 15235

In re: Open-Records Appeal; Docket No. AP 2022-1336

Dear Ms. Walsh and Open-Records Officer Andrejchak:

I am the Open-Records Appeals Officer for the District Attorney of Allegheny County. On June 30, 2022, I received a transferred appeal from the Office of Open Records. The parties are familiar with the procedural history. Relevant to this appeal Requester had sought:

The missing person report involving her granddaughter

See Final Determination, Dkt. No. AP 2022-1336 at pp. 1-2.

For historical purposes, I note that I had received a previous transferred appeal from Office of Open Records at AP 2019-1986 in which the same documents were requested from Penn Hills:

“missing person report indicating the times when police took report and when info was sent to PSP. This is regarding Nalani Johnson. Missing 8/31/19. Defendant Sharena Nancy.”

See letter dated 9/24/19; Dkt. No. AP-2019-1986. I had denied that request due to the criminal investigative exemption. Although Requester notes that the criminal investigation has now ended, closure of an investigation, even by conviction and sentence, does not negate that exemption.

I have read the affidavit that Open-Records Officer Andrejchak provided to the Office of Open Records and incorporate that document into my decision that the items are exempt from disclosure. In denying the present request, Open-Records Officer Andrejchak invoked exemption under 65 P.S. §67.708(b)(16) which provides in relevant part:

(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 Ms. Walsh'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