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DISTRICT ATTORNEY



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County of Allegheny

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Mr. Howard Blazer
2909 Brownsville Road
Pittsburgh, PA 15227

May 13, 2016

George Zboyovsky
Borough Manager/Right To Know Officer
Brentwood Borough Municipal Building
3624 Brownsville Road
Pittsburgh, PA 15227

In re: Open Records Appeal

Dear Mr. Blazer and Mr. Zboyovsky:

I am the Open Records Appeals Officer for the District Attorney of Allegheny County. I received an appeal from Mr. Blazer of a denial of a Right To Know Request. That denial was from the Borough of Brentwood. On February 24, 2016, Mr. Blazer had requested either a copy of, or the right to view, a police report concerning an incident which occurred on November 28, 2015. It appears that Mr. Blazer made a supplemental request for the document at, or immediately after, his preliminary hearing in March of 2016. Concerning that second request, a date of March 17, 2016 is referenced by Mr. Zboyovsky in a letter dated April 26, 2016.

Initially, on March 23, 2016, Police Chief Adam Zeppuhar sent a letter informing Mr. Blazer that the request was denied because the case involving Mr. Blazer and the police report was in the court system and that Mr. Blazer would be given the report in the discovery phase of the criminal process. With all respect to Brentwood Borough, it does not appear that Chief Zeppuhar was the Open Records Officer for Brentwood Borough. If I am mistaken in that regard, I apologize. But the Chief gives no indication of such responsibility in his letter. The Chief also did not indicate why the Borough did not comply with the 5 business day response period mandated by 65 P.S. §67.901 nor did the letter indicate a prior invocation of the 30 day extension period allowed pursuant to §67.902. The letter also did not conform to the requirements of §67.903. If the Chief

was not the Open Records Officer, it is unclear why he sent the letter. And if he was the Open Records Officer, he did not fulfill the statutory requirements imposed upon such Officer.

On April 26, 2016 Mr. Zboyovsky sent a letter denying the requests. That letter does not mention the Chief's letter or what happened to the initial request filed on February 24, 2016. It does reference the second request submitted on March 17, 2016. Given the lapse of time between March 17th and April 26th, it is unclear again, why Brentwood Borough did not respond within the 5 business day response period. Additionally, there is no reference to a need for an extension under §67.902. Be that as it may, Mr. Zboyovsky did provide a reason for the denial:

The Borough of Brentwood has denied your request because the requested Police Report is exempt from disclosure under Section 708(b)(16) "A record of an agency relating to or resulting in a criminal investigation."

Mr. Zboyovsky was correct that a police report is exempt under §67.708 (b)(16) and its numerous subsections. The fact that a case is closed does not invalidate an exemption. As the Office of Open Records explained in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196 records pertaining to a closed investigation remain protected because Section 708(b)(16) expressly protects records relating to the result of an 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).

It is noted that under §67.708(b)(16) "police blotter" information "as defined in 18 Pa.C.S. §9102" is not exempt from disclosure. The definition of "police blotter" information does not appear to encompass the name of the person who called the police or the reason for the call. It may include the time of the call since it is concerned with "chronological listing."

As a result, I must deny Mr. Blazer's request for a copy of the police report. And I do not believe that he is entitled to information which would disclose who called the police or the reason for the call. I do however direct Brentwood Borough to provide him with the time of the police call and any other "police blotter" information it might have regarding this incident.

Should either of the parties disagree with my disposition, be advised that appeals from my decision should be filed in the Court of Common Pleas of Allegheny County pursuant to §67.1302 and should be filed within 30 days.

Very Truly Yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer