



DISTRICT ATTORNEY'S OFFICE
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R. SETH WILLIAMS
District Attorney

December 21, 2016

Re: Cooper Appeal from Denial of Request for Criminal Investigative Files

Dear Mr. Cooper and Ms. Graham-Rubin:

This letter constitutes the final determination of the Appeals Officer for the Philadelphia District Attorney's Office concerning Mr. Cooper's appeal from the denial by the Philadelphia District Attorney's Office (DAO) of his request for records under Pennsylvania's Right-to-Know Law. For the reasons set forth below, the appeal is denied.

BACKGROUND

On October 27, 2016, Mr. Cooper submitted a request to the DAO under the Right-to-Know Law (the RTKL), 65 P.S. §§ 67.101-67.3104, seeking:

1. A copy of the July 12, 1985, July 13, 1985 trial records containing the portions of the supplemental instruction to sequester the jury, in the matter of CW v Cooper CP 51 CR 0438741-1984.
2. A copy of the ADA Sandy Byrd's notes, records and or written materials pertaining to the supplement instruction given on July 12-13, 1985, in the matter of CW v. Cooper CP 51 CR 0438741-1984.

On October 28, 2016, the DAO denied the request. The DAO asserted the records were exempt under the criminal-investigative-records exemption in Section 708(b)(16) of the RTKL, and barred from disclosure by the Criminal History Record Information Act (CHRIA), 18 Pa.C.S. §§ 9101-9106.

On November 16, 2016, Mr. Cooper filed an appeal with the Office of Open Records (OOR), challenging the DAO's invocation of the criminal-investigative file exemption. On November 21, 2016, as a courtesy to the requester, the OOR timely forwarded the appeal to the DAO Appeals Officer because it did not have jurisdiction to consider the appeal.

LEGAL ANALYSIS

The RTKL grants the DAO Appeals Officer the exclusive jurisdiction to hear and decide appeals related to access to criminal investigative records. 65 P.S. §§ 67.503(d)(2); *see Barros v. Martin*, 92 A.3d 1243, 1246 n.2 (Pa. Commw. 2014) (explaining that where "the appeal . . . relates to access to criminal investigative records, the appeal is heard by an appeals officer designated by the District Attorney and not [the] OOR").

The DAO is a local agency subject to the RTKL and is required to disclose public records. *Id.* § 67.302. However, any record “relating to or resulting in a criminal investigation,” *id.* § 67.708(b)(16), is by definition not a public record subject to disclosure through the RTKL. *See id.* § 67.102 (defining “public record” as record “not exempt under section 708”); *Allegheny Cnty. Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1037 (Pa. Commw. 2011) (“[A] ‘public record’ is, by definition under Section 102, a ‘record’ that is *not exempt*.”).

As an initial matter, Mr. Cooper’s appeal fails because he does not address all of the grounds for denial stated by the DAO. Specifically, he does not address the DAO’s invocation of CHRIA under Sections 102 and 305 of the RTKL (exempt from disclosure under state law). When a requester appeals a denial of access to records, they must “state the grounds upon which the requester asserts that the record is a public record . . . and shall address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a) (emphasis added). Because Mr. Cooper does not address CHRIA, he has waived any challenge to that bar to access. Therefore, the appeal is denied under Section 1101(a).

In any event, the plain language of the request establishes that Mr. Cooper seeks exempt records “relating to or resulting in a criminal investigation,” 65 P.S. § 67.708(b)(16), namely records related to the criminal investigation and prosecution of Mr. Cooper. He explicitly identifies the criminal case name and docket numbers for his cases. Any such documents undoubtedly would “[r]evele the . . . progress or result of a criminal investigation,” *id.* § 67.708(b)(16)(vi)(A). Moreover, Mr. Cooper does not offer any argument against the 708(b)(16) exemption except to simply assert that the requested records “ha[ve] nothing to do with” a criminal investigation. *See, e.g., Barros*, 92 A.3d at 1250 (“[I]f a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii).”); *Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 697 (Pa. Commw. 2013) (“[C]riminal investigative records are still exempt from disclosure under the Right-to-Know Law after the investigation is completed[.]”). His assertion is inadequate under Section 1101(a) and ignores the obvious relationship to a criminal investigation. Accordingly, the appeal is denied under Sections 1101(a) and 708(8)(16).

For the foregoing reasons, this appeal is denied. This final determination is binding on all parties. Within thirty days of the date of this letter, either party may appeal to the Philadelphia County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served notice of the appeal. The DAO Appeals Officer also shall be served notice and have an opportunity to respond in accordance with applicable court rules. *Id.* § 67.1303.

Sincerely,

Douglas Weck
Assistant District Attorney
RTKL Appeals Officer

By post (Bruce Cooper) & hand delivery (BJ Graham-Rubin)

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