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County of Allegheny

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Mr. Thaddeus Crumbley
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November 22, 2021

Mr. Kevin F. McCarthy, Esquire
Open Records Officer
Office of District Attorney
401 Courthouse
436 Grant Street
Pittsburgh, PA 15219-2489

In re: Right to Know Law Appeal

Dear Mr. Crumbley and Mr. McCarthy:

I am the Open Records Appeals officer for Allegheny County. On November 22, 2021, I received an appeal from the decision of Mr. McCarthy, invoking an exemption under the Right To Know Law. Requester had sought the following:

1) All verbal agreements that Sadday Robinson gave to from (sic) the following agencies. The Allegheny County District Attorney's Office, the Allegheny County Police Department, the Penn Hills Police Department and the U.S. Attorney's Office including the FBI or the DEA offices

2) All videos that Sadday Robinson was filed (sic) by the Allegheny County District Attorney (,) the Allegheny County Police Department, the Penn Hills Police Department and the U.S. Attorney's Office including the FBI or the DEA offices.

3) All tape recordings (sic) statements that Sadday Robinson gave to the following agencies. The Allegheny County District Attorney's Office, the Allegheny County Police Department, the Penn Hills Police Department and the U.S. Attorney's Office including the FBI or the DEA offices.

4) All financial documents, or receipts that [were] used for Sadday Robinson for her cost of living for her cooperation for her testimony against Petitioner such as home, hotels, plane, train, cars, food, spending money, out of state expenses that the following agencies gave her. The Allegheny County District Attorney's Office, the Allegheny County Police Department, the Penn Hills Police Department and the U.S. Attorney's Office including the FBI or the DEA offices.

5) All documents, videos, or tape recordings of Sadday Robinson agreeing to testify against Petitioner for curry favor or financial gains.

(See Mr. McCarthy's letter dated 11/1/21).

In denying the request, Mr. McCarthy stated, *inter alia*, that the records were exempt from disclosure under the Right To Know Law due to their classification as criminal investigative materials.

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