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March 22, 2023

Celia B. Liss, Esquire
Agency Open Records Officer
City of Pittsburgh Law Department
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

In re: Right to Know Law Appeal; Dkt. No. AP-2023-0490; *Louis Fava v. City of Pittsburgh*

Dear Mr. Fava and Ms. Liss:

I am the Open Records Appeals officer for Allegheny County. On March 22, 2023, I received a transferred appeal from the Office of Open Records at the above docket number. In reading the materials sent to me by that Office, I see that the Agency submitted an affidavit from Acting Chief of Police Thomas Stangrecki,

which included the following affirmation in support of its decision not to release certain items to Mr. Fava:

The information described in the narrative of the Arrest, Supplemental and Missing Persons Report include, for example, analysis of the victim and witness statements, which we withheld under the criminal investigation section of the RTKL.

See Exhibit 3; paragraph 13.

Both parties are aware that I have no power in equity and must apply the law as written and elaborated on by the appellate courts.

65 P.S. §67.1101 **Filing of appeal** places a burden on a requester to: “state the grounds upon which the requester asserts that the record is a public record...and ... address any grounds stated by the agency for delaying or denying the request.”

Requester is reminded that the Right to Know Law exempts certain materials from disclosure and 65 P.S. § 67.708(b)(16) makes the following documents unavailable to public access:

- (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 deny the request and affirm denial of access to the police report. 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.

I want to thank both parties for their cooperation in this matter.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer