

YORK COUNTY DISTRICT ATTORNEY'S OFFICE

TOM KEARNEY
DISTRICT ATTORNEY



YORK COUNTY JUDICIAL CENTER
45 North George Street
YORK, PA 17401-1240

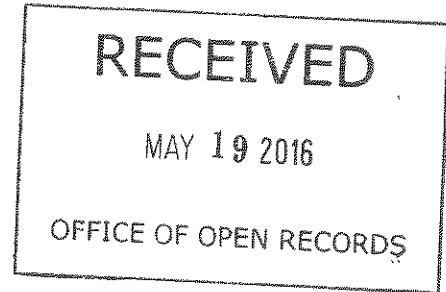
PHONE: (717) 771-9600
FAX: (717) 771-9738

May 18, 2016

Ms. Darlene Herrera
904 East King Street
York, Pennsylvania 17403

Re: Open Records Appeal No.: AP 2016-0765

Dear Ms. Herrera,



Having reviewed your appeal of the determination of the City of York's denial of your Right to Know Request filed on April 18, 2016, as the City of York's basis for denying access to records was appropriate under the Pennsylvania Right to Know Law, your appeal is DENIED.

BACKGROUND

On May 16, 2016 the District Attorney of York County, Pennsylvania received your appeal of Right to Know Request made to the City of York, dated May 2, 2016, requesting a Police Incident Report related to the theft of a Vespa moped in December of 2015. On April 18, 2016 Inspector Craig Losty of the York City Police Department Internal Affairs Division reviewed your request; Inspector Losty advised that an Incident Report did not exist. Based on the information from Inspector Losty, on April 19, 2016 the City of York's Open Records Officer denied your request in accordance with 65 P.S. §67.705, Creation of Record.

As evidenced by a letter dated May 2, 2016, your Official Notice of Appeal was received by the Pennsylvania Office of Open Records on May 2, 2016. On May 3, 2016, after receiving the Notice of Appeal, the Open Records Officer again contacted Inspector Losty to review the documents related to this Appeal; the Open Records Officer learned that the Incident Report number 20160104M0107 did exist, but was not previously located due to the date being incorrectly entered as "01/04/2015" instead of "01/04/2016."

On May 10, 2016 the City of York responded to your Appeal, respectfully requesting that the Office of Open Records deny your appeal, explaining that had Incident Report number 20160104M0107 been located on April 18, 2016, your request would have still been denied by the City of York, instead being denied under 65 P.S. §67.708(b)(16)(ii) and §67.708(b)(17)(ii).

On May 13, 2016 the Pennsylvania Office of Open Records made its Final Determination and transferred this matter to the Appeals Officer for the York County District Attorney's Office. This Officer's Opinion now follows:

DISCUSSION AND FINDINGS

Per 65 P.S. §67.1102(a)(2), this Officer reviewed all filed relating to your request and determined that this appeal may be decided, based on the documents as filed, without any further hearing.

Next, we must determine whether the City of York's Open Records Officer correctly applied the law in issuing a denial of your request. Upon initial review, the Open Records Officer cited to 65 P.S. §67.705, Creation of Record, in denying your request, which states: "When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record."

After filing your appeal, the Open Records Officer uncovered an Incident Report number 20160104M0107 related to your Request. However, the Officer nevertheless denied your request, citing 65 P.S. §67.708(b)(16)(ii) and §67.708(b)(17)(ii) as being exempt. More specifically, those subsections make exempt from access by a requester the following information, respectively: A record of an agency relating to or resulting in a criminal investigation, including investigative materials, notes, correspondence, videos and reports; and a record of an agency relating to a noncriminal investigation, including investigative materials, notes, correspondence and reports. See 65 P.S. §67.708(b)(16)(ii) and §67.708(b)(17)(ii).

In hindsight, denial based upon §67.705 was improper due to an error as the date of incident was incorrectly entered. However, after re-investigating your request upon appeal, it was appropriately denied under the proper sub-sections. Thus, the incorrect initial denial is moot as it should have been denied nonetheless. The documents being requested, on their face, fall squarely into the aforementioned exemption.

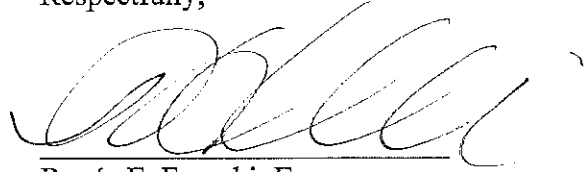
More specifically, the documents being sought are the investigative reports relating to a criminal investigation. The incident report that you seek is the result of a detailed examination and official probe by the York City Police Department pursuant to its receipt of your burglary complaint, and outlines the investigation process and outcome of the investigation. As a result of the investigation, the Vespa moped was recovered and restored to your possession. By the very nature of the request for a "Police Incident Report" it is uncontested that the report(s) being sought are the investigative reports relating to a criminal investigation.

CONCLUSION

As the records being sought are indeed reports relating to a criminal investigation pursuant to 65 P.S. §67.708(b)(16) and are thus exempt under the law, the City of York Open Records Officer's denial of your Open Records Request was consistent with the law. Therefore, the records in question do not constitute public records subject to release under the Pennsylvania Right to Know Law and this appeal is hereby DENIED.

If you choose to file an appeal of this Right to Know Appeal Decision with the Court of Common Pleas for York County, you must do so within 30 business days of the mailing date of the agency's response. § 1302. If you have further questions, please call the Open Records Compliance Officer at the above phone listing during normal business hours. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

A handwritten signature in black ink, appearing to read 'R. Franchi', written over a horizontal line.

Renée E. Franchi, Esq.
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CC: *City of York, Solicitor's Office*
Pennsylvania Office of Open Records