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September 14, 2023

Ms. Amy Knight
25 Shadyside Avenue
Summit, NJ 07901

Mr. Dan Vernacchio
401 Courthouse
Pittsburgh, PA 15219

In re: September 5, 2023 Right to Know Request

Dear Ms. Knight and Mr. Vernacchio,

I am the Open Records Appeals officer for Allegheny County. On September 12, 2023, I received an appeal from the decision of Mr. Vernacchio denying a request for information. Requester had sought the following:

“Request is for the homicide file of Ezra Bozeman, born 12/28/1955 and arrested in Pittsburgh, PA on May 1, 1975 and charged with murder and robbery. Case docket number: CC197503632 of CP-02-CR-0003632-1975. The police officer in charge was Charles Lenz.”

(See Ms. Knight’s request of September 5, 2023).

In denying the request, Mr. Vernacchio stated, *inter alia*, that the records were exempt from disclosure under the Right to Know Law and explained that the fact that a criminal investigation is closed is irrelevant to whether the records must be disclosed.

(See Mr. Vernacchio’s letter of September 6, 2023).

Requester is reminded that Section 67.708(b)(16), of Title 65, exempts the following from disclosure:

- (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.

67 P.S. § 67.708(b)(16). Any records relating to a murder investigation fall within the parameters of this exception.

Furthermore, Mr. Vernacchio is correct in asserting that the Office of Open Records explained in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196, that 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.Cmwlt. 2010); *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa.Cmwlt. 2011). In addition, he is also correct in stating that to the extent the information you seek is investigative, it falls within the prohibitions set forth in the Pennsylvania Criminal History Records Act.

I understand requester's frustration in seeking information she believes would right a great injustice, but she is seeking criminal investigative material that cannot be released under the Right to Know Law. I second Mr. Vernacchio's suggestion that the Post Conviction Relief Act may provide the most appropriate mechanism to address requestor's concerns.

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,

/s/ Kevin F. McCarthy

Kevin F. McCarthy
Assistant District Attorney
Open Records Appeals Officer