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County of Allegheny

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Ms. Kristen Spolter
674 Scenic Ridge Drive
Venetia, PA 15367

September 28, 2020

Chief Jonathan E. Wharton
Police Chief and Open Records Officer
Upper St. Clair Department of Police
1820 McLaughlin Run Road
Upper St. Clair, PA 15241-2332

In re: Right to Know Law Appeal

Dear Ms. Spolter and Chief Wharton:

I am the Open Records Appeals officer for Allegheny County. On September 8, 2020, I received an appeal from the decision of Upper St. Clair denying requester's request for documents involving "Kristen and Aaron Spolter or just Aaron Spolter." I asked the parties to submit additional information to me as I was having difficulty understanding the situation. Chief Wharton kindly responded but Ms. Spolter did not provide anything further to me. Chief Wharton indicates that the records in his possession were prepared as a result of criminal investigations. I have attached his letter hereto.

I have no equitable power and must act pursuant to the statute and case law. It is my belief that the RTKL is too restrictive when it comes to potential victims of uncharged conduct that is potentially criminal, and has been investigated by a police agency; but not prosecuted. The need to amend the law has often been made clear to me; especially in cases I have had involving parents whose son or daughter committed suicide, and they are denied police reports generated by the investigation. But that is neither here nor there. And it is certainly not meant as anything more than a reflection on the RTKL; and not the actions of Upper St. Clair.

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