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DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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Mr. Jevon Everett  
DOC# HW1387  
SCI Greene  
c/o Smart Communications  
P.O. Box 33028  
St. Petersburg, Florida 33733

November 23, 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. Everett and Mr. McCarthy:

I am the Open Records Appeals officer for Allegheny County. On November 23, 2021, I received an appeal from the decision of Mr. McCarthy that denied a request for information. Requester had sought the following:

[A]ll records, discovery and tangible evidence of Jevon A. Everett, case No. CP-02-CR-012952-2006, CP-02-CR-015751-2006, CP-02-MD-00513-2008m

MDJ-05003-CR-07069-2006MCU RPT#06-068897 and OTN# G314966-1, etc....

These records are not limited to Jevon Everett's case/work file, witness statements, warrants, affidavits, Agents' notes, Prosecutor's notes/work files, that may have been generated throughout Mr. Everett's trials to present date, not limited Prosecutor and resigned Judge Mark V. Tranquilli and all prosecutors on case # above. Please include DVD's, CD's, photographs, maps, tape recordings, statements, and any other tangible evidence related to the above cases, phone records and information, including defense work/case file and notes.

(See Mr. McCarthy's letter dated 11/08/21).

In denying the request, Mr. McCarthy stated, *inter alia*, that the records were exempt from disclosure under the Right To Know Law.

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). I understand requester's frustration but he is seeking criminal investigative material that cannot be released under the Right To Know Law. Mr. McCarthy was correct to suggest that requester seek the information from his defense lawyers as it would have been provided in discovery and a defendant has the right to request his file from his lawyer after representation has ceased. Also, it is noted that if requester files a PCRA petition he could request discovery pursuant to Pa.R.Crim.P. 902.

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,

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Michael W. Streily  
Deputy District Attorney  
Open Records Appeals Officer