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DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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Ms. Monica Fuentes  
Loevy & Loevy  
311 N. Aberdeen St., 3<sup>rd</sup> Floor  
Chicago, Illinois 60607

December 9, 2020

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

In re: Right to Know Law Appeal

Dear Ms Fuentes and Open Records Officer Liss:

I am the Open Records Appeals officer for Allegheny County. On December 9, 2020, I received an appeal from the decision of the City of Pittsburgh denying requester's request for the following documents:

[A]ny document related to, including but not limited to police and autopsy reports from the Pittsburgh Police Department related to Elijah Jamaal Brewer (DOB: 10.29.1994, DOD 3.5.2020) from the time period of March 1, 2020 to present.

*See Notice of Appeal letter of Ms. Fuentes dated December 4, 2020 (I note there is no indication in the letter that it was served on Ms. Liss).* Ms. Fuentes has not provided me with the response of Ms. Liss but indicates that Ms. Liss provided some documents and then invoked the criminal investigative exemption as to the aforementioned records. The only argument Ms. Fuentes offers now as to why Ms. Liss was wrong, is that “there is no investigation regarding Mr. Brewer because he is dead.”

With all respect to Ms. Fuentes, that response does not constitute a reason to order Ms. Liss to turn over the requested items.

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,

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Michael W. Streily  
Deputy District Attorney  
Open Records Appeals Officer