



DISTRICT ATTORNEY'S OFFICE
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

R. SETH WILLIAMS
District Attorney

July 11, 2016

By post (Mr. Kelsey) & electronic mail (Mr. Crofts)

Joseph Kelsey
Inmate LK-8669
SCI-Huntingdon
1100 Pike Street
Huntingdon, Pennsylvania 16654

Russell Crofts, Esquire
Assistant City Solicitor
Law Department
One Parkway Building
1515 Arch Street
Philadelphia, Pennsylvania 19102

Re: Appeal from the City's Denial of Request from Joseph Kelsey

Dear Mr. Kelsey and Mr. Crofts:

This letter constitutes the final determination of the Appeals Officer for the Philadelphia District Attorney's Office concerning Joseph Kelsey's appeal of the denial by the City of Philadelphia of his request for public records under Pennsylvania's Right-to-Know Law. For the reasons set forth below, the appeal is denied.

BACKGROUND

On or about April 5, 2016, Joseph Kelsey (the Requestor) submitted a request to the City of Philadelphia Police Department (the PPD) under the Right-to-Know Law (the RTKL), 65 P.S. §§ 67.101 *et seq.* He sought the following records: "copies of the evidence/property seized relating to search warrant #146687 for cellular phone records to numbers 267-582-6328 & 267-755-8281," and "copies of the evidence/property seized relating to search warrant #146688 for cellular phone records to number 267-971-5192."

On April 13, 2016, the PPD received the request. On May 15, 2015, the PPD denied the request, relying on the criminal investigative records exemption set forth in Section 708(b)(16) of the RTKL.

On June 10, 2016, the Appeals Officer for the Philadelphia District Attorney's Office received a submission from the Requestor in which he appealed the PPD's denial. On July 11, 2016, the City provided its appellate position statement on behalf of the PPD, which included an

affidavit from the Open Records Officer for the PPD. The City again asserted the criminal investigative records exemption found in Section 708(b)(16) of the RTKL.

LEGAL ANALYSIS

The RTKL grants the Appeals Officer of the Office of the District Attorney for Philadelphia (the Appeals Officer) jurisdiction to hear and decide this appeal. 65 P.S. §§ 503(d)(2), 1101(a)(1). Under 65 P.S. § 67.503(d)(2), the Appeals Officer is authorized to “determine if the record requested is a criminal investigative record” of a local agency in Philadelphia County. The Appeals Officer lacks jurisdiction to review the City’s denial of a request on any ground other than the criminal investigative records exception. 65 P.S. §§ 503(d)(2), 1101(a)(1).

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. As such, records in its possession are presumed public, and thus subject to disclosure, unless exempt under the RTKL or other law or protected by a privilege, judicial order, or decree. 65 P.S. § 67.305. The City bears the burden of proving the applicability of any exemptions it claims. 65 P.S. § 67.708(a).

The City asserts that the request at issue facially concerns exempt criminal investigative records. 65 P.S. § 708(b)(16) (precluding from disclosure agency records “relating to or resulting in a criminal investigation”). The request seeks materials the PPD seized pursuant to search warrants. According to the affidavit of the PPD’s Open Records Officer, search warrants generally are created, approved, and executed during the course of an ongoing criminal investigation. Moreover, he attested that the specific search warrants at issue relate to criminal investigations. As such, the plain language of the request establishes that it concerns criminal investigative records, and, thus, the requested records fall squarely within the Section 708(b)(16) exemption. *See Barros v. Martin*, 92 A.3d 1243, 1250 (Pa. Commw. 2014) (“Thus, if a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii); *Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 697 (Pa. Commw. 2013); *Mitchell v. Office of Open Records*, 997 A.2d 1262, 1264 (Pa. Commw. 2010).

Accordingly, the City’s assertion of the RTKL’s criminal investigatory exemption was proper, and this appeal is denied. *See, e.g., Hunsicker v. Pa. State Police*, 93 A.3d 911 (Pa. Commw. 2014) (affirming denial of request for criminal investigative materials concerning state trooper’s involvement in death of requestor’s brother); *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. 2011) (an attestation made under the penalty of perjury may serve as sufficient evidentiary support).

For the foregoing reasons, this appeal is denied. This final determination is binding on all parties. Within thirty days of the date of this letter, any party may appeal to the Philadelphia County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served notice of the appeal. The Appeals Officer also shall be served notice and have an opportunity to respond in accordance with applicable court rules. 65 P.S. § 67.1303.

Sincerely,
/s/ Priya Travassos
Priya Travassos
Appeals Officer
Office of the District Attorney of Philadelphia