

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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Mr. Jeffrey Benzing  
PublicSource  
746 E. Warrington Avenue  
Pittsburgh, PA 15210

July 17, 2017

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

In re: Transferred Appeal-PublicSource v. City of Pittsburgh, OOR Dkt. AP  
2017-1004

Dear Mr. Benzing and Attorney Liss:

I am the Open Records Appeals officer for Allegheny County. On June 30, 2017 I received a transferred appeal from the Office of Open Records (OOR). You are both familiar with the procedural history of this case as well as the Final Determination of the OOR and the reason the case was transferred. Of note is the fact that the City of Pittsburgh denied part of Mr. Benzing's request for documents based upon the criminal investigation exemption, 65 P.S. §67.708(b)(16). In the written denial, dated April 13, 2017, Attorney Liss advised Mr. Benzing that an appeal challenging that particular denial needed to be filed with the Appeals officer for the Office of District Attorney within 15 business days; while an appeal challenging the denial on the claimed exemptions based upon mental health and minors should be filed with the Office of Open Records (see letter dated 4/13/17).

Mr. Benzing did not file an appeal with me. Rather, he appealed to the OOR and attempted to challenge the criminal investigation exemption in that appeal. In transferring this case, OOR Officer Benjamin Lorah, relied upon the decision in *Union Reform v. District Attorney's Office*, 139 A.3d 354 (Pa. Cmwlth. 2016) to justify the transfer. With all respect to Mr. Benjamin, I do not see how that decision can vest jurisdiction in me, given the fact that Mr. Benzing was properly informed about the appeal procedures and elected not to appeal to me. *Union Reform, Id.*, involved a transfer between **Courts** and Commonwealth Court relied upon 42 Pa. C.S. §5103 and Pa.R.A.P. 751. The Office of Open Records is not a Court, so I don't see how those transfer provisions would apply. Although The Right to Know Law does not contain a transfer provision, I have taken transfers in the past, where the requester was not informed of the proper procedure to follow, and misfiled. That is not the present situation, however.

I have no powers of equity. As a result, I must decline Mr. Benzing's 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