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DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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September 25, 2023

Carmine Bloise  
1230 Arkansas Avenue  
Pittsburgh, PA 15216

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

In re: OOR Docket No. AP 2023-1680

Dear Mr. Bloise and Ms. Liss,

I am the Open Records Appeals Officer for Allegheny County. On September 15, 2023, I received a transferred appeal from the Office of Open Records. Requester had sought the following:

“copies of all records held by the City of Pittsburgh Police Department pertaining to three specific incidents, including two which were initially acted upon by the Dormont Police, as well as a third incident for which I am seeking additional information:

1. On April 22, 2023, at approximately 19:33 hours, when Officers Waldron, Z. Schmidt, and Maloney of the Dormont Police were dispatched to 1230 Arkansas Avenue to serve an ICC warrant on me, Carmine Bloise, issued by the City of Pittsburgh police.
2. On October 23, 2022, at approximately 18:30 hours, when Sergeant Witucki and Officer Schmidt of the Dormont Police responded to 2844 Louisiana Avenue to attempt to make contact

with me in reference to an ICC Warrant issued by the City of Pittsburgh police.

3. Between the hours of midnight on Monday, April 17, 2023, and 1:30 am on Tuesday, April 18, 2023, when police officers were noted outside my residence. According to my Right-to Know request submitted to Dormont Police, they have no record of this incident, leading me to believe that it involved the City of Pittsburgh Police.

I previously submitted a Right-to-Know request to the Dormont Police and have received documents related to the aforementioned incidents. I have attached these documents to this email for your reference. For all of these incidents, I am now seeking the following information from the City of Pittsburgh Police Department:

- Originating details of each warrant and reasons for each warrant.
- All incident reports, including initial complaint reports, case reports, and follow-up reports.
- All field interview cards or similar reports of on-scene interviews conducted by the officers.
- Any audio or video recordings made by officers at the scene or by dispatchers during relevant phone or radio communications.
- The names and badge numbers of all law enforcement personnel involved in the incidents.
- Any records of communications between officers and others regarding the incidents, including emails, text messages, and notes.
- Any photographs or other physical evidence relating to the incidents.
- If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the law."

See Mr. Bloise's Right to Know request of June 13, 2023.

Ms. Liss granted the request in part providing requester two "2.0 Pittsburgh Bureau of Police Offense/Incident Reports" and withheld all other police records on the basis of her determination that they are investigative in nature, and therefore protected under 65 P.S. § 67.708(B)(16)(ii). In addition, she explained that she would also not be permitted to supply them "to the extent that they are protected under the Criminal History Record Information Act, 18 Pa.C.S. § 9101, *et seq*".

See Ms. Liss' letter of July 20, 2023.

Section 67.708(b)(16), of Title 65, exempts the following from disclosure:

(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.

Moreover, 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.Cmwth. 2010); *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa.Cmwth. 2011). Furthermore, Ms. Liss is correct in stating that to the extent the information requester seeks is investigative, it falls within the prohibitions set forth in the Pennsylvania Criminal History Records Act, Pa.C.S.A. § 9101, *et seq.* *See Commonwealth v. Pennsylvania State Police*, 146 A3d 814 (Pa.Cmwth. 2016) (“Generally, CHRIA concerns collection, maintenance, dissemination, disclosure and receipt of criminal history record information. As a matter of law, CHRIA prohibits (a criminal justice agency) from disseminating “investigative information” to any persons or entities, other than to criminal justice agents and agencies. 18 Pa.C.S. § 9106(c)(4).”); and *Mitchell v. Office of Open Records*, 997 A.2d 1262 (Pa.Cmwth. 2010).

In his appeal, Mr. Bloise states that while he appreciates and respects the Ms. Liss' responsibilities and obligations under the law, he is “concerned that the broad application of exemption 65 P.S. § 67.708(b)(16)(ii) of the Right to Know Law (RTKL) may not fully consider the nuances and specifics of my request.” and that they “are of a deeply personal nature to me, involving incidents that directly affect my life and rights, and I believe this personal

involvement merits a more comprehensive release of the requested documents.”  
See Mr. Bloise’s Current Appeal Request of July 20, 2023.

As the parties know, my only authority extends to determining whether a document is exempt from disclosure due to the criminal investigation exemption. 65 P.S. § 67.503(d)(2). I have no power in equity and must apply the law as written and elaborated on by the appellate courts. I mention that because Mr. Bloise appears to want criminal investigative material that involved him in some manner. The exemptions in the Right to Know Law apply to all citizens making a request for information, regardless of whether they are defendants, victims, or just interested members of the public.

As a result, I must deny the request and affirm denial of access to the police records that the requester seeks. 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,

/s/ Kevin F. McCarthy

Kevin F. McCarthy  
Assistant District Attorney  
Open Records Appeals Officer