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DISTRICT ATTORNEY



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County of Allegheny

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Mr. Brian DiVito
8058 Steubenville Pike
Oakdale, PA 15071

January 31, 2020

Michael Baker
Township Manager
Open Records Officer
North Fayette Township
400 North Branch Road
Oakdale, PA 15071

In re: Docket No. AP 2019-2286

Dear Mr. DiVito and Mr. Baker:

I am the Open Records Appeals officer for Allegheny County. On January 28, 2020, I received a transferred appeal from the Office of Open Records. Requester had sought the following documents from the North Fayette Police Department:

Police records/reports where authorities had been called to his house. These reports dated back to October 2007.

See OOR Final Determination at p. 1.

I have reviewed the affidavits of both Mark O'Donnell, Chief of Police for North Fayette Township and Open Records Officer Baker. According to Chief

O'Donnell's affidavit, all records possessed by the agency involving instances where police were summoned to his residence relate to criminal investigations, even though those investigations and responses did not result in charges being filed. See *Affidavit of Chief O'Donnell at paragraphs four (4) and five (5)*. I note that the fact that charges were not filed or that the investigations are long concluded, does not affect the exemption being invoked by the agency.

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.

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,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer