

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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Robert Payne
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Bellefonte, PA 16823

September 4, 2018

Kevin F. McCarthy, Esquire
Open Records Officer
Office of District Attorney
401 Courthouse
Pittsburgh, PA 15219

In re: Open Records Appeal

Dear Mr. Payne and Attorney McCarthy:

I am the Open Records Appeals Officer for the District Attorney of Allegheny County. On August 29, 2018, I received Mr. Payne's appeal of a denial of a Right To Know Request. That denial was from the Office of District Attorney of Allegheny County. In that request Mr. Payne was seeking:

1. search and arrest warrants, Criminal Investigative files, and transcripts of the preliminary hearing, trial, PCRA hearing, and any other proceeding associated with requester's court case at No. CP-02-CR-07237-2004.

Mr. McCarthy denied that request based upon 65 P.S. §67.708(b)(16).

As both of you know, 65 P.S. §67.708 (a)(16) exempts 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.

* * * *

- (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.

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 an 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).

I agree with Mr. McCarthy and further note that the Office of District Attorney is not permitted to make copies of transcripts and provide them to the public. Under Rule 4015 of the Rules of Judicial Administration, transcripts “are the exclusive property of the judicial district.” Rule 4007 of the Rules of Judicial Administration provides the procedure for requesting copies of transcripts.

As a result, I must decline Mr. Payne’s request. Please be advised that pursuant to Section 1302 Mr. Payne has 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