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DISTRICT ATTORNEY



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Mr. Derek Sieck
OnderLaw, LLC
110 E. Lockwood
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April 8, 2022

Jessica Garofolo
Director, Open Records Officer
Department of Administrative Services
202 Courthouse
436 Grant Street
Pittsburgh, PA 15219

In re: Right to Know Law Appeal; AP 2022-0827

Dear Mr. Sieck and Open Records Officer Garofolo:

I am the Open Records Appeals officer for Allegheny County. As you know, the Office of Open Records (OOR) referred the present case to me to determine whether the Agency properly invoked the criminal investigative exemption in denying Mr. Sieck's request for certain items.

Part of the difficulty with this case is the fact that requester did not follow proper procedure and appears to be unfamiliar with the Pennsylvania Right To Know Law and/or the respective parties and the role they play. Requester was directed to file his appeal from the portion of the decision dealing with a claimed exemption "related to a criminal investigation" to me. *See letter dated March 18, 2022, authored by Ms. Garofolo.* Despite that directive, requester filed his appeal with

OOR. Requester then sent me a certified letter on March 28, 2022¹ in which he asserted that he was “sending this written appeal of your decision to deny our Pennsylvania Open Records Request for the investigative file related to case number CR-002493-20.” Requester then stated that “[t]he preliminary report that you provided to our Office has no information regarding the blinds.” See *Exhibit A*. I had not denied anything at that point in time and I certainly hadn’t sent the requester any report. The letter seems to be a cut and paste with no connection to the reality of the present litigation. The letter did not include the name of the Agency that denied the request, did not include any indication that requester served the Agency with a copy of the letter, nor did it contain any written response of the Agency. I reached out to Mr. Sieck, author of the letter, by both email and voice mail, and received no reply. Given that the request came from a Law Firm, I expected more.

Another problem is one I often encounter when OOR remands a case for disposition-the record is incomplete. For instance, in the present case I have not been provided a copy of the original request. I reached out to OOR to get that original request and was told they did not have it. I am therefore going to assume that the statements contained in the documented responses are correct, because that is the record before me.

Requester sought access to the following:

Any all incident reports, investigative materials/photos related to Luke Balzer death that occurred on 11/28/2020

See Ms. Garofolo’s letter, id.

Ms. Garofolo granted in part and denied in part, that request. Requester was provided with a redacted police report. As to the denial which is now before me, she stated,

Second, all remaining records must be respectfully denied as they are related to a criminal investigation. Section 708(b)(16) of the RTKL exempts from disclosure a “record of an agency relating to or resulting in a criminal investigation, including ... (ii) investigative materials, notes, correspondence, videos and reports. Additionally, the remaining records contain investigative information, as defined in CHRIA, The Allegheny County Police Department (AOPD) is barred from disseminating investigative information by CHRIA Section 9106(c)(4). Section

¹ I have attached a copy of that letter to this disposition as Exhibit A.

305(a)(3) of the RTKL provides that a record is not presumed to be public if it is exempt from disclosure under any other federal or state law.

See Ms. Garofolo's letter, *id.*

Under 65 P.S. §67.708(b)(16) the following records are exempt 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.

In his letter dated March 28, 2022, requester asserted that “[a]s an investigation is no longer being conducted, we feel that the denial was improper, and we are entitled to a more complete copy of the investigative file.” With all respect, the status of an investigation is irrelevant. 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).

I would normally deny this request because I find that the original request sought items that were purely criminal investigative materials. However, in the March 28th letter requester now clarifies that he is only seeking information concerning the manufacturer of the window blinds that were involved in the strangulation death of Luke Balzer:

To clarify, **we are not** seeking photographs of the victim or scene, we are simply looking for any photographs identifying the manufacturer of the blind for our ongoing investigation and to help promote window blind safety nationwide.

See Exhibit A (emphasis in original). Requester indicated he would like access to:

1. any notes identifying the manufacturer of the blind at issue,
2. any photographs that were taken of the subject blind that identify or show manufacturer markings,
3. if the blind is available for inspection, we would request that we be allowed to inspect the blind to identify the manufacturer.

See Exhibit A.

I believe that the amended request could be partly accommodated without running afoul of the RTKL and the criminal investigative material exemption. Requester is not entitled to examine any item in the Agency's possession. I do decide however, that the Agency should examine its investigative file to see if it has a photo of the blind, or any notes, that would disclose the name of the blind's manufacturer. If so, the Agency should provide that information to requester. To that end, I also direct that the Agency inform requester as to whether it still has possession of the blind. Again, I stress that in no way do I direct that the Agency must allow access to the blind, if it still possesses the item. I merely decide that if the Agency can inform requester of the manufacturer's identity, it should do so.

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. I want to thank all parties for their cooperation.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer