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R. SETH WILLIAMS
District Attorney

May 18, 2016

By post (Mr. Smith) & electronic mail (Mr. Cohen)

Keith Smith
Inmate HK-8869
SCI-Benner
301 Institution Drive
Bellefonte, Pennsylvania 16823

Jeffrey Cohen, Esquire
Assistant City Solicitor, Law Department
One Parkway Building
1515 Arch Street
Philadelphia, Pennsylvania 19102

Re: Appeal from City's Partial Denial of Request from Keith Smith

Dear Mr. Smith and Mr. Cohen:

This letter constitutes the final determination of the Appeals Officer for the Philadelphia District Attorney's Office concerning Mr. Smith's appeal of the partial denial by the City of Philadelphia of his request for public records under Pennsylvania's Right-to-Know Law. For the reasons set forth below, the appeal is denied.

BACKGROUND

On or about February 25, 2016, the Philadelphia Medical Examiner's Office received from Keith Smith (the Requestor) a request under the Right-to-Know Law (the RTKL), 65 P.S. §§ 67.101 *et seq.* Specifically, he sought "[t]he official autopsy report and record of M.E. case number 99-4566, including bullet track test, body chart, physical pictures, internal and external examination, video recording reduce[d] to writings[,] etc."

On or about April 4, 2016, the Medical Examiner's Office (through the Law Department of the City of Philadelphia) sent a final response partially denying the request. Among the bases for the denial, the City asserted the criminal investigative records exemption found in Section 708(b)(16) of the RTKL.

On April 18, 2016, the Appeals Officer for the Philadelphia District Attorney's Office received a submission from the Requestor in which he appealed the Medical Examiner's Office's partial denial of his request. After the City requested and received a one-week extension of time in which to submit its response, the City provided its appellate position statement on May 16, 2016, which included an affidavit from the Open Records Officer for the Philadelphia Police Department (PPD).

LEGAL ANALYSIS

The RTKL grants the Appeals Officer of the Philadelphia District Attorney's Office for Philadelphia jurisdiction to hear and decide this appeal. 65 P.S. §§ 503(d)(2), 1101(a)(1). Under 65 P.S. § 67.503(d)(2), the Appeals Officer is authorized to "determine if the record requested is a criminal investigative record" of a local agency in Philadelphia County.

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. As such, records in its possession are presumed public, and thus subject to disclosure, unless exempt under the RTKL or other law or protected by a privilege, judicial order, or decree. 65 P.S. § 67.305. The City bears the burden of proving the applicability of any exemptions it claims. 65 P.S. § 67.708(a).

The Requestor, in his appellate submission, concedes that the requested records are criminal investigative records but argues that the City should produce them because they purportedly were required to have been disclosed in discovery in the related criminal proceedings.

In its appellate submission, the City expands on its original assertion of the RTKL's criminal investigative records exception and also contends that the request at issue represents an improper attempt to circumvent the post-conviction discovery process.¹ To support its invocation of Section 708(b)(16), the City provides an affidavit from the PPD's Open Records Officer establishing that the requested records are exempt criminal investigative records as the RTKL defines them.

The Requester himself has conceded that the requested records constitute criminal investigative materials. Because of this concession, and for the reasons provided in the City's appellate submission, which correctly sets forth and applies the relevant law concerning the City's assertion of the criminal investigative records exception, this appeal is denied. *See Barros v. Martin*, 92 A.3d 1243, 1250 (Pa. Commw. 2014) ("Thus, if a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii)); *Hunsicker v. Pa. State Police*, 93 A.3d 911 (Pa. Commw. Ct. 2014) (affirming denial of request for criminal investigative materials); *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011) (an attestation made under the penalty of perjury may serve as sufficient evidentiary support).

¹ The Appeals Officer lacks jurisdiction to review the Medical Examiner's Office's denial of the request on any ground other than the criminal investigative records exception. 65 P.S. §§ 503(d)(2), 1101(a)(1).

For the foregoing reasons, this appeal is denied. This final determination is binding on all parties. Within thirty days of the date of this letter, any party may appeal to the Philadelphia County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served notice of the appeal. The Appeals Officer also shall be served notice and have an opportunity to respond in accordance with applicable court rules. 65 P.S. § 67.1303.

Sincerely,
/s/ Priya Travassos
Priya Travassos
Appeals Officer
Office of the District Attorney of Philadelphia