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DISTRICT ATTORNEY



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County of Allegheny

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Ms. Kerry Sujilida
30 East Georgia Street, #314
Indianapolis, Indiana 46204

February 11, 2019

Matthew R. Serakowski
Open Records Officer
Township of Upper St. Clair
1820 McLaughlin Run Road
Upper St. Clair, PA 15241-2332

In re: Right to Know Law Appeal

Dear Ms. Sujilida and Mr. Serakowski:

I am the Open Records Appeals officer for Allegheny County. On February 8, 2019, I received an appeal filed by requester from the decision of Upper St. Clair to deny her access to a copy of a police report/complaint that she filed on her own behalf with the Upper St. Clair Police Department. From documentation provided by requester to this officer, it appears that the complaint alleged a sexual assault, many years ago, allegedly committed by her father. In denying access the agency relied on 65 P.S. §67.708(b)(16). (See letter dated February 7, 2019).

As you both are aware, the Right to Know Law exempts certain materials from disclosure, and 65 P.S. § 67.708(b)(16) provides in relevant part as follows:

(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).

With all respect to the agency, I find that the complaint that requester filed is in the nature of a private complaint and that as an alleged victim, she should be given access to the information which she provided to the agency on her own behalf. I therefore direct the agency to provide requester with a copy of the complaint which she executed and filed. Assuming *arguendo* that an investigation is underway, no other records generated can be disclosed, however. The agency is reminded that if the requester's complaint has caused a criminal investigation to be undertaken, or if her complaint relates to another criminal investigation already in

progress or previously opened and now closed, she has rights that the agency needs to honor. See 18 P.S. §11.212

As a result, I direct the agency to provide requester with a copy of the complaint which she filed on her own behalf in which she alleged that she was the victim of a crime. 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