



COUNTY OF ALLEGHENY

OFFICE OF THE DISTRICT ATTORNEY

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY

303 COURTHOUSE
PITTSBURGH, PENNSYLVANIA 15219-2489
PHONE (412) 350-4401 | FAX (412) 350-4414

August 4, 2023

Val Martin

Request filed via: www.MuckRock.com

Response filed at: www.MuckRock.com/respond/1518750

In re: Open Records Request dated June 27, 2023

To Val Martin,

I am the Open Records Officer for the District Attorney of Allegheny County. On June 27, 2023, I received your June 27, 2023, request asking for:

“Time frame of July 1, 2022 thru November 30, 2022”

“Any emails between the ADA Borelli, ADA Shanahan, ADA Fleming and Randall Ricuitti, Brent McCune, Paige Hall, Larry Gerson, Shannon Kasprzyk, Shannon Hunter, David Kasprzyk, Brian Wikert, Angie Fry, Ariella Samson.”

First for clarity, as we have stated previously in our extension filed on July 5, 2023, we are treating your most recent request as a new request because we had already denied your previous request that was filed on May 19, 2023, when you filed this most recent request on June 27, 2023, asking for related records.

Next, upon receiving your request, we conducted a preliminary search of our database based upon the identifiers that you provided of participants names and start date for the search. I was informed by the individual who conducted the search for records that there were potentially thousands of emails at the time of the search that met the criteria that you stated in your request of participants names and start date for the search. We determined that we required additional time to consider your request and conduct further research on the matter based upon this result and your request, and thus, as you are aware, we invoked a 30-day extension to respond to your request for this purpose. Following that, several additional searches of our records were necessary to more precisely identify the records that you were seeking based upon the identifiers that you provided.



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Additionally, we determined based upon our internal review of your prior requests, that your most recent request was duplicative, at least in part, of another request for records that you made to this office within the last 12 months. To be clear, your prior request that we are referencing requested the following information:

“Since logs of emails are not available, please provide any and all emails between the following parties starting with 4-15-21 thru 11-30-22

Assistant District Attorney Emily Shanahan
Assistant District Attorney Lisa Borrelli
Humane Officer Angela Fry
West Deer Police Officer Brian Wikert
Attorney Randy Riciutti
Attorney Brent McCune
Lawrence J. Gerson, VMD (Point Breeze
Veterinary Clinic)
David P. Dorn, VMD (West Liberty Animal
Hospital)
Shannon Hunter Kaspyk
Jennifer Borczyk
Paige Hall.”

I have attached our January 6, 2023, letter in response to that request as a reminder that your request was previously addressed by our office and, furthermore, I note that the results of that request, including the emails that you requested, are still available to you at:

<https://www.muckrock.com/foi/allegheny-county-306/shanahan-emails-4-15-21-thru-12-31-21-136735/>

As you know, this is the website where you requested that we post our response to your prior request. Thus, our prior response, including those emails, are still publicly available to you at that website as of the date of this letter. Thus, if you would like to review the results of your prior request, they are still publicly available to you.



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Turning now to your most recent request, your most recent request was not duplicative and, therefore, was not previously addressed by this office, as to the information that we have detailed below. Accordingly, our current response addresses the information listed below that has not been previously addressed by this office. Specifically, your most recent request was not duplicative and, thus, was not previously addressed, as to ADA Borelli and ADA Shanahan regarding the following information:

“Time frame of July 1, 2022 thru November 30, 2022”

“Any emails between the **ADA Borelli** and/or David Kasprzyk, Ariella Samson.”

“Any emails between the **ADA Shanahan** and/or David Kasprzyk, Ariella Samson.”

Additionally, your previous request did not include a request for the emails of ADA Fleming during that time period, and so we also have included a response that addressed:

“Time frame of July 1, 2022 thru November 30, 2022”

“Any emails between the **ADA Fleming** and Randall Ricuitti, Brent McCune, Paige Hall, Larry Gerson, Shannon Kasprzyk, Shannon Hunter, David Kasprzyk, Brian Wikert, Angie Fry, Ariella Samson.”

As is my obligation, I have reviewed the records that were captured by this search of the email server for this information, which amounted to 254 pages of records. Having completed my review of these records, we have attached the results of our search. As you will note, the results have been heavily redacted. The reasons for these redactions are as follows but, most significantly, the majority of the emails that you requested were related to criminal case information in some capacity and many of those emails in this batch were duplicates of each other.

In that regard, the Right to Know Law provides for a number of enumerated exceptions to the general rule that agency records are open to the public, among them is 65 P.S. § 67.708 (b)(16), which exempts:



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- (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 trial 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.

Moreover, the fact that a criminal investigation is closed is of no moment, because, as the Office of Open Records has explained, Section 708(b)(16) expressly protects documents relating to the result of a criminal investigation and thus remain protected even after the investigation ends, and this is true even where no charges are filed. *See Jones v. Pennsylvania Game Commission*, OOR Dkt. AP2009-0196. *See also Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa.Cmwlt. 2011).

Second, to the extent that the information is "investigative information", the Pennsylvania Criminal History Records Information Act ("CHRIA") prohibits the District Attorney from disseminating it. Under CHRIA, "Investigative information" is



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“information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.” 18 Pa.C.S.A. § 9102. The District Attorney is a “Criminal Justice Agency”, 18 Pa.C.S.A. § 9102, 37 Pa.Code § 601.2, and CHRIA prohibits the District Attorney from disseminating investigative information to anyone other than criminal justice agencies. 18 Pa.C.S.A. § 9106(c)(4), 9121(d); 37 Pa.Code § 601.7; *In Re: Pittsburgh Citizen Police Review Board*, 16 Pa. D.&C. 5th 435 (2010), *aff.d.*, 36 A.3d 631, (Pa.Cmwlt. 2011), *app. denied*, 615 Pa. 793 (2012); *Department of Auditor General v. Pennsylvania State Police*, 844 A.2d 78 (Pa.Cmwlt. 2004); *In Re: Cullen*, 2007 Pa. D.&C. Dec. LEXIS 1 (2007). Finally, the Right to know law does not apply to attorney work product materials.

If you have any questions or if you feel that this response was in error for some reason, then please feel free to contact us again.

Additionally, please be advised that pursuant to 65 P.S. § 67.1101(a)(1) you have 15 days to appeal this response to the county’s Open Records Appeals Officer, Assistant District Attorney Kevin McCarthy, at:
openrecordsappealsofficer@alleghenycountyda.us

Sincerely,

/s/ Keaton Carr
Keaton Carr
Assistant District Attorney
Open Records Officer
412-350-4534