

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

# County of Allegheny

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January 6, 2023

Val Martin  
c/o Muck Rock News  
DEPT MR 136735  
263 Huntington Ave  
Boston, MA 02115

In re: Open Records Request of November 19, and December 7, 2022

Dear Mr. Martin,

As you are aware from our previous correspondence, I am the Open Records Officer for the District Attorney's Office. Following my response to your initial request of November 19, 2022, in which you requested only email logs and I explained that this Office was unable to comply, I received your follow up request on December 5, 2022, in which you requested:

"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 Kasprzyk  
Jennifer Borczyk  
Paige Hall."

Upon receiving this request, I directed a search of the Office email system to determine if there are any matching documents. I was advised that there were over a thousand emails to review. Due to the fact that the overwhelming number of these emails related to criminal investigations and prosecutions, I requested a 30-day extension to comply with your request, to which you graciously agreed. Having completed my review, I have attached the results of my search. As you will note, the results have been heavily redacted. The reasons for these redactions are as follows.

First, 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:

- (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.Cmwth. 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 “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.

As is my obligation, I have reviewed all 3127 pages that were captured by this search of the email server and determined that the content I redacted fell within these exceptions.

Please be advised that if you construe my response to be a partial denial of your request, that pursuant to Section 1101 you have 15 days to appeal my decision to the Open Records Appeals Officer for the District Attorney of Allegheny County. His name is Michael W. Streily. His address is: Office of the District Attorney, 401 Courthouse, 436 Grant Street, Pittsburgh, PA 15219.

Very truly yours,

/s/ Kevin F. McCarthy  
Kevin F. McCarthy  
Assistant District Attorney  
Open Records Officer