IN RE:	: RIGHT-TO-KNOW REQUEST : DAUPHIN COUNTY, PENNSYLVANIA
APPEAL OF KELLY MALDONADO	: RTK-2022-DA-007 (HARRISBURG P.D.)

FINAL DETERMINATION

After review of the decision of the Open Records Officer for the City of Harrisburg, the response by the City of Harrisburg is affirmed. The requester, Kelly Maldonado ("Requester"), filed multiple requests for items related to the police shooting of her son, Miguel Maldonado, Jr., on January 16, 2022. The City of Harrisburg denied those requests. Requester then appealed to the Office of Open Records (OOR). The OOR issued a Final Determination on June 3, 2022, in which it denied in part, dismissed as premature in part, and transferred in part Requester's appeal. There was some confusion within the procedural history of this matter as to which request or requests were at issue in this appeal. OOR's Final Determination describes the portion of Requester's appeal that was transferred to this Appeals Officer as pertaining to "all documents involving the specified police shooting." (OOR Final Determ., p. 5). Accordingly, the instant review is limited to an examination of whether the documents in the possession of the City of Harrisburg pertaining to the police shooting on January 16,

2022, qualify under the Right to Know Law's exception for "criminal investigative records."

The Final Determination of the OOR provided helpful background information and is incorporated herein by reference, as well as attached collectively with the initial request, the City's response, the City's position statement to the OOR, and the requester's appeal as Appendix "A."

In addition to reviewing the above-referenced materials, I conducted an *in camera* review of the documents generated by the Harrisburg Bureau of Police in connection with the events surrounding the police shooting of Miguel Maldonado, Jr. on January 16, 2022. Those documents included a Harrisburg Bureau of Police Incident Report Form for incident number HC-22-001162, which consists of nine (9) pages.

A record in the possession of a local agency shall be presumed to be a public record. 65 P.S. §67.305(a). However, the presumption shall not apply if the record is exempt from disclosure under section 708 of the Right to Know Law (RTKL). 65 P.S. §67.305(a)(1). The burden of proving that a record of a local agency is exempt from public access is on the local agency receiving the request by a preponderance of the evidence. 65 P.S. §67.708(a)(1). The duty of this Appeals Officer is solely to determine whether the receiver of the request was obligated by law to disclose the requested item(s). Whether to disclose one or more items outside the boundaries of the RTKL is within the discretion of the agency possessing the requested item(s).

The City of Harrisburg's denial of the request was based on Section 67.708(b)(16) of the Right-to-Know Law.

> Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:
>
> * * *
>
> (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.
>
> This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa. C.S. §9102 (relating to

> definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa. C.S. §3754(b) (relating to accident prevention investigations).

65 P.S. §67.708(b)(16).

Here, the entirety of the materials I reviewed *in camera* consists of materials related to a criminal investigation that are excluded from the applicability of the Right-To-Know Law. 65 P.S. §67.780(b)(16). The report includes investigation of potential criminal activity, namely a vehicle in the river (potential traffic violations and/or DUI), an individual wielding a knife and a woman who had been stabbed with a knife, which is plainly within the exception. Investigative reports and witness statements taken by law enforcement personnel during a criminal investigation are not subject to disclosure under the Right-To-Know Law. ***Pennsylvania State Police v. Office of Open Records***, 5 A.3d 473 (Pa.Cmwlth. 2010). The contents of the police report fall within the exception contained at 65 P.S. §67.780(b)(16) and fall outside the definition of police blotter information.

For the above reasons, the City of Harrisburg's decision to deny the request is affirmed.

The parties are hereby notified of their right to appeal this decision to the Dauphin County Court of Common Pleas within thirty days.

MICHAEL A. SPROW
APPEALS OFFICER

DATED: 7/7/22

DISTRIBUTION:

Kelly Maldonado, via email to KellyJMaldonado@yahoo.com
RTK Officer, City of Harrisburg, via email to righttoknow@harrisburgpa.gov
Ryan Lysaght, Esq., Open Records Officer, Dauphin County District Attorney's Office

APPENDIX "A"

pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
KELLY MALDONADO,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2022-0692**
	:	
CITY OF HARRISBURG	:	
POLICE DEPARTMENT,	:	
Respondent	:	

INTRODUCTION

Kelly Maldonado ("Requester") submitted a request ("Request") to the City of Harrisburg Police Department ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking records of a police shooting. The Department denied the Request as seeking records of a criminal investigation, and the Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **denied in part**, **dismissed as premature in part**, and **transferred in part**, and the Department is not required to take any further action at this time.

FACTUAL BACKGROUND

On February 23, 2022, the Requester filed two information requests with the Dauphin County District Attorney's Office (the "Office"). The first was filed pursuant to Act 22 of 2017, 42 Pa.C.S. § 67A03, and sought:

> [A]ll recordings from every officer and vehicle involved [in the police shooting of Miguel Maldonado Jr.] and all 911 recordings made from [a specified phone number].

The Requester also sent the Office an email, which stated:

> Records Requested:
>
> All documents and evidence obtained regarding the incident on 01/16/22 approximately 3:33 am that led to the homicide of my son Miguel Junior Maldonado AKA Miguel Maldonado Jr by Harrisburg Police Department. I am requesting ALL witness statements, the two city workers that called 911 as well as Andrea Maldonado's statements, and any other person that provided a statement. I want a list of officers responding to the incident, their time on the police force and all complaints filed against these officers whether founded or unfounded. I want copies of all information collected from the Harrisburg Hospital (UPMC). I want the location identified as the accident that Andrea Maldonado claimed occurred on Paxton Street, and whether any efforts were made to recover video from the local businesses in the area. I want all evidence relating to the vehicle retrieved from the river, to include photos, video, and an inventory of items retrieved from the vehicle. I also want ... any information regarding attempts to retrieve my sons body from the Susquehanna river, include name of agencies involved, dates and times searches were conducted. If there is any additional documents I have not mentioned here I would like those a well. I have formally submitted a request to DA Chardo & Chief Goshert for ALL bodycam, dashcam videos and all 911 calls. [T]his request has been sent certified within the 60 days required.

On March 7, 2022, the Office transferred the first Act 22 request ("Request") to the Department, which determined that it constituted both a request for recordings under Act 22 of 2017 and a request for documents under the RTKL. On March 7, 2022, the Department denied the Request, stating that all responsive records were exempt because they relate to a criminal investigation, as well as under the Criminal History Record Information Act ("CHRIA"). 65 P.S. § 67.708(b)(16); 18 P.S. § 9101 *et seq.*

On March 21, 2022, the Requester appealed to the OOR, challenging the denial and arguing that no criminal investigation actually occurred. The OOR invited the parties to supplement the record and directed the Department to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On April 8, 2022, the Department submitted a position statement, arguing that the responsive records relate to a criminal investigation. In support of this argument, the Department submitted the verification of Niels Davidson, the Open Records Officer for the City of Harrisburg, who attests that he located and reviewed the responsive files and determined that they relate to a criminal investigation.

On May 27, 2022, in response to an inquiry from the OOR, the Department confirmed that it had received the Request from the Office and docketed it as a RTKL Request and Act 22 request but had never received the second informational request emailed to the Office.

The same day, the Requester confirmed to the OOR that she had filed all of the documents with the Office and intended to appeal them all.

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the request" and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party sought a hearing.

The Department is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: "(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence." 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as "such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. This appeal is limited to the Request docketed with the Department

The Requester filed a number of requests under various laws with both the Office and the Department, and, on appeal, states that she intended to appeal all of the filings included in the notice of appeal. However, the OOR can only accept appeals of denied or deemed denied RTKL requests, and cannot consider denials made pursuant to Act 22 of 2017, or appeals of requests for documents which were never received by the respondent agency. Here, the Requester is appealing the Department's denial, but included an emailed request for records which was sent to the Office and not filed with the Department. Because the Department has not seen or considered the Requester's second request for information, any appeal of that request would be premature. 65 P.S. § 67.901; *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014) (the time for appeals only begins running when an agency receives the request).

On March 7, 2022, the Department received the Request from the Office and interpreted it as a hybrid request under Act 22 of 2017 and as an RTKL request for all records "involving the interaction that led to police shooting Miguel Maldonado, Jr." From the appeal, it appears that the Requester agrees that her filings seek such documentary records, although it is unclear whether the Department and Requester agree on which filing gave rise to the Request.

A requester may not modify, explain or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Staley v. Pittsburgh Water and Sewer Auth.*, OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256 ("A requester may not modify the original request as the denial, if any, is premised upon the original request as written."). In this case, however, both parties agree that the Request seeks all documents involving the specified police shooting, and the Department's denial was premised upon their construction of the Request as such. For that reason, because no party differs on the construction of the Request,

and because the OOR's jurisdiction in this matter is limited for the reasons stated below, the OOR will accept the interpretation of the Request put forth by the Department as including documents.

2. The OOR has no jurisdiction over Act 22 appeals

The Department denied access to certain records under Act 22 of 2017. Act 22 of 2017 removed audio and video recordings made by law enforcement agencies from access under the RTKL and created a separate, exclusive means of access. 42 Pa.C.S. § 67A03. To obtain such recordings, a requester must submit a written request to the open records officer for the law enforcement agency that possesses the record within 60 days of the creation of that record. A "[l]aw enforcement agency" includes "an agency that employs a law enforcement officer", which is defined in relevant part as "[a]n officer of... the Commonwealth... who is empowered by law to conduct investigations of or make arrests for offenses enumerated in this chapter...," which encompasses all of 18 Pa.C.S. 42 Pa.C.S. § 67A01.

Here, the Department is a law enforcement agency; therefore, to the extent that the Requester is seeking audio and video recordings created by the Department, any denial of those recordings must be appealed according to the provisions of Act 22 of 2017, and not the RTKL. *See, e.g, Araujo v. Upper Merion Twp.*, OOR Dkt. AP 2020-0222, 2020 PA O.O.R.D. LEXIS 1988. Therefore, the appeal is dismissed to the extent that it is appealing any request for police audio or video recordings.

3. The appeal must be transferred in part

As noted above, the Request sought, in relevant part, all records "involving the interaction that led to police shooting Miguel Maldonado, Jr." The threshold determination which must be made is whether the OOR has jurisdiction over the instant appeal. The Department argues that the responsive records are exempt either under Section 708(b)(16) of the RTKL or CHRIA because

they contain investigative information. Section 708(b)(16) of the RTKL exempts from disclosure "[a] record of an agency relating to or resulting in a criminal investigation, including: ...[c]omplaints of potential criminal conduct other than a private criminal complaint[,].... [i]nvestigative materials, notes, correspondence, videos and reports[,]...[v]ictim information...[and a] record that, if disclosed, would do any of the following: ...[r]eveal the institution, progress or result of a criminal investigation, except the filing of charges." 65 P.S. §§ 67.708(b)(16)(i)-(ii), (v), and (vi)(A). While the RTKL does not define the phrase "criminal investigation," our courts have observed that the term "clearly and obviously refers to an official inquiry into a possible crime." *Cal. Borough v. Rothey*, 185 A.3d 456 (Pa. Commw. Ct. 2018) (citing *Pa. State Police v. Grove*, 161 A.3d 877 (Pa. 2017)).

Additionally, Section 9106(e) of CHRIA provides that:

> Criminal justice agencies maintaining intelligence information, investigative information or treatment information must enter, as a permanent part of an individual's information file, a listing of all persons and agencies to whom they have disseminated that particular information, the date of the dissemination and the purpose for which the information was disseminated. This listing shall be maintained separate from the record itself.

18 Pa.C.S. § 9106(e). Section 9106(c)(4) of CHRIA provides:

> (c) Dissemination of protected information.
>
> ...
>
> (4) Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

18 Pa.C.S. § 9016(c)(4). CHRIA defines "investigative information" as "[i]nformation 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. § 9102.

The OOR has no jurisdiction over criminal investigative records held by a local agency; however, a local agency claiming that records are exempt criminal investigative records does not automatically divest the OOR of jurisdiction over an appeal. The issue of subject matter jurisdiction may be raised by the parties or the OOR, *sua sponte*. *See Weber v. Wyoming Valley Sch. Dist.*, 668 A.2d 1218 (Pa. Commw. Ct. 1995) (Secretary of Education permitted to raise issues of subject matter jurisdiction in an administrative proceeding under the Public School Code, *sua sponte*). Here, the Department argues that the OOR lacks jurisdiction, and must either dismiss or transfer the appeal.

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). Section 503(d) creates a two-step analysis for determining when cases should be heard by the OOR and when they should be heard by the appeals officer appointed by a District Attorney. First, jurisdiction is properly transferred from the OOR to the District Attorney's Office when an appeal on its face involves records that relate to a criminal investigation (e.g., search warrants, witness statements, etc.). *See, e.g., Porter v. Allegheny County Sheriff's Office*, OOR Dkt. AP 2014-1910, 2014 PA O.O.R.D. LEXIS 1444 (transferring an appeal where the request sought a search warrant, which was facially related to a criminal investigation).

Second, when it is unclear whether the requested records relate to a criminal investigation, the local agency must provide some evidence showing how the records relate to a specific criminal investigation. While a low threshold for transferring a case is needed, an agency must provide more than a conclusory affidavit that merely repeats the language of Sections 503(d) and 708(b)(16). *See Bush v. Westtown-East Goshen Police Dep't*, OOR Dkt. AP 2016-1869, 2016 PA

O.O.R.D. LEXIS 1708 (finding that an affidavit demonstrated how the requested records related to a specific criminal investigation); *Burgess v. Willistown Twp. Police Dep't*, OOR Dkt. AP 2013-1511, 2013 PA O.O.R.D. LEXIS 868 (holding that where a local agency made a preliminary showing that records relate to a criminal investigation, the OOR lacked jurisdiction to consider the merits of the appeal).

In support of the argument that the records relate to a criminal investigation, the Department submitted the verification of Mr. Davidson, who attests that:

> 1. I served as the Open Records Officer for the City of Harrisburg [] and was responsible for responding to Right-to-Know requests filed with the [City of Harrisburg] at the time of the [R]equest.
>
> 3. I contacted the City of Harrisburg's Police Data Technicians, requesting that they conduct a search of files in the possession, custody and control of the [Department] for records responsive to the [R]equest[] underlying this appeal.
>
> 4. After a thorough review of the records in the possession, custody and control of [the Department] it was determined that the documents responsive to the [R]equest contained information that pertained to [Department] investigations.
>
> 5. The aforementioned documents were created as part of a record relating to a non-criminal investigation.[1] Section 708(b)(16)(ii) of the RTKL states: "a record of an agency relating to a criminal investigation..." "...is exempt from access by a requester." As such, the City withheld said records and denied [the Request].

Under the RTKL, an attestation made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith, "the averments in [the affidavit] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. Prot.*, 103 A.3d 374, 382-

[1] Although the Department's attestation states that the documents were created as part of a noncriminal investigation, the Department's position statement and the context of the paragraph indicates that this was a typo.

83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

In her appeal statement, the Requester argues that she discussed the case with the Dauphin County District Attorney, who informed her that the officers who shot Mr. Maldonado had been vindicated by investigation and that her son, as the decedent, could not have been under criminal investigation. Therefore, the Requester argues that the instant matter cannot have been the subject of a criminal investigation. However, the article the Requester submitted announcing the vindication of the police officers who shot Mr. Maldonado was published over a month after the shooting, and therefore, does not demonstrate that no criminal investigation of those officers occurred. Furthermore, the fact that the investigation is closed does not affect whether the records are exempt under Section 708(b)(16). *See Coley v. Phila. Dist. Attorney's Office,* 77 A.3d 694, 697 (Pa. Commw. Ct. 2013).

The verification submitted by the Department is conclusory, demonstrating only that the affiant reviewed the responsive records and believes that they relate to a criminal investigation. Even in the context of the low evidentiary bar for transfers, a conclusory statement is not sufficient to prove that the records relate to a criminal investigation. *See Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) ("[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records"). Therefore, the Department's evidence is not sufficient to show that the responsive records relate to a criminal investigation.[2]

[2] The Department submitted no argument regarding the requested 911 recording; however, 911 records are generally held by the county in which the call is placed, rather than a police department. Furthermore, 911 call records may be exempt pursuant to Section 708(b)(18) of the RTKL, which protects from disclosure "[r]ecords or parts of records, except time response logs, pertaining to audio records, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings." 65 P.S. § 67.708(b)(18)(i). However, "[t]his paragraph shall not apply to a 911 recording, a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure." 65 P.S. § 67.708(b)(18)(ii). Because any 911 records possessed by the Department would relate to the Department's investigation and the Department has not raised Section 708(b)(18), the appeal is transferred as to these records as well, for disposition by the Appeals Officer for the Office.

However, as noted above, an appeal may also be transferred to the District Attorney's Office where it appears from the face of the record that it is likely to implicate records of a criminal investigation. In this instance, the Request seeks information gathered by the police regarding the incident in which Mr. Maldonado was shot and killed; although the officers involved were eventually vindicated, it is likely that the confrontation and use of force were investigated by the Department to determine whether criminal conduct occurred. *See Pa. Game Comm'n v. Fennell*; 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal filing when construing exemptions); *see also Office of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). Therefore, although the Department has not demonstrated that a criminal investigation actually occurred or that the responsive records are related to such an investigation, the context of the Request is sufficient to transfer the appeal to the Dauphin County District Attorney's Office for disposition.

Accordingly, the appeal is hereby transferred in part to the Appeals Officer for the Dauphin County District Attorney's Office ("Office") to determine whether the written records are either exempt under Section 708(b)(16) or constitute "criminal investigative information" under the meaning of CHRIA. A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Office.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied in part, dismissed as premature in part** and **transferred in part**, and the Department is not required to take any further action at this time. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Dauphin County Court of

Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.[3] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: June 3, 2022

/s/ Jordan C. Davis

Jordan C. Davis, Esq.
Appeals Officer

Sent to: Kelly Maldonado (via email only);
Open Records Officer, Harrisburg Police Department (via email only);
Appeals Officer, Dauphin County District Attorney's Office (via email)

[3] *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

From: Davis, Jordan
To: Right to Know; KellyJMaldonado@yahoo.com
Subject: Final Determination - Maldonado v. Harrisburg Police Department (OOR Dkt. AP 2022-0692)
Date: Friday, June 3, 2022 3:45:00 PM
Attachments: 2022-0692_Maldonado-HarrisburgPD_FD.pdf

Dear Parties,

Attached, please find the Final Determination of the OOR in the above-captioned matter. If you have any questions or comments, please direct your email to the OOR's resource account at openrecords@pa.gov, to the attention of the OOR's chief counsel. A copy of the entire record of the appeal is being transmitted to the Appeals Officer for the Dauphin County District Attorney's Office along with this decision.

Sincerely,

Jordan Davis
Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | http://openrecords.pa.gov
jorddavis@pa.gov | @OpenRecordsPA

From: Kelly Maldonado
To: Davis, Jordan
Subject: [External] Re: Maldonado v. Harrisburg PD: AP 2022-0692
Date: Friday, May 27, 2022 3:21:07 PM
Attachments: image002.png
image003.png
image004.png
image005.png
image006.png

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Page 18 appears to be the form I sent from the Dauphin county Da's website. Mr. Chardo responded and stated his office did not handle the inquiry and he forwarded the information to Niels Davidson. I later found out my request was denied and Mr. Davidson assisted me with filing the appeal.

I am fine waiting a couple more days as I hope your office reviews the requests and makes a fair determination. I would like to add since filing the appeal, we have recovered my sons body. The recovery of his body has led to more questions than answers. The information I am being denied access to will clarify whether my son died as a result of the shooting or if Harrisburg Rescue left my son to drown. The death certificate is inaccurate and leaves questions as to the cause of death.

Thank you for your time and willingness to have aoll the information before making a decision.

> On Friday, May 27, 2022, 02:46:04 PM EDT, Davis, Jordan <jorddavis@pa.gov> wrote:
>
> Dear Ms. Maldonaldo,
>
> Thank you for your response, and I apologize for the last-minute questions. I just have two more quick inquiries before my office issues a determination-
>
> 1. Who was the request on page 18 emailed to?
> 2. Would you be willing to grant the OOR a very brief three day extension to issue the Final Determination in this matter? I recognize that you were kind enough to grant the OOR additional time already, but I would like to discuss this case further with the OOR's legal and executive staff. If you agree, the Final Determination would issue on or before June 3, 2022.
>
> Thank you again for your consideration. Please let me know if you have any questions regarding this appeal.

Sincerely,

Jordan Davis
Attorney
Office of Open Records
333 Market St., 16th Floor

Harrisburg, PA 17101-2234

(717) 346-9903 | http://openrecords.pa.gov

jorddavis@pa.gov | @OpenRecordsPA

From: Kelly Maldonado <kellyjmaldonado@yahoo.com>
Sent: Friday, May 27, 2022 2:28 PM
To: Davis, Jordan <jorddavis@pa.gov>
Subject: Re: [External] RE: Maldonado v. Harrisburg PD: AP 2022-0692

Yes, my intentions are to appeal all denials. it was my understanding the appeal covered everything I have been denied access to.

Thank you

On Friday, May 27, 2022, 02:16:27 PM EDT, Davis, Jordan <jorddavis@pa.gov> wrote:

Dear Ms. Maldonado,

Thank you for your email. When you filed your appeal with the OOR, you stated that the records at issue are:

> Statements provided by city employees that called 911. Andrea Maldonado's
>
> statements to police. all evidence gathered from UPMC regarding Miguel Maldonado's

test and any videos collected. Details regarding what efforts were made to gather video

footage closer to the Dock street dam, especially from businesses where Andrea

claimed they were involved in an accident and she puts herself in the back seat. Any

videos , photos, and inventory log of items retrieved from the vehicle. any requests

made to obtain

This matches the text of the email which you included with your appeal, and which is reproduced on page 18 of the attached Notice of Appeal. However, the March 7, 2022 denial by the Department appears to be for only the request forwarded to the Department by DA Chardo, on pages 16 and 17.

Could you confirm whether you intended to appeal the request on page 18? Was that emailed to the Department on March 7, 2022?

Please let me know if I can clarify this question in any way. Thank you.

Sincerely,

Jordan Davis
Attorney
Office of Open Records
333 Market St., 16th Floor

Harrisburg, PA 17101-2234

(717) 346-9903 | http://openrecords.pa.gov

jorddavis@pa.gov | @OpenRecordsPA

From: kellyjmaldonado <kellyjmaldonado@yahoo.com>
Sent: Friday, May 27, 2022 1:48 PM
To: Right to Know <righttoknow@harrisburgpa.gov>; Davis, Jordan <jorddavis@pa.gov>
Subject: [External] RE: Maldonado v. Harrisburg PD: AP 2022-0692

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From: Right to Know <righttoknow@harrisburgpa.gov>

Date: 5/27/22 1:16 PM (GMT-05:00)

To: "Davis, Jordan" <jorddavis@pa.gov>, Right to Know <righttoknow@harrisburgpa.gov>,KellyJMaldonado@yahoo.com

Subject: RE: Maldonado v. Harrisburg PD: AP 2022-0692

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MLK Jr. City Government Center

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Harrisburg PA 17101

P:(717) 255- 6521

C: (717) 798-0745

HarrisburgPA.gov ◦ *Find Community. Find Home.*

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Sent: Wednesday, May 25, 2022 4:21 PM
To: Right to Know <righttoknow@harrisburgpa.gov>;KellyJMaldonado@yahoo.com
Subject: RE: Maldonado v. Harrisburg PD: AP 22022-0692

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From: Right to Know <righttoknow@harrisburgpa.gov>
Sent: Friday, April 8, 2022 3:05 PM
To: Davis, Jordan <jorddavis@pa.gov>
Subject: [External] Maldonado v. Harrisburg PD: AP 22022-0692

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From:	Davis, Jordan
To:	Kelly Maldonado
Cc:	Right to Know
Subject:	RE: Maldonado v. Harrisburg PD: AP 2022-0692
Date:	Friday, May 27, 2022 2:45:00 PM
Attachments:	image002.png image003.png image004.png image005.png image006.png

---

Dear Ms. Maldonaldo,

Thank you for your response, and I apologize for the last-minute questions. I just have two more quick inquiries before my office issues a determination-

1. Who was the request on page 18 emailed to?
2. Would you be willing to grant the OOR a very brief three day extension to issue the Final Determination in this matter? I recognize that you were kind enough to grant the OOR additional time already, but I would like to discuss this case further with the OOR's legal and executive staff. If you agree, the Final Determination would issue on or before June 3, 2022.

Thank you again for your consideration. Please let me know if you have any questions regarding this appeal.

Sincerely,

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From: Kelly Maldonado <kellyjmaldonado@yahoo.com>
Sent: Friday, May 27, 2022 2:28 PM
To: Davis, Jordan <jorddavis@pa.gov>
Subject: Re: [External] RE: Maldonado v. Harrisburg PD: AP 2022-0692

Yes, my intentions are to appeal all denials. it was my understanding the appeal covered everything I have been denied access to.

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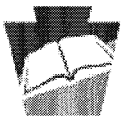

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Maldonado v. Harrisburg OOR Dkt. AP 2022-0692.

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From:	Kelly Maldonado
To:	Davis, Jordan
Subject:	Re: [External] RE: Maldonado v. Harrisburg PD: AP 2022-0692
Date:	Friday, May 27, 2022 2:27:40 PM
Attachments:	image002.png image003.png image004.png image005.png image001.png

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From:	Kelly Maldonado
To:	Davis, Jordan
Subject:	[External] Re: Maldonado v. Harrisburg PD: AP 22022-0692
Date:	Friday, May 27, 2022 2:14:49 PM
Attachments:	image001.png image005.png image004.png image003.png image002.png

---

Mr. Davis,

What exactly are you requesting? I have submitted all of my information in a timely manner. DA Chardo and Dauphin County Criminal Investigation have misled me every step of the way. Every time I speak to someone regarding this matter I get another excuse. I was told by Commissioner Carter on March 29, 2022 that Harrisburg police were not involved in any part of the investigation and would not have any of the documents I formally requested. The right to know officer Mr. Davidson has received my request as DA Chardo and himself have acknowledged it was forwarded. I can forward all emails that have been exchanged.

thanks

On Wednesday, May 25, 2022, 04:21:13 PM EDT, Davis, Jordan <jorddavis@pa.gov> wrote:

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Date: Friday, May 27, 2022 1:48:22 PM
Attachments: image007.png
image008.png
image009.png
image010.png
image011.png
image007.png
image008.png
image009.png
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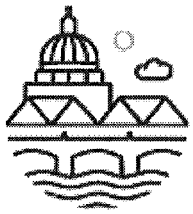

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Attachments: 2022-0692_Maldonado-HarrisburgPD.pdf
image001.png
image002.png
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C: (717) 798-0745

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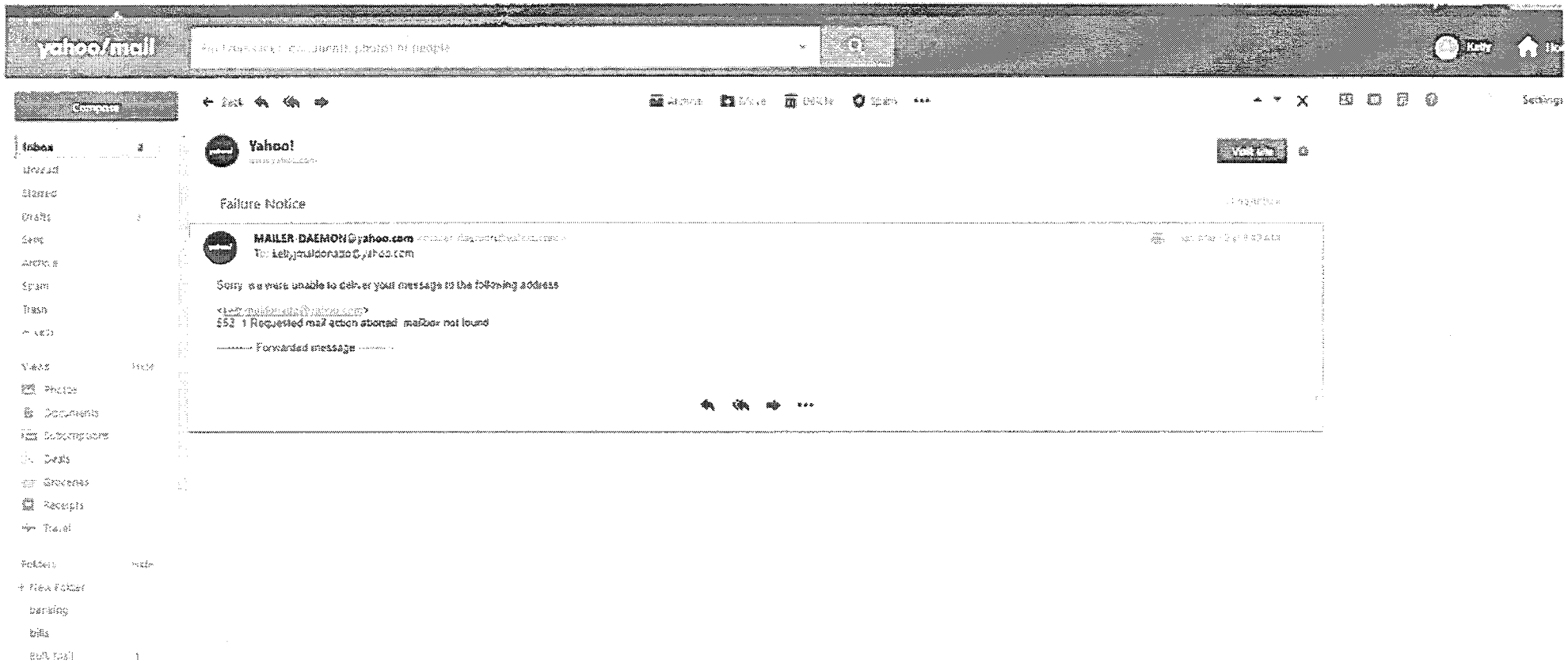

yahoo/mail
Kelly
Compose
Inbox
Drafts
Sent
Spam
Trash
Photos
Documents
Deals
Groceries
Receipts
Travel
Folders
+ New Folder
banking
bills
Yahoo!
Failure Notice
MAILER-DAEMON@yahoo.com
To: kellyjmaldonado@yahoo.com
Sorry, we were unable to deliver your message to the following address.
<kellyjmaldonado@yahoo.com>
553 5.1.1 Requested mail action aborted: mailbox not found
---------- Forwarded message ----------

Harrisburg Bureau of Police
123 Walnut Street
Harrisburg, PA 17101

Audio Video Recording Request Form

Printed name of requestor: KELLY JEAN MALDONADO

Address of requestor: 111 HORIZON RIVER DR #F7 MYRTLE BEACH SC. 29588

Phone number of requestor: 843-467-3605

Email or other contact: KELLYJMALDONADO@Yahoo.com

Date/Time of the incident requested: 1-16-2022 3:30 AM

Location of the incident requested: Dock Street DAM Susquehanna River

Description of the incident: Miguel Maldonado Jr Shot and Killed by police

Relationship of the requestor to the incident: Mother of deceased

If the incident occurred inside of a residence, identify each individual present at the time other than Police personnel: Outside in the Susquehanna River present ANDREA MALDONADO (wife to deceased) Saphia Cristina MALDONADO (Daughter to deceased)

By signing this request, I acknowledge that if my request is approved I will be charged a fee of $100.00.

Signature of requestor: Kelly J Maldonado

*Attach other pages if necessary to provide complete information to support your request.

Send or deliver requests to:
Office of the City Solicitor
Attn: Right-to-Know Officer
The City of Harrisburg
Rev. Dr. Martin Luther King Jr. City Government Center
10 North Second Street, Suite 402
Harrisburg, PA 17101

11/2021

I am requesting all police bodycam video and any dashcam videos of the incident that occurred. I am only aware of 2 of the officers present since the DA's office and Chief Goshert from the Dauphin County Criminal Investigation Division have decided to not allow me to see all of the video involved. The two officers I am aware of is Officer Brandon Hoover (one of the shooters), Officer Novack who attempted to engage in conversation with my son Miguel Maldonado.

I am attaching the initial email I sent to chief Goshert on 02/23/2022 in which I submitted a formal request. I asked if he was the correct contact person. Chief Goshert chose not to respond. I realize the Law Enforcement Recording Request form – Act 22 of 2017 has an incorrect email address. However, I would like to point out the letter attached to the form has my correct email address. In addition, Chief Goshert has my correct contact information and has responded to me via email on multiple occasions, he simply chose not to respond. I can only assume this was done intentionally as to delay my request being received timely.

On 02/28/2022, I sent the form via certified mail requiring a signature to both Chief Goshert and DA Fran Chardo, I will include proof of certified mail sent and received by both.

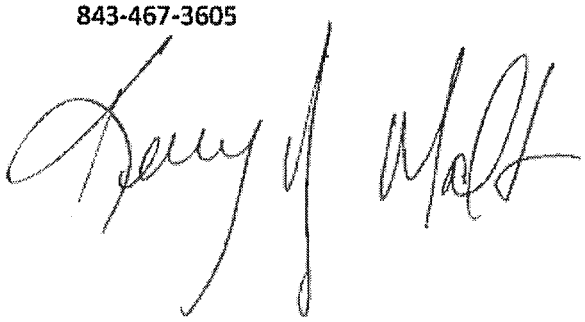
There is no criminal case, DA Chardo made it very clear on several media sources the investigation was solely to determine if the shooting was justified, there was no investigation as to how or why the ended up in the river.

I feel both DA Chardo and Chief Goshert have done everything possible to prevent me from having access to the videos. This is not an open investigation; the case has been closed.

My correct contact information is

KELLYJMALDONADO@YAHOO.COM

843-467-3605



7020 2450 0000 6197 4393

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Harrisburg, PA 17101 **OFFICIAL USE**

Certified Mail Fee	$3.75	0588 15
Extra Services & Fees (check box, add fee as appropriate)	$7.05	
☐ Return Receipt (hardcopy)	$0.00	Postmark Here
☐ Return Receipt (electronic)	$0.00	
☐ Certified Mail Restricted Delivery	$0.00	
☐ Adult Signature Required	$0.00	
☐ Adult Signature Restricted Delivery	$	
Postage	$0.58	
Total Postage and Fees	$7.38	02/28/2022

Sent To
Street and Apt. No., or PO Box No.
City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Francis Chardo
101 Market St 2nd Fl
HBG PA 17101

9590 9402 5838 0038 7243 10

2. Article Number (Transfer from service label)
7020 2450 0000 6197 4409

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) COUUS C. Date of Delivery 3/7/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery ($500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

7020 2450 0000 6197 4409

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Harrisburg, PA 17101 **OFFICIAL USE**

Certified Mail Fee	$3.75	0588 15
Extra Services & Fees (check box, add fee as appropriate)	$7.05	
☐ Return Receipt (hardcopy)	$0.00	Postmark Here
☐ Return Receipt (electronic)	$0.00	
☐ Certified Mail Restricted Delivery	$0.00	
☐ Adult Signature Required	$0.00	
☐ Adult Signature Restricted Delivery	$	
Postage	$0.58	
Total Postage and Fees	$7.38	02/28/2022

Sent To
Street and Apt. No., or PO Box No.
City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
John Goshert
2 South 2nd St 3rd FL
HBG PA 17101

9590 9402 5838 0038 7243 03

2. Article Number (Transfer from service label)
7020 2450 0000 6197 4393

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

MAR 08 2022
HARRISBURG, PA 17101

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Proof of timely Request

Kelley J. Mall

Proof of timely request

Formal request

From: Kelly Maldonado (kellyjmaldonado@yahoo.com)

To: jgoshert@dauphinc.org

Date: Wednesday, February 23, 2022, 12:40 PM EST

Good afternoon Chief Goshert,

I am submitting a formal request for all of the police bodycam videos as I am advised this can be done. To ensure I have send my request to the right person please verify you are the person who would be handling this request. This is the contact information I have:

John Goshert, Chief County Detective
Dauphin County Criminal Investigation Division
Dauphin County Administration Building (Third Floor)
2 South 2nd Street
Harrisburg, PA 17101
Phone: (717) 780-6200

I will submit a formal request by mail to ensure we follow the proper guidelines, just need you to verify requesting the info from you is correct.

Thank you
Kelly J Maldonado .

formal request.pdf
66.8kB

3 page Submitted on 2/23/22

Law Enforcement Recording Request Form – Act 22 of 2017

This form can be used to request law enforcement recordings ("any audio recording or video recording made by a law enforcement agency") under Act 22 of 2017. Note that the Right-to-Know Law does not apply to such recordings. Any denials must be appealed to the appropriate Court of Common Pleas, <u>not</u> the Office of Open Records.

SUBMITTED TO AGENCY NAME: Dauphin County Criminal Investigation (Attn: AORO)

Date of Request: 02/23/2022 Submitted via: ■ U.S. Mail ☐ In Person

(Act 22 requires requests to be submitted via "personal delivery or certified mail.")

PERSON MAKING REQUEST:

Name: Kelly Jean Maldonado Company (if applicable): _____

Mailing Address: 111 Horizon River Drive Unit F7

City: Myrtle Beach State: SC Zip: 29588 Email: Kelltjmaldonado@yahoo.com KELLY3MALDONADO

Telephone: 843-467-3605 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ■ Email ■ U.S. Mail

RECORDING REQUESTED: ***Requests must be submitted within 60 days of the event recorded. All of the following information is <u>required</u>. Be thorough; use additional pages if necessary.***

Date and Time of the Event: 01/16/2022 3:30am

Location of the Event: Susquehanna River, Dock Street Dam, under 83 highway

Describe the Event:

The interaction that led to police shooting Miguel Maldonado JR.

Describe Your Relationship to the Event:

Mother of deceased . Requesting all recordings from every officer and vehicle involved

If the Event Occurred in a Residence, Identify All People Present (*unless unknown & not reasonably ascertainable*):

Officers: Hoover, Novack,officers not identified. Fire rescue, Andrea & Sophia Maldonado

If an Act 22 request is granted, the agency may charge "reasonable fees" to provide a copy of the recording.

Please notify me if fees associated with this request will be more than ■ $100 (or) ☐ $_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (30 cal. days): _____

Extension? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: $_____

NOTE: In most cases, a completed Request Form is a public record.
More information about Act 22 is available at <u>https://www.openrecords.pa.gov</u>

Form updated March 16, 2020
by the Office of Open Records

Chief Goshert,

Since my meeting with DA Chardo ended abruptly on 02/14/22, I am requesting access to all video & audio recordings involving the homicide of my son Miguel Maldonado Jr. DOB 03/29/1985, DOD 01/16/2022.

As his mother I feel I am entitled to view all the evidence used to vindicate the officers of any wrongdoing.

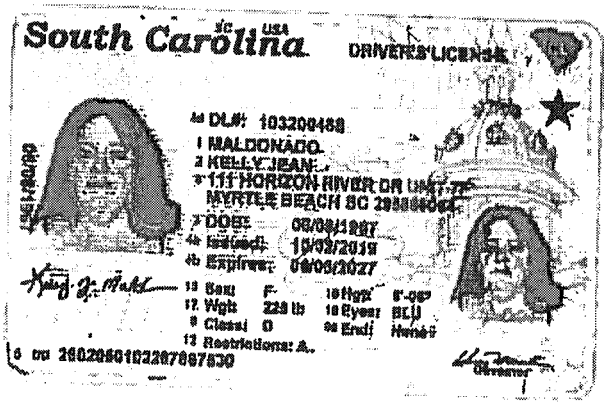
Kelly J. Maldonado

111 Horizon River Rd

Unit F7,

Myrtle Beach SC 29588

KellyJMaldonado@yahoo.com



Law Enforcement Recording Request Form – Act 22 of 2017

*This form can be used to request law enforcement recordings ("any audio recording or video recording made by a law enforcement agency") under Act 22 of 2017. Note that the Right-to-Know Law does not apply to such recordings. Any denials must be appealed to the appropriate Court of Common Pleas, **not** the Office of Open Records.*

SUBMITTED TO AGENCY NAME: D.A. FRAN Chardo (Attn: AORO)

Date of Request: 02/23/2022 Submitted via: ■ U.S. Mail ☐ In Person

(Act 22 requires requests to be submitted via "personal delivery or certified mail.")

PERSON MAKING REQUEST:

Name: Kelly Jean Maldonado Company (if applicable): _____

Mailing Address: 111 Horizon River Drive Unit F7

City: Myrtle Beach State: SC Zip: 29588 Email: Kelltjmaldonado@yahoo.com

Telephone: 843-467-3605 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ■ Email ■ U.S. Mail

RECORDING REQUESTED: *Requests must be submitted within **60 days** of the event recorded. **All of the following information is required**. Be thorough; use additional pages if necessary.*

Date and Time of the Event: 01/16/2022 3:30am

Location of the Event: Susquehanna River, Dock Street Dam, under 83 highway

Describe the Event:

The interaction that led to police shooting Miguel Maldonado JR.

RECEIVED
MAR 07 2022
DISTRICT ATTORNEY'S OFFICE
DAUPHIN COUNTY

Describe Your Relationship to the Event:

Mother of deceased. Requesting all recordings from every officer and vehicle involved AND ALL 911 Recordings Made From 717 343 7422

If the Event Occurred in a Residence, Identify All People Present (*unless unknown & not reasonably ascertainable*):

Officers: Hoover, Novack,officers not identified. Fire rescue, Andrea & Sophia Maldonado

If an Act 22 request is granted, the agency may charge "reasonable fees" to provide a copy of the recording.

Please notify me if fees associated with this request will be more than ■ $100 (or) ☐ $_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (30 cal. days): _____

Extension? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: $_____

NOTE: In most cases, a completed Request Form is a public record.
More information about Act 22 is available at https://www.openrecords.pa.gov

Form updated March 16, 2020
by the Office of Open Records

DA Chardo/ Chief Goshert,

Since my meeting ended abruptly on 02/14/22, I am formally requesting all video and audio recordings involving the homicide of my son Miguel Maldonado Jr. DOB 3/29/85 be released to me.

Although the law does not acknowledge me as his next of kin, I am his mother and as such I should be allow to view and listen to all of the evidence collected.

Kelly J Maldonado

111 Horizon River Drive

Unit F7

Myrtle Beach SC 29588

843-467-3605

I am mailing this request to both the district attorneys office as well as the Dauphin County Criminal Investigation Unit as Chief Goshert has not responded to my inquiry on where I should submit my request.

Kelly J Maldonado

From:	Right to Know
To:	Davis, Jordan; Right to Know; KellyJMaldonado@yahoo.com
Subject:	[External] RE: Maldonado v. Harrisburg PD: AP 2022-0692
Date:	Friday, May 27, 2022 1:16:18 PM
Attachments:	image007.png image008.png image009.png image010.png image011.png SKM_80822030716190.pdf MMJR.1.pdf mmjr.2.pdf

---

Dear Appeals Officer Davis,

Thank you for your correspondence. The City's Law Bureau did not receive the records request on page 18 of the Notice of Appeal (2022-0692), emailed on March 7, 2022.

I have attached the documents which were sent/forwarded to me in my capacity as RTK Officer.

It is worth mentioning that today is my last day as RTK Officer for the City of Harrisburg. A new RTK Officer has not been added to the team yet, but I am leaving notes for my successor in the hope that it expedites their ability to assist the OOR and Ms. Maldonado.

Best regards,

Niels M. Davidson
Right to Know Officer & Confidential Legal Assistant

City of Harrisburg
MLK Jr. City Government Center
10 N 2nd St
Harrisburg PA 17101

P: (717) 255- 6521
C: (717) 798-0745

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From: Davis, Jordan <jorddavis@pa.gov>
Sent: Wednesday, May 25, 2022 4:21 PM
To: Right to Know <righttoknow@harrisburgpa.gov>; KellyJMaldonado@yahoo.com
Subject: RE: Maldonado v. Harrisburg PD: AP 22022-0692

Dear Parties,

I write today with some quick questions regarding the Request. I am attaching a copy of the Notice of Appeal in this matter for easy reference.

1. Did the Department receive the records request on page 18 of the attached Notice of Appeal, emailed on March 7, 2022?
2. If the Department did receive that request, was it encompassed in the March 7, 2022 denial on page 15?

I am requesting this information simply to ensure that I have an accurate record, and do not require an affidavit. Please let me know if I can clarify either question in any way.

Sincerely,

Jordan Davis
Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | http://openrecords.pa.gov
jorddavis@pa.gov | @OpenRecordsPA

From: Right to Know <righttoknow@harrisburgpa.gov>
Sent: Friday, April 8, 2022 3:05 PM
To: Davis, Jordan <jorddavis@pa.gov>
Subject: [External] Maldonado v. Harrisburg PD: AP 22022-0692

Good Afternoon,

Attached are the City of Harrisburg's Submissions in response to the Official Notice of Appeal – Maldonado v. Harrisburg OOR Dkt. AP 2022-0692.

Should any additional clarification be required please do not hesitate to get in touch.

Best regards,

Niels M. Davidson
Right to Know Officer & Confidential Legal Assistant

City of Harrisburg
MLK Jr. City Government Center
10 N 2nd St
Harrisburg PA 17101

P: (717) 255- 6521
C: (717) 798-0745

HarrisburgPA.gov • *Find Community. Find Home.*

From: Davis, Jordan
To: Right to Know; KellyJMaldonado@yahoo.com
Subject: RE: Maldonado v. Harrisburg PD: AP 22022-0692
Date: Wednesday, May 25, 2022 4:21:00 PM
Attachments: 2022-0692_Maldonado-HarrisburgPD.pdf
image001.png
image002.png
image003.png
image004.png
image005.png

Dear Parties,

I write today with some quick questions regarding the Request. I am attaching a copy of the Notice of Appeal in this matter for easy reference.

1. Did the Department receive the records request on page 18 of the attached Notice of Appeal, emailed on March 7, 2022?
2. If the Department did receive that request, was it encompassed in the March 7, 2022 denial on page 15?

I am requesting this information simply to ensure that I have an accurate record, and do not require an affidavit. Please let me know if I can clarify either question in any way.

Sincerely,

Jordan Davis
Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | http://openrecords.pa.gov
jorddavis@pa.gov | @OpenRecordsPA

From: Right to Know <righttoknow@harrisburgpa.gov>
Sent: Friday, April 8, 2022 3:05 PM
To: Davis, Jordan <jorddavis@pa.gov>
Subject: [External] Maldonado v. Harrisburg PD: AP 22022-0692

Good Afternoon,

Attached are the City of Harrisburg's Submissions in response to the Official Notice of Appeal – Maldonado v. Harrisburg OOR Dkt. AP 2022-0692.

Should any additional clarification be required please do not hesitate to get in touch.

Best regards,

Niels M. Davidson
Right to Know Officer & Confidential Legal Assistant

City of Harrisburg
MLK Jr. City Government Center
10 N 2nd St
Harrisburg PA 17101

P: (717) 255- 6521
C: (717) 798-0745

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City of Harrisburg
Office of the City Solicitor

Via email jorddavis@pa.gov

April 8, 2022

Jordan Davis, Esquire
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: OOR Dkt. # AP 2022-0692

Dear Appeals Officer Davis:

On behalf of the City of Harrisburg, please consider this letter and the accompanying documents to serve as the City of Harrisburg's submission in response to the OFFICIAL NOTICE OF APPEAL – DOCKET #AP 2022-0692 dated March 21, 2022.

Kelly Maldonado ("Requester") submitted a Right to Know Request seeking records regarding "the interaction that led to police shooting Miguel Maldonado, Jr. Requesting all recordings from every officer and vehicle involved and all 911 recordings made from (717)343-7422." The release of police video is subject to the protocols laid out in 42 Pa. CS.A. § 67A01-67A09 and is not subject to the Right to Know Law. As such, Ms. Maldonado's request was split into two components; one addressing the request for audio and video recordings, and the other, that at the crux of the instant matter, addressing the request for police records. The City's Right to Know Officer and the undersigned on this position statement contacted a Police Data Technician in the City of Harrisburg Bureau of Police as part of a good faith effort to determine whether the records in the City's possession, custody, or control constituted responsive records.

The City denied Ms. Maldonado's request pursuant to Section 708(b)(16)(ii) of the Right to Know Law, which states in pertinent part that "A record of an agency relating to or resulting in a criminal investigation, including: investigative materials, notes, correspondence, videos and reports" are exempt from access by a requester. The documents requested by Ms. Maldonado fall within the purview of this exemption. Additionally, the City relied upon the Criminal History Record Information Act, 18 Pa. C.S. § 9101, when denying Ms. Maldonado's request for records relating to or resulting in a criminal investigation. While the City was not able to provide any responsive records specific to Ms. Maldonado's request, a copy of the City of Harrisburg Bureau of Police's body worn camera General Order was supplied with the City's response, as it provides useful insight as to how to correctly file an audio and video recording request.

In the attestation of Niels M. Davidson, attached hereto as Exhibit A, it is stated that a thorough review of the records in the City's possession, custody and control uncovered responsive records relative to Ms. Maldonado's request. Furthermore, the Attestation provides that the records in question form part of a record relating to or resulting in a criminal investigation. In an appeal before the Office of Open Records sworn statements constitute sufficient evidence to support dismissal of an appeal. Moore v. Office of Open Records, 992 A.2d 907, (Pa. Commw. 2010). In addition to the fact that Ms. Maldonado's original request, on its face, seeks exempt records, the aforementioned Attestation constitutes sufficient evidence to dismiss the appeal. Moore, *supra.*

In the alternative, the City respectfully requests that to the extent the appeal seeks to overturn a denial issued pursuant to 65 P.S. §67.708(b)(16)(ii) the request be transferred to the Dauphin County District Attorney's Office. In Jaynes v. Philadelphia Police Department, the Office of Open Records stated that "The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. See 65 P.S. § 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney." Docket No. AP 2020-0392. In Elwood Johnson v. Montgomery County District Attorney's Office, a matter in which Requester Johnson sought a copy of his arrest warrant, the Office of Open Records transferred the appeal to the Appeals Officer for the

Montgomery County District Attorney's Office as a search warrant was, on its face and without any supporting evidence, a record related to a criminal investigation. Docket No. AP 2017-1845.

The City respectfully requests that the above-captioned appeal be dismissed as to the request for the aforementioned documents. The City's Denial was appropriate pursuant to Section 708(b)(16)(ii) of the Right to Know Law as the responsive records were collected as part of a criminal investigation. To the extent that this matter is outside the jurisdiction of the Office of Open Records the City requests that it be transferred to the appeals officer designated by the Dauphin County District Attorney and dismissed by the Office of Open Records.

Respectfully,

CITY OF HARRISBURG LAW BUREAU

/s/ Niels M. Davidson

Niels M. Davidson
Right to Know Officer
10 North Second Street, Suite 402
Harrisburg, PA 17101
Phone: (717) 255-3065 Facsimile: (717) 255-3056

Encl.
cc: Kelly Maldonado (kellyjmaldonado@yahoo.com)

MLK, Jr. City Government Center
10 North Second Street, Suite 402
Harrisburg, PA 17101
Ph: (717) 255-3065/Fax (717) 255-3056

City of Harrisburg
Office of the City Solicitor

Name of Requester: Kelly Maldonado
111 Horizon River Drive, Unit F7
Myrtle Beach, SC 29588

Appeal Caption: OOR Dkt. AP 2022-0692

I, Niels M. Davidson, hereby declare, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

1. I served as the Open Records Officer for The City of Harrisburg ("Agency") and was responsible for responding to Right-to-Know requests filed with the Agency at the time of the request.

2. In my capacity as the records custodian, I am familiar with the records of the Agency.

3. I contacted the City of Harrisburg's Police Data Technicians, requesting that they conduct a search of files in the possession, custody and control of the Agency for records responsive to the requests underlying this appeal.

4. After a thorough review of the records in the possession, custody and control of the City of Harrisburg it was determined that the documents responsive to the request contained information that pertained to Harrisburg City Police investigations.

5. The aforementioned documents were created as part of a record relating to a non-criminal investigation. Section 708(b)(16)(ii) of the RTKL states: "a record of an agency relating to a criminal investigation..." "...is exempt from access by a requester." As such, the City withheld said records and denied Ms. Maldonado's request.

Date: April 8, 2022 Signature: */s/ Niels M. Davidson*

Niels M. Davidson
Right to Know Officer & Legal Assistant
City of Harrisburg

From:	Right to Know
To:	Davis, Jordan
Subject:	[External] Maldonado v. Harrisburg PD: AP 22022-0692
Date:	Friday, April 8, 2022 3:05:40 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png Position Statement - Kelly Maldonado (2022-0692).pdf Exhibit A - Kelly Maldonado OOR Appeal (2022-0692) - Attestation (Niels Davidson).pdf

---

Good Afternoon,

Attached are the City of Harrisburg's Submissions in response to the Official Notice of Appeal – Maldonado v. Harrisburg OOR Dkt. AP 2022-0692.

Should any additional clarification be required please do not hesitate to get in touch.

Best regards,

Niels M. Davidson
Right to Know Officer & Confidential Legal Assistant

City of Harrisburg
M.L.K Jr. City Government Center
10 N 2nd St
Harrisburg PA 17101

P: (717) 255- 6521
C: (717) 798-0745

HarrisburgPA.gov • *Find Community. Find Home.*

From: DC, OpenRecords
To: KellyJMaldonado@yahoo.com; righttoknow@harrisburgpa.gov; nmdavidson@harrisburgpa.gov; officeofthechief@harrisburgpa.gov
Cc: Davis, Jordan
Subject: Maldonado v. Harrisburg PD: AP 22022-0692
Date: Monday, March 21, 2022 4:41:14 PM
Attachments: 2022-0692_Maldonado-HarrisburgPD.pdf

Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records. The above mentioned matter has been assigned to Appeals Officer Jordan Davis (refer to the attachment for contact information). Please forward all future correspondence directly to the Appeals Officer (cc'd on this email) and all other parties.

Sincerely,

Dylan Devenyi
Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | **Fax** (717) 425-5343
https://openrecords.pa.gov
@OpenRecordsPA

pennsylvania
OFFICE OF OPEN RECORDS

IN THE MATTER OF	:	
	:	
KELLY MALDONADO,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2022-0692**
	:	
HARRISBURG CITY POLICE	:	
DEPARTMENT,	:	
Respondent	:	

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before May 31, 2022.

Devenyi, Dylan

From: no-reply@openrecordspennsylvania.com
Sent: Saturday, March 19, 2022 11:44 PM
To: KELLYJMALDONADO@YAHOO.COM
Subject: [External] PA Office of Open Records - Appeal Confirmation

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.*

pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	KELLY MALDONADO
Company:	
Address 1:	111 HORIZON RIVER DR UNIT F7
Address 2:	
City:	MYRTLE BEACH
State:	South Carolina
Zip:	29588
Phone:	843-467-3605
Email:	KELLYJMALDONADO@YAHOO.COM
Agency (typed):	Police department
Agency Address 1:	123 Walnut St
Agency Address 2:	
Agency City:	Harrisburg
Agency State:	Pennsylvania
Agency Zip:	17101
Agency Phone:	717-558-6900
Agency Email:	officeofthechief@harrisburgpa.gov

Records at Issue in this Appeal:	Statements provided by city employees that called 911. Andrea Maldonado's statements to police. all evidence gathered from UPMC regarding Miguel Maldonado's test and any videos collected. Details regarding what efforts were made to gather video footage closer to the Dock street dam, especially from businesses where Andrea claimed they were involved in an accident and she puts herself in the back seat. Any videos , photos, and inventory log of items retrieved from the vehicle. any requests made to obtain
Request Submitted to Agency Via:	mail
Request Date:	02/28/2022
Response Date:	03/18/2022
Deemed Denied:	No
Agency Open Records Officer:	Niels Davidson
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	Yes
Attachments:	• Information from the cellphone.docx • SKM_80822030716190 (2).pdf • denial.pdf • appeal letter.docx • emails.2.docx

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I am asking reconsideration. From the very beginning DA Chardo and Chief Goshert have made this process difficult. The attached for was sent to Chief Goshert via email, I asked he provide me with the correct information if I submitted it in error. It wasn't until I sent certified letter via USPS requiring a signature did, I get a response from DA Chardo saying he would forward my request to the correct agency. I have also submitted a separate request for all bodycam videos and dashcam videos involved in the incident along with the 911 recordings,

The DA agreed to sit down and allow me to view all the evidence gathered, but as stated previously he was offended when I told him he mishandled my sons case from the beginning. Whether I can have access to the info the county collected I should be able to see the information or lack of information gathered by the Harrisburg Police Department.

The DA clearly stated the in and interview this was not a criminal investigation so the reason provided does not apply, Section 708(b)(16)(ii): A record of an agency relating to or resulting in a criminal investigation, including: Investigative materials, notes, correspondence, videos and reports

Sincerely

Kelly J Maldonado

843-467-3605

Kellyjmaldonado@yqhoo.com

https://lm.facebook.com/l.php?u=https%3A%2F%2Ftrib.al%2Fv3BMXIe&h=AT1b4JURfKxjCetGyiiqSHBnWrdRHSZY1DLqxNt82fwNPmWDD5KK4R7pmsmj3ZBadD-3kRUDc09581ohSVjII1vYexcIe7CgoJUKl9k4PLzD5mgA4K8evmXt4kG6b86ZTz5y

As with all police shootings, Chardo said he limited his review to the sole question of whether the officers' actions violated criminal law, not whether the use of force was proper or complied with department policy.

Information from the cellphone, to include calls made from the time they left UPMC to the last 911 call.

The investigation has been flawed from the beginning; I was told I could view the evidence once the investigation was completed. The case is closed and no criminal charges are being filed. I was not able to view all of the evidence as agreed to by Chief Goshert and DA Chardo. Da Chardo did not like the manner in which I let him know I was dissatisfied how he made a press statement releasing details that were not confirmed 6 hours after the incident, he also released my sons name to the media before notifying his mother. DA Chardo abruptly ended the meeting and told me to leave his office. If my appeal is denied I feel the City of Harrisburg should have a meeting with me and I should be able to view all information regarding the investigation. My son is deceased and cannot be charged with any crimes, the police officers have been vindicated, this is not a criminal investigation.

Please not the request has the incorrect email. Correct email is KELLYJMALDONADO@YAHOO.COM

City Government Center
10 North Second Street, Suite 402
Harrisburg, PA 17101
Phone: (717) 255-3065
Facsimile: (717) 255-3056

City of Harrisburg

Right-To-Know Response
DENIED

March 7, 2022

Via email to kelltjmaldonado@yahoo.com

Kelly Maldonado
111 Horizon River Drive, Unit F7
Myrtle Beach, SC 29588

Ms. Maldonado,

Thank you for writing to the City of Harrisburg with your request for records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*

In your request received by the City of Harrisburg Law Bureau on March 7, 2022, you requested copies of information held by Harrisburg Bureau of Police regarding "the interaction that led to the shooting of Miguel Maldonado Jr."

Your request is DENIED pursuant to the Criminal History Record Information Act, 18 Pa. C.S. § 9101, as well as the exemption listed in Section 708 of the RTKL:

> Section 708(b)(16)(ii): A record of an agency relating to or resulting in a criminal investigation, including: Investigative materials, notes, correspondence, videos and reports.

You have a right to appeal in writing with the Office of Open Records or judicial, legislative or other applicable appeals officer designated under section 503(d). *See* 65 P.S. § 67.503. If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response. *See* 65 P.S. § 67.1101. Please note that a copy of your original Right-to-Know request and this denial letter must be included when filing an appeal. More information about how to file an appeal under the RTKL is available at the Office of Open Records website, https://www.openrecords.pa.gov.

Best regards,

/s/ Niels M. Davidson

Niels M. Davidson
Right to Know Officer

Law Enforcement Recording Request Form – Act 22 of 2017

*This form can be used to request law enforcement recordings ("any audio recording or video recording made by a law enforcement agency") under Act 22 of 2017. Note that the Right-to-Know Law does not apply to such recordings. Any denials must be appealed to the appropriate Court of Common Pleas, **not** the Office of Open Records.*

SUBMITTED TO AGENCY NAME: D.A. FRAN Chardo (Attn: AORO)

Date of Request: 02/23/2022 Submitted via: ■ U.S. Mail ☐ In Person

(Act 22 requires requests to be submitted via "personal delivery or certified mail.")

PERSON MAKING REQUEST:

Name: Kelly Jean Maldonado Company (if applicable): _____

Mailing Address: 111 Horizon River Drive Unit F7

City: Myrtle Beach State: SC Zip: 29588 Email: Kelltjmaldonado@yahoo.com

Telephone: 843-467-3605 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ■ Email ■ U.S. Mail

RECORDING REQUESTED: *Requests must be submitted within **60 days** of the event recorded. **All of the following information is required**. Be thorough; use additional pages if necessary.*

Date and Time of the Event: 01/16/2022 3:30am

Location of the Event: Susquehanna River, Dock Street Dam, under 83 highway

Describe the Event:

The interaction that led to police shooting Miguel Maldonado JR.

RECEIVED
MAR 07 2022
DISTRICT ATTORNEY'S OFFICE
DAUPHIN COUNTY

Describe Your Relationship to the Event:

Mother of deceased . Requesting all recordings from every officer and vehicle involved AND ALL 911 Recordings Made From 717 343 7422

If the Event Occurred in a Residence, Identify All People Present (*unless unknown & not reasonably ascertainable*):

Officers: Hoover, Novack,officers not identified. Fire rescue, Andrea & Sophia Maldonado

If an Act 22 request is granted, the agency may charge "reasonable fees" to provide a copy of the recording.

Please notify me if fees associated with this request will be more than ■ $100 (or) ☐ $_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (30 cal. days): _____

Extension? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: $_____

NOTE: In most cases, a completed Request Form is a public record.
More information about Act 22 is available at https://www.openrecords.pa.gov

Form updated March 16, 2020
by the Office of Open Records

DA Chardo/ Chief Goshert,

Since my meeting ended abruptly on 02/14/22, I am formally requesting all video and audio recordings involving the homicide of my son Miguel Maldonado Jr. DOB 3/29/85 be released to me.

Although the law does not acknowledge me as his next of kin, I am his mother and as such I should be allow to view and listen to all of the evidence collected.

Kelly J Maldonado

111 Horizon River Drive

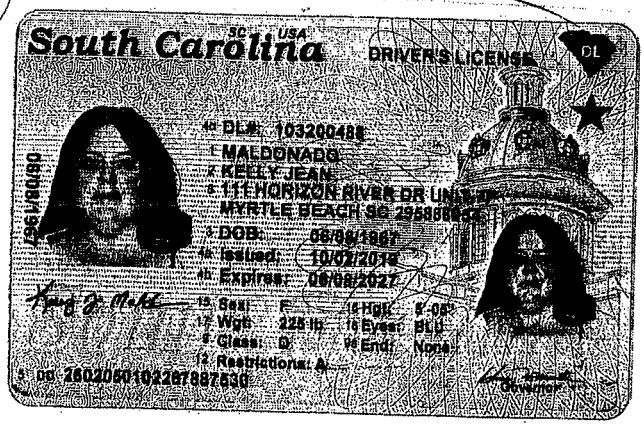
Unit F7

Myrtle Beach SC 29588

843-467-3605

I am mailing this request to both the district attorneys office as well as the Dauphin County Criminal Investigation Unit as Chief Goshert has not responded to my inquiry on where I should submit my request.

Kelly J Maldonado



Emails

Right-to-Know Request

Yahoo/Pito

•

CRIMEWATCH <support@crimewatchus.com>

To:kellyjmaldonado@yahoo.com

Mon, Mar 7 at 11:15 AM

Submitted on Mon, 03/07/2022 - 11:15am

Date Requested: 03/07/2022
Name of Requestor: kelly maldonado
Address:
111 Horizon River Drive Unit F7
Myrtle Beach
South Carolina
29588
Phone: (843) 467-3605
Email: Kellyjmaldonado@yahoo.com

Records Requested:

All documents and evidence obtained regarding the incident on 01/16/22 approximately 3:33 am that led to the homicide of my son Miguel Junior Maldonado AKA Miguel Maldonado Jr by Harrisburg Police Department. I am requesting ALL witness statements, the two city workers that called 911 as well as Andrea Maldonado's statements, and any other person that provided a statement. I want a list of officers responding to the incident, their time on the police force and all complaints filed against these officers whether founded or unfounded. I want copies of all information collected from the Harrisburg Hospital (UPMC). I want the location identified as the accident that Andrea Maldonado claimed occurred on Paxton Street, and whether any efforts were made to recover video from the local businesses in the area. I want all evidence relating to the vehicle retrieved from the river, to include photos, video, and an inventory of items retrieved from the vehic le. I also want the any information regarding attempts to retrieve my sons body from the Susquehanna river, include name of agencies involved, dates and times searches were conducted. If there is any additional documents I have not mentioned here I would like those a well. I have formally submitted a request to DA Chardo & Chief Goshert for ALL bodycam, dashcam videos and all 911 calls. this request has been sent certified within the 60 days required.

Do you want copies? Yes
Do you want to inspect the records? No
Do you want certified copies of the records?No

Chardo, Fran <fchardo@dauphinc.org>
To:kellyjmaldonado@yahoo.com
Mon, Mar 7 at 3:44 PM

I received your request. Under the statute, because the Harrisburg Bureau of Police was the agency that recorded the body cam video, the request must be addressed to them. I have forwarded your request to them, and they have accepted it. The Dauphin County Department of Public Safety runs our 911 center. Any request for 911 calls must be directed to them. I believe those records are subject to the Right-To-Know Law, not 42 Pa.C.S. § 67A01, *et seq*. I have forwarded your request to that department. Generally, 911 calls and emergency radio dispatch recordings and logs are not subject to disclosure unless the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure. 65 P.S. § 67.708(18). In such case, the recordings would be a public record.