



LACKAWANNA COUNTY DISTRICT ATTORNEY'S OFFICE

MARK POWELL

RECEIVED

AUG 04 2023

OFFICE OF OPEN RECORDS

July 27, 2023

John P. Finnerty, ESQ  
DLP  
75 Glenmaura National Blvd.  
Moosic, Pa 18507

Dear Sir:

Pursuant to 65 P.S. §§67.503(b)(d), the Right-To-Know Law ("RTKL"), 65 P.S. §§67.101-3104 requires the Lackawanna County District Attorney's Office have an appeals officer designated for hearing appeals involved the RTKL.

Be advised, I serve in this capacity for the Lackawanna County District Attorney's Office. Recently, the Office of Open Records ("OOR") issued a final order transferring a RTKL appeal in the matter of John P. Finnerty v. Jessup Borough, OOR Dkt. AP 2023-1425 to the Lackawanna County District Attorney's for final determination. Documents enclosed herewith.

Having carefully reviewed the request from Attorney John P. Finnerty, who is seeking records pertaining to a dash cam video of a motor vehicle accident that occurred on May 19, 2023 in the Borough of Jessup. Specifically, please refer to the Open Records Request filed by Attorney Finnerty.

It is my decision that the records requested are exempt under the Pa RTKL, specifically Section 708(b)(16). This dash cam video is related to a criminal investigation by the Jessup Police Department regarding a motor vehicle accident, and therefore, exempt under Section 708(b)(16). As such, your request is DENIED.

In closing, within 30 days of the mailing date of this final determination, you may appeal to the Lackawanna County Court of Common Pleas.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Riccardo". The signature is stylized with a large, sweeping initial "G" and a long, horizontal flourish extending to the right.

Gene Riccardo, ESQ  
RTKL Appeals Officer  
Lackawanna County District Attorney's Office

GR/bf  
Enclosure(s)

Cc: Joshua Young, ESQ  
Office of Open Records

Sent via: USPS-Regular/Certified mail



**pennsylvania**  
OFFICE OF OPEN RECORDS

VIA FIRST CLASS MAIL

June 28, 2023

Appeals Officer  
Lackawanna County District Attorney's Office  
135 Jefferson Avenue  
Scranton, PA 18503

Re: *John Finnerty v. Jessup Borough*  
OOR Dkt. 2023-1425

Dear Appeals Officer:

Pursuant to 65 P.S. §§ 67.503(b)-(d), the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101-.3104, requires that you have an Appeals Officer designated for hearing appeals involving the RTKL. The Office of Open Records ("OOR") has issued a final determination transferring a RTKL appeal to your jurisdiction.

The OOR's final determination and a complete record of the appeal received by the OOR are included with this correspondence.

Please contact me with any questions.

*/s/ Joshua Young*

Joshua Young  
Senior Deputy Chief Counsel



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**JOHN FINNERTY,  
Requester**

v.

**JESSUP BOROUGH,  
Respondent**

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**Docket No.: AP 2023-1425**

On June 14, 2023, John Finnerty (“Requester”) filed a request (“Request”) with Jessup Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking dash cam video relating to a motor vehicle accident that occurred on May 19, 2023. The Borough denied the Request on June 21, 2023, stating that the records are related to a criminal investigation. *See* 65 P.S. § 67.708(b)(16). On June 23, 2023, the Requester appealed to the Office of Open Records (“OOR”).

The Borough is a local law enforcement agency, and the Request, by its very wording, seeks records concerning a criminal investigation. 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. *See id.* Accordingly, the appeal is hereby transferred to the Appeals Officer for the Lackawanna County District Attorney’s Office (“District Attorney’s Office”) to determine

whether the records are subject to disclosure.<sup>1</sup> A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the District Attorney's Office.

For the foregoing reasons, Requester's appeal is **transferred** to the Appeals Officer for the District Attorney's Office. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Lackawanna 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 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.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: June 28, 2023**

*/s/ Joshua Young*

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Senior Deputy Chief Counsel  
Joshua Young, Esq.

Sent to: Requester (via email), Open Records Officer (via email), Appeals Officer for the Lackawanna County District Attorney's Office (via first class mail)

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<sup>1</sup> The Commonwealth Court has noted that the OOR has the authority to transfer an appeal to "where [a requester] should have initially appealed." See *Phila. Dist. Attorney's Office v. Williams*, 204 A.3d 1062, \*4 n.5 (Pa. Commw. Ct. 2019) ("... [A]lthough the onus for appealing from an RTKL denial to the proper appeals officer is on the requester, the OOR did not violate the law or any procedure in redirecting the appeal in this case").

<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

# BOROUGH OF JESSUP

Lackawanna County

395 Lane Street  
Jessup, PA 18434  
Website: [jessupborough.com](http://jessupborough.com)

Phone: 570-489-0411  
Fax: 570-489-6899  
Email: [jessupborough@comcast.net](mailto:jessupborough@comcast.net)

June 21, 2023

John P. Finnerty, Esquire  
DLP  
75 Glenmaura National Blvd.  
Moosic, PA 18507  
[jfinnerty@dlplaw.com](mailto:jfinnerty@dlplaw.com)  
phone 570.347.1011  
fax 570.347.7028

Dear Atty. Finnerty,

Thank you for writing to the Borough of Jessup with your request for information pursuant to the Right-to-Know Law (RTKL), 65 PS 67 101, *et seq.* This office received your request on June 14, 2023 for:

*Copy of the dash cam video of a motor vehicle accident that occurred on May 19, 2023 on Hill Street in Jessup Borough. The parties involved in the accident were Daniel Karsnak (driver) and Alan Ritzco (pedestrian). The dash cam video is from Mr. Karsnak's vehicle.*

Under the Right to Know Law (RTKL), records in possession of an agency are presumed public unless they are exempt under Section 708 of the RTKL. Section 708(b)(16) of the RTKL protects the disclosure of "a record of an agency relating to or resulting in a criminal investigation, including investigative materials, notes, correspondence, videos, and reports." See, 65 P.S. Section 67.708(b)(16). The Pennsylvania Commonwealth Court, in Pa. State Police v. Kim, 150 A.3d 155 (Pa. Cmwlth. 2016), held that an injured passenger was not entitled to surveillance video obtained by a police agency from a private party because the video was related to a criminal investigation by the police agency and, therefore, exempt under Section 708(b)(16).

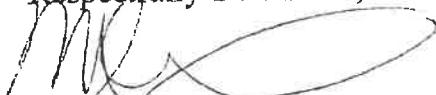
Here, the record you've requested is exempt from disclosure pursuant to Section 708(b)(16) and the Kim case because the video did not become a record accessible from the Borough until the Jessup Police Department undertook a criminal investigation of the crash. Thus, the video is related to the Jessup Police Department's criminal investigation of this matter and not subject to disclosure. For these reasons, your request is denied.

You have a right to appeal this denial of information in writing to: Office of Open Records, 333 Market St., 16<sup>th</sup> Floor, Harrisburg, PA 17101-2234. Appeals can also be filed online at the Office of Open Records website, <https://www.openrecords.pa.gov>.

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>.

If you have additional questions, please contact Mia Stine. This correspondence will serve to close this record with our office as permitted by law.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Mia Stine', with a large, sweeping flourish extending to the right.

Mia Stine  
Open Records Officer



# pennsylvania

OFFICE OF OPEN RECORDS

## Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Jessup Borough Police Department (Attn: AORO)

Date of Request: June 14, 2023 Submitted via:  Email  U.S. Mail  Fax  In Person

### PERSON MAKING REQUEST:

Name: John P. Finnerty, Esquire Company (if applicable): DLP

Mailing Address: 75 Glenmaura National Blvd.

City: Moosic State: PA Zip: 18507 Email: JFinnerty@dplaw.com

Telephone: 570-347-1011 Fax: 570-347-7028

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

**RECORDS REQUESTED:** *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Copy of the dash cam video of a motor vehicle accident that occurred on May 19, 2023 on Hill Street in Jessup Borough. The parties involved in the accident were Daniel Karsnak (driver) and Alana Ritzco (pedestrian). The dash cam video is from Mr. Karsnak's vehicle.

I can pick up a copy of the dash cam video if it is downloaded to a thumbdrive or a flashdrive. Alternatively, you may e-mail a copy of the dash cam video to me.

- DO YOU WANT COPIES?**  Yes, printed copies (default if none are checked)  
 Yes, electronic copies preferred if available  
 No, in-person inspection of records preferred (may request copies later)

Do you want certified copies?  Yes (may be subject to additional costs)  No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

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 (5 bus. days): \_\_\_\_\_

30-Day Ext.?  Yes  No (If Yes, Final Due Date: \_\_\_\_\_) Actual Response Date: \_\_\_\_\_

Request was:  Granted  Partially Granted & Denied  Denied Cost to Requester: \$\_\_\_\_\_

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.  
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020



**Agency:**

Appeal Officer  
Lackawanna County District Attorney's  
Office  
135 Jefferson Avenue  
Scranton, PA 18503

**From:** [no-reply@openrecordspennsylvania.com](mailto:no-reply@openrecordspennsylvania.com)  
**To:** [jfinnerty@dplaw.com](mailto:jfinnerty@dplaw.com)  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation  
**Date:** Friday, June 23, 2023 3:15:08 PM  
**Attachments:** [oor\\_logo\\_email.png](#)

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**ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

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**pennsylvania**  
OFFICE OF OPEN RECORDS

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

<b>Name:</b>	John Finnerty
<b>Company:</b>	Dougherty, Leventhal & Price, LLP
<b>Address 1:</b>	75 Glenmaura National Blvd.
<b>Address 2:</b>	
<b>City:</b>	Moosic
<b>State:</b>	Pennsylvania
<b>Zip:</b>	18507
<b>Phone:</b>	570-347-1011
<b>Email:</b>	JFinnerty@dplaw.com
<b>Email2:</b>	JFinnerty@dplaw.com
<b>Agency (list):</b>	Jessup Borough
<b>Agency Address 1:</b>	395 Lane Street
<b>Agency Address 2:</b>	
<b>Agency City:</b>	Jessup
<b>Agency State:</b>	Pennsylvania

<b>Agency Zip:</b>	18434
<b>Agency Phone:</b>	570-489-0411
<b>Agency Email:</b>	MStine@jessupborough.org
<b>Records at Issue in this Appeal:</b>	Copy of dash cam video of a motor vehicle accident that occurred on May 19, 2023 on Hill Street in Jessup Borough. The parties involved in the accident were Daniel Karsnak (driver) and Alana Ritzco (pedestrian). The dash cam video is from Mr. Karsnak's vehicle.
<b>Request Submitted to Agency Via:</b>	e-mail
<b>Request Date:</b>	06/14/2023
<b>Response Date:</b>	06/21/2023
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	Mia Stine
<b>Attached a copy of my request for records:</b>	Yes
<b>Attached a copy of all responses from the Agency regarding my request:</b>	Yes
<b>Attached any letters or notices extending the Agency's time to respond to my request:</b>	No
<b>Agree to permit the OOR additional time to issue a final determination:</b>	No
<b>Interested in resolving this issue through OOR</b>	No

**mediation:**

**Attachments:**

- 20230623140004.pdf
- 20230623140012.pdf

**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.**



LACKAWANNA COUNTY  
DISTRICT ATTORNEY'S OFFICE  
135 JEFFERSON AVENUE  
SCRANTON, PA 18503

US POSTAGE  
EPA 14503 \$ 00183<sup>0</sup>  
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OFFICE OF OPEN RECORDS  
333 MARKET ST.  
1624 FL  
HARRISBURG PA 17101  
ATTN: JOSHUA YOUNG