

YORK COUNTY DISTRICT ATTORNEY'S OFFICE

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Sergeant Orazio Riccobono
Via e-mail only

Re: *Open Records Appeal*

FINAL DETERMINATION:

On June 17, 2016, the York County District Attorney's Office received a Right to Know ("RTK") appeal from the Office of Opens Records. On June 15, 2016, the Office of Open Records ("OOR") determined that it did not have jurisdiction over the appeal and transferred the appeal to the District Attorney's Office.

Petitioner Gordon Rago (hereinafter "Petitioner") filed his RTK Appeal from the May 12, 2016 determination of the City of York (hereinafter "City") Right To Know Officer denying Petitioner's request for information. In the RTK request submitted as part of the transference from the OOR, Petitioner requested the following information:



- All body camera video recorded by York City police officers between 8 a.m. and 5 p.m. on March 16, 2016

Additional background of this matter can be found in the introduction portion of the OOR determination, and this RTK officer incorporates that here. In relevant part, City identified six videos that fell under this request. The OOR determined that City did not present sufficient evidence to demonstrate that the videos labeled¹ 1, 2, 3, and 6 dare or can be exempt from disclosure. However, with respect to videos labeled 4 and 5, the OOR determined that City did present evidence that the recordings could contain relating to or resulting in a criminal investigation.

The OOR transferred jurisdiction to the York County District Attorney's Office to determine, consistent with Pa. State Police v. Michelle Grove, whether the requested records have a sufficient connection to a criminal investigation to constitute investigative content and are therefore exempt from disclosure, in whole or in part, as criminal investigative records under Section 708(b)(16). After careful review, the decision of this Right to Know Officer is that the subject videos are subject to disclosure, with redaction.

TIMELINESS OF APPEAL

On June 17, 2016, the York County District Attorney's Office received the instant appeal. Petitioner takes his appeal from the May 12, 2016 determination from City in which his request was denied. Petitioner would have had until May 27, 2016 to timely file an appeal with the District Attorney's office. Petitioner submitted an appeal to the Office of Open Records on May 18, 2016. As the District Attorney's Office received this appeal on June 17, 2016 via transferred jurisdiction from the Office of Open Records, Petitioner's appeal is timely.

¹ This numerical labeling is described in Sergeant Riccobone's sworn affidavit and is adopted herein.

JURISDICTION

Pursuant to 65 P.S. 67.503(d)(2), the District Attorney for York County appointed this Right to Know Officer to act as the appeal officer in this matter as the appeal raises the issue of Criminal and Non-Criminal Investigation records exceptions.

ITEMS REVIEWED:

In rendering this decision, this RTK officer has had an opportunity to review:

1. Open records request of Petitioner dated April 6, 2016
2. Open records denial of May 12, 2016 by Patricia Siebert
3. Appeal of denial filed by Petitioner dated May 14, 2016
4. The affidavit of Sergeant Orazio Riccobono
5. The Final Determination made by the OOR dated June 15, 2016
6. The videos that are the subject of the instant appeal.

FINDINGS

In his appeal, Petitioner requests the following records:

- All body camera video recorded by York City police officers between 8 a.m. and 5 p.m. on March 16, 2016

As was clarified through Sergeant Riccobono's affidavit, the two videos that are the subject of this appeal have been designated as videos 4 and 5.

1. Records relating to a Criminal investigation 708(b)(16)

Township argues that requested information is exempt from disclosure under Section 708

(b) (16). Said exception reads:

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

65 P.S. § 67.708 (b)(16). Section 708(b)(16) states that records "exempt from access by a requester under" the RTKL include:

(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.

In Pa. State Police v. Grove, the Commonwealth Court held that recordings of interactions between law enforcement officers and members of the public in public settings are not automatically exempt under Section 708(b)(16) of the RTK law. Pa. State Police v. Grove, 119 A3d 1102 (Pa. Commw. Ct. 2015). Accordingly, the recording must be viewed to determine if any investigative content exists and is subject to redaction.

This Right to Know Officer has reviewed the subject videos. Video 4 depicts a traffic investigation and stop. There is no audio recording at any point during the video. The initial portion of the video clearly shows an investigative stop and that subject of the video is subject to redaction. However, following the initial meeting with the driver, the officer returns to his vehicle and from that point forward in the video, no investigative actions can be seen. Those portions of the video are subject to disclosure. Thus, Video 4 can be disclosed from the point of the video where the officer returns to his vehicle. Anything prior to that is subject to redaction.

Video 5 depicts an officer's point of view as he or she drives his or her automobile. There is no audio recording. None of the captured footage definitively shows investigative content. Therefore, the entirety of Video 5 is subject to disclosure.

City is hereby directed to provide to Petitioner, within thirty days of the mailing date listed above, copies of Videos 4 and 5, subject to named redactions. Petitioner is required to pay for the costs of duplicating the videos.

CONCLUSION

Within thirty (30) days of the mailing date of this Final Determination, any party may appeal or petition for review to the Court of Common Pleas. 65 P.S. § 67.1302. All parties must be served with notice of the appeal. The Appeals Officer also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL.

Respectfully,

Stephanie E. Lombardo, Esq.
Open Records Appeal Officer