

**DISTRICT ATTORNEY'S OFFICE
NORTHAMPTON COUNTY, PENNSYLVANIA**

**SALVATORE TORNABENE,
Requester,**

v.

**BETHLEHEM TOWNSHIP POLICE
DEPARTMENT,
Respondent.**

No.: 4-ORA - 2022

FINAL DETERMINATION

AND NOW, the Northampton County District Attorney's Office respectfully submits its Final Determination as to Salvatore Tornabene's ("Requester" or "Requester's") Right to Know Law request.

INTRODUCTION

On February 20, 2020, Requester submitted a request to Bethlehem Township Police Department ("Respondent") seeking "a copy of the body camera video footage, with the audio, of the 3 police officers that arrested [Requester] on October 6, 2018 ..." Attachment "A." On April 13, 2020, Respondent denied the request, because the requested video related to a "criminal investigation." *Id.*

On April 25, 2022, Requester renewed his request for the body camera video and audio footage, but this time directed it at the Northampton County District Attorney's Office Open Records Officer. Attachment "B." The Open Records Officer sought clarifying information from Requester, and did receive the same on May 17, 2022. *Id.* After review, the Open Records Officer denied Requester's Right to Know Law request, citing to Act 22, which required Requester to have

made his original request to Respondent “within 60 days of the date when the audio recording or video recording was made.” *Id.*

On June 23, 2022, Requester appealed to the Northampton County District Attorney’s Office Appeals Officer. Attachment “C.” This matter is now before the Appeals Officer for the Northampton County District Attorney’s Office for a Final Determination.

DISCUSSION

The Northampton County District Attorney’s Office lacks jurisdiction to decide the instant appeal. Act 22 of 2017 provides that its provisions, and not the Right-To-Know-Law, “shall apply to any audio recording or video recording made by a law enforcement agency.” 42 Pa.C.S.A. § 67A02(a). Under this statute, “if a law enforcement agency determines that an audio recording or video recording contains potential evidence in a criminal matter ... the law enforcement agency *shall* deny the request in writing.” 42 Pa.C.S.A. § 67A04(a) (emphasis added). Section 67A06 instructs requesters seeking body camera footage to appeal any denial by a police department directly to the Court of Common Pleas with jurisdiction over the police department. 42 Pa.C.S.A. § 67A06.

In this case, Requester sought “a copy of the body camera video footage, with the audio, of the 3 police officers that arrested [him] on October 6, 2018 ...” Attachment “A.” Thus, Act 22 of 2017 is the controlling law here. 42 Pa.C.S.A. § 67A02(a). On February 20, 2020, Requester submitted his request to the Respondent, which was timely denied in writing. Attachment “A.” Requester then renewed his request to the Northampton County District Attorney’s Office Open Records Officer, *see* Attachment “B,” however, under Act 22, Requester should have appealed the decision of Respondent to the Northampton County Court of Common Pleas, because it is the only institution with the authority to decide the merits of Requester’s position. 42 Pa.C.S.A. § 67A06.

Accordingly, the Northampton County District Attorney's Office lacks jurisdiction to decide Requester's appeal.

CONCLUSION

For the foregoing reasons, the Northampton County District Attorney's Office declines to rule on this appeal. Requester may file a petition for judicial review in the Northampton County Court of Common Pleas. 42 Pa.C.S.A. § 67A06.

Respectfully Submitted:

By: Katharine R. Kurnas

Katharine R. Kurnas, Assistant District Attorney
Northampton County District Attorney's Office
669 Washington Street, Easton, Pa 18042
Tel.: (610) 829-6630
Email: KKurnas@northamptoncounty.org
Appeals Officer

Date: July 22, 2022

cc:

Salvatore Tornabene
P.O. Box 3772
Easton, Pa 18043
Email: intvservice@aol.com
Requester

Lisa A. Pereira, Esq.
Broughal & DeVito, L.L.P
38 West Market Street
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Attorneys for Respondent,

DISTRICT ATTORNEY'S
OFFICE
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Attachment “A”



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 is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Bethlehem Township Police Department (Attn: AORO)

Date of Request: 2/20/2020 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: SALVATORE TORNABENE Company (if applicable): _____

Mailing Address: P.O. BOX 3772

City: ETHLEHEM State: PA Zip: 18043 Email: _____

Telephone: (610) 534-5992 Fax: _____

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. Use additional sheets if necessary. 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.

I, Salvatore Tornabene, am requesting a copy of the body camera video footage with the audio, of the 3 police officers that arrested me on October 6 2018 at my residence. They arrested me in the afternoon, at my home located at:
3761 Chipman Road, Bethlehem, PA 18045.

18-06586

DO YOU WANT COPIES? Yes, electronic copies preferred if available
 Yes, printed copies preferred
 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: DGP Date Received: 4-13-20 Response Due (5 bus. days): 4-18-20

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: 4-13-20

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 Nov. 27, 2018

Criminal Investigation

Attachment “B”

TERENCE HOUCK
DISTRICT ATTORNEY

**COUNTY OF NORTHAMPTON
OFFICE OF THE DISTRICT ATTORNEY**

Northampton County Government Center
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Easton, Pennsylvania 18042
(610) 829-6630- Main
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ADRIANNE DOLL
ROBERT DUMINIAK
AARON GALLOGLY
KATHARINE KURNAS
BRIDGET M. MURPHY
JAYDEN N. PETERS (J.D.)
PATRICIA TURZYN

Salvatore Tornabene
intvservice@aol.com
P.O. Box 3772
Easton, PA 18043

RE: Right to Know Request

May 24, 2022

Please be advised that this office acknowledges receipt of your complete request for body cam footage as of May 17 2022. (This includes the partial request received on April 25 2022 and the supplemented additional necessary information received on May 17 2022). Act 22 of 2017, 42 Pa.C.S. §§ 67A02-67A03, removed audio and video recordings made by law enforcement agencies from access under the RTKL and created a separate, exclusive means of access. Pursuant to 42 Pa.C.S. § 67A05, a law enforcement agency that receives a request under section 67A03 has thirty days to identify in writing the basis for denying the request.

In that complete request, you requested the following information:

A copy of the body camera footage with the audio, of the 3 police officers (subsequently identified as Patrick J. Brehm, Leonard A. Shepulski Jr., and William S. Station) involved in the arrest of Salvatore Tornabene in the afternoon of October 6 2018 at Mr. Tornabene's residence located in 3731 Chipman Road, Bethlehem PA 18045. Verification of a April 13 2020 RTK request made to Bethlehem Twp Police Department, and a copy of a RTK request dated 2/2/2020 seeking such footage, was also received by our office.

42 Pa. Stat. and Cons. Stat. Ann. § 67A05 (West)

To obtain such recordings, a requester must follow the procedures set forth in Act 22 and submit a written request to the open records officer for the law enforcement agency that possesses the record. 42 Pa.C.S. § 67A02. Further, appeals concerning such requests are to be filed "in the court of common pleas with jurisdiction," rather than to the OOR. 42 Pa.C.S. § 67A06.

The request must be denied if the audio recording or video recording, upon review, contains potential evidence in a criminal matter, information pertaining to an investigation or a matter in which a criminal charge has been filed, confidential information or victim information and the reasonable redaction of the audio or video recording would not



safeguard potential evidence, information pertaining to an investigation, confidential information or victim information. 42 Pa. Stat. and Cons. Stat. Ann. § 67A04 (West)

First Assistant D.A.
RICHARD H. PEPPER

Chief Deputy D.A.
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REBECCA J. KULIK
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JAYDEN N. PETERS (J.D.)
PATRICIA TURZYN

Under the procedures set forth in that statute, the following requirements to requests for audio and video recordings made by law enforcement agencies apply:

(1) An individual who requests an audio recording or video recording made by a law enforcement agency shall, **within 60 days of the date when the audio recording or video recording was made**, serve a written request to the individual who is designated as the open-records officer for the law enforcement agency under section 502 of the act of February 14, 2008 (P.L. 6, No. 3),¹ known as the Right-to-Know Law. Service is effective upon receipt of the written request by the open-records officer from personal delivery or certified mail with proof of service.

(2) The request under paragraph (1) shall specify with particularity the incident or event that is the subject of the audio recording or video recording, including the date, time and location of the incident or event.

(3) The request shall include a statement describing the requester's relationship to the incident or event that is the subject of the audio or video recording.


(4) If the incident or event that is the subject of the audio recording or video recording occurred inside a residence, the request shall identify each individual who was present at the time of the audio recording or video recording unless not known and not reasonably ascertainable.

42 Pa. Stat. and Cons. Stat. Ann. § 67A03 (West)(emphasis added)

Upon review of this request, a written RTK request would have had to have been sent within 60 days of October 6 2018, when the recording was made, in order to comply with the procedures set forth in Act 22. However, the information we have received indicated that, while a RTK request was indeed made to a law enforcement agency prior to being submitted to the DA's Office, that previous the RTK request was received over a year after that deadline. Accordingly, we must deny your RTK request.

You may appeal to the Northampton County Court of Common Pleas within thirty days (30) of the mailing date of this decision. See 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal.

Sincerely,


Bridget Murphy
Open Records Officer
District Attorney's Office



Attachment “C”

Salvatore Tornabene
P.O. Box 3772,
Easton, Pa 18043

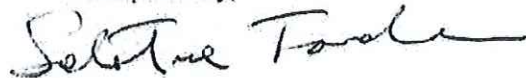
June 23, 2022

Katherine Kumas, Esq.
Appeals Officer
District Attorney's Office

Ms. Kumas, Esq.

I, Salvatore Tornabene, am requesting the body camera footage with audio from officers Patrick J. Brehm, Leonard A. Shepulski Jr., and William S. Station. The body camera video and audio footage is from my arrest on the date October 6, 2018 at my residence 3716 Chipman Rd Bethlehem, Pa 18045. I am appealing the denial I received for my Standard Right-to-Know Law Request.

Respectfully,



Salvatore Tornabene

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