

## RTKL: Police Audio and Video Recordings (Act 22 of 2017)

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The Open Record Officers' Guide to the Pennsylvania Right to Know Law ("RTKL") – Types of Records

Section 3 of Act 22 of 2017, 42 Pa.C.S. §§ 67A01-67A09, removed audio and video recordings made by law enforcement agencies from access under the RTKL and created a separate, exclusive means of access. In order to obtain such recordings, a requester must submit a written request to the open records officer for the law enforcement agency (like a municipal police department) that possesses the record. A law enforcement agency includes an agency that employs a law enforcement officer. A law enforcement officer, in turn, is defined to include an officer of a political subdivision who is empowered by law to conduct investigations and make arrests.

In *Collins v. Upper Macungie Township*, AP 2018-2004 (Jan. 14, 2019), the Office of Open Records confirmed that a request for "in-car camera footage from police vehicles" should have been filed pursuant to Act 22, rather than the RTKL.

Under Act 22, a request for a police audio or video recording must be made within 60 days of the date the recording was made. The request must also include:

- The date, time and location of the event recorded;
- A statement describing the requester's relationship to the event recorded; and
- If the recorded incident took place inside a residence, the request must also identify every person present at the time of recording, unless unknown and not reasonably ascertainable.

The agency then has 30 days to respond to the Act 22 Request. The request **shall** be denied if the record 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; or
- Information pertaining to an investigation, confidential information or victim information.

The written denial shall state that reasonable redaction of the audio recording or video recording will not safeguard potential evidence, information pertaining to an investigation, confidential information or victim information.

If a request is denied, the Requester may file a petition for judicial review in the court of common pleas with jurisdiction within 30 days of the date of denial.

If the police department is unwilling or unable to process Act 22 requests, it may enter into an agreement with the Attorney General or the local district attorney to: (1) ensure consultation regarding the reviewing of audio recordings or video recordings in order to make a determination; or (2) require the Attorney General or district attorney with jurisdiction to issue a denial when appropriate.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.