

OOR Begrudgingly Recognizes the Broad Scope of Act 22

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In *Bradley v. Lehigh Area School District*, AP 2019-2068 (Jan. 13, 2019), the OOR confirmed that the scope of videos covered by Act 22 (and, therefore, beyond the reach of the RTKL) is significantly broader than many anticipated.

In *Bradley*, the Requester sought video recordings from cameras located in the School District's board room and lobby surrounding the house of public meetings and executive sessions. The District denied the request and, on appeal, argued that the Office of Open Records did not have jurisdiction pursuant to Act 22, 42 Pa.C.S. § 67A01.

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. In order 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.

Importantly, under Act 22, a "law enforcement agency" includes "an agency that employs a law enforcement officer." 42 Pa.C.S. § 67A01 (emphasis added). Moreover, a "law enforcement officer" is defined to include an "officer of ... a political subdivision ... who is empowered by law to conduct investigations [and] make arrests[.]" *Id.*

The District argued that because it employs two school police officers, it is a law enforcement agency under Act 22 and that requester must follow the Act 22 procedures to access District video recordings. First, the District is a political subdivision because the rules of statutory construction define "political subdivision" as "[a]ny county, city, borough, incorporated town, township, school district, vocational school district and county institution district." 1 Pa.C.S. § 1991.

Second, school police officers are "law enforcement officers" because they can conduct investigations and make arrests. The Pennsylvania School Code allows a school district to apply to a judge of the court of common pleas to appoint a person to act as a school police officer. 24 P.S. § 13-1302-C. The appointment allows the "school police officer the power to arrest . . . [and] to issue citations for summary offenses or authority to detain students..." *Id.* at 13-1302-C(b)(1)-(2).

Based on the foregoing, the OOR reluctantly agreed with the District that it was a law enforcement agency under the clear and unambiguous language of Act 22 and that the request for the video footage should have been filed pursuant to Act 22. Accordingly, the appeal was dismissed for lack of jurisdiction.

Though we've previously covered Act 22 on this blog, as a reminder, 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 *Bradley* decision an important reminder that Act 22 governs the dissemination of video recordings made by law enforcement agencies and that the definition of law enforcement agencies is broad. While the OOR believe that it was absurd to require requesters to use the more restrictive provisions of Act 22, rather than the RTKL, to seek a recording of an event as routine and innocuous as a school board meeting, it correctly applied the law in this case and local agencies should do the same.

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.