IN THE SUPREME COURT OF PENNSYLVANIA

No. 25 MAP 2016

Pennsylvania State Police,
Appellant,

v.

Michelle Grove,
Appellee

BREIF OF *AMICI CURIAE,* THE PENNSYLVANIA NEWSMEDIA ASSOCIATION AND REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS IN SUPPORT OF APPELLEE, MICHELLE GROVE

Appeal from the Commonwealth Court Opinion dated July 7, 2015, 1146 C.D. 2014, affirming in part and reversing in part the Final Determination of the Office of Open Records No. AP 2014-0828 dated June 17, 2014

Katie Townsend
Adam A. Marshall
The Reporters Committee for
Freedom of the Press
1156 15th Street, N.W., Suite 1250
Washington, DC 20005
(202) 795-9300

Melissa Bevan Melewsky
PA ID # 91886
Counsel of Record for Amici
Pennsylvania NewsMedia Association
3899 North Front Street
Harrisburg, PA 17110
(717) 703-3048

TABLE OF CONTENTS

Table of Authorities.....iii

Interest of the *Amici Curiae*.....1

Counterstatement of the Questions Involved.....3

Summary of the Argument.....4

Argument.....6

I. Police dash camera video records are presumptively public records under the Right to Know Law.....6

II. CHRIA does not apply to the records in this case.....15

III. The Wiretap Act does not apply to MVR video or audio.....22

IV. Access to law enforcement videos is crucial for the public and the press to understand the actions of their government and engage in democratic oversight.....25

Conclusion.....36

TABLE OF AUTHORITIES

Cases

Agnew v. Dupler, 717 A.2d 519 (Pa. 1998).....23

Advancement Project v. Pennsylvania Department of Transportation, 60 A.3d 891 (Pa. Cmwlth. 2013).....12

Bowling v. Office of Open Records, 990 A.2d 813 (Pa. Cmwlth. 2010).....6, 10

Carey v. Pennsylvania Dept. of Corrections, 61 A.3d 367 (Pa. Cmwlth. 2013).....6

Colville v. Allegheny County Retirement Bd., 926 A.2d 424, 431 (Pa. 2007).....15

Com, Off. Of the Governor v. Donahue, 98 A.3d 1223, 1228 (Pa. 2014).....12, 18

Cox Broad. Corp. v. Cohn, 420 U.S. 469, 491 (1975).....29

Dept. of Environmental Protection v. Cole, 52 A.3d 541 (Pa. Cmwlth. 2012)...12

Dept. of Environmental Protection v. Legere, 50 A.3d 260, (Pa. Cmwlth.2012).....15

Fields & Geraci, v. Philadelphia, --- F.Supp.3d ----2016 WL 2754014 (E.D. Pa. 2016).....25

Geraci v. Philadelphia, 2016 WL 1060250.....25

Gilles v. Davis, 427 F.3d 197 (3d Cir. 2005).....24

Levy v. Senate of Pennsylvania, 619 Pa. 586, 619, 65 A.3d 361, 381 (2013).....29

Kelly v. Borough of Carlisle, 622 F.3d 248 (3d Cir. 2010).....24

Pennsylvania State Police v. Grove, 1119 A.3d 1102 (Pa. Cmwlth. 2015).....11, 28

Pennsylvania State Police v. Office of Open Records, 5 A.3d 473 (Pa. Cmwlth. 2010).....9

Schwartz v. Dana Corp./Parish Div., E.D.Pa.2000, 196 F.R.D. 275.....22

Smith v. Chicago Police Department, No. 2015 CH 11780 (Cir. Ct. of Cook County, Nov. 19, 2015) https://perma.cc/EL4E-2MUZ.....31

Smith v. City of Cumming, 212 F.3d 1332, 1333 (11th Cir. 2000).....24

Ward & Lee, P.L.C. v. City of Claremore, 2014 OK CIV APP 1, 316 P.3d 225.....28

Statutes

1 Pa.C.S. § 1921(a).....12, 18

18 Pa.C.S. § 9101.....15

18 Pa.C.S. § 9102.....17, 20

18 Pa.C.S. § 9105.....17

18 Pa.C.S. § 9106.....18, 19

18 Pa.C.S. § 9107.....16

18 Pa.C.S. § 9122.....16

18 Pa.C.S. § 9151-9153.....16

18 Pa.C.S. § 5702.....21, 23

18 Pa.C.S. § 5703.....21

18 Pa.C.S. § 5704(16).....23, 24

65 P.S. § 67.102.....6, 10

65 P.S. § 67.305.....6, 10

65 P.S. § 67.701.....14

65 P.S. § 67.705.....12

65 P.S. § 67.706.....10, 12

65 P.S. § 67.708(b)(16).....8

65 P.S. § 67.1101.....10

65 Pa.C.S. § 67.3101.1.....25

Other Resources

Axon, The Future of FOIA: Find, Redact, Deliver, Axon Webinar, http://bit.ly/1JY6qtw 14

Cave and Rochelle Oliver, *The Videos That Are Putting Race and Policing Into Sharp Relief*, N.Y. Times (Nov. 24, 2015), http://nyti.ms/1IMtFWL.....26

Collister & Joe Ellis, *Texas troopers ticketing Hispanic drivers as white*, KXAN (Nov. 6, 2015), https://perma.cc/G8ZJ-TSSP.....30

Collister, *Lawmaker calls for hearing over DPS wrongly reporting race of drivers*, KXAN (Nov. 10, 2015), https://perma.cc/LAG9-UAFU.....31

Collister & Joe Ellis, *DPS seeks outside review of traffic stop data*, KXAN (Dec. 17, 2015), https://perma.cc/85LJ-RRDZ.....31

Collister & Joe Ellis, *DPS troopers to stop asking drivers' race*, KXAN (Dec. 30, 2015), https://perma.cc/X37J-N97M.....31

Congedo, *Officer: 'I wanted to be absolutely sure before I used deadly force'*, WLWT5 (Apr. 20, 2015), http://bit.ly/1EXuKaK, *archived at* perma.cc/7HM8-JXEU.....33

Davey & Mitch Smith, *Justice Officials to Investigate Chicago Police Department After Laquan McDonald Case*, The N.Y. Times (Dec. 6, 2015), http://nyti.ms/1Iymh1k.....32

Friedersdorf, *When Police Shoot Dogs: Disturbing Footage from a Body Cam Prompts a Public Outcry*, The Atlantic (Oct. 21, 2014), http://theatln.tc/ZFjXzD.....33

Grimm, *NOPD Ignored, Mischaracterized Evidence in Officer-Involved Shooting, Monitor Finds*, The Times-Picayune (Aug. 4 ,2015), http://bit.ly/1QFBQEH.....33

House Bill No. 420 (2015), https://perma.cc/RAM8-FETW 26

Kravets, *Body cam footage leads to indictment for cop accused of beating woman*, Ars Technica (Jan. 13, 2016), perma.cc/FAW6-V5UX.....33

Letter from the PERF Executive Director in *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, United States Dep't of Justice (2014), http://1.usa.gov/1s7UIxl.....29

Liesik, *Dashcam video captures shootout between Utah officer, parolee*, KSL-TV (Nov. 10, 2015), http://www.ksl.com/?nid=148&sid=3731241.....34

Maass, *New DPD Body Cam Video Shows Excessive Force*, CBS Denver (Mar. 12, 2015), https://perma.cc/SP7Y-ZYTH.....32

Meisner, Jeremy Gorner, & Steve Schmadeke, *Chicago releases dash-cam video of fatal shooting after cop charged with murder*, Chicago Tribune (Nov. 24, 2015), https://perma.cc/W6JK-XTMV.....32

Merriam-Webster's Collegiate Dictionary 659 (11th ed. 2004).....9

Meyer, *Seen It All Before: 10 Predictions About Police Body Cameras*, The Atlantic (Dec. 5, 2014), https://perma.cc/8DMZ-CEW8.....27

Morgan, *Sand Springs police release body-cam video of officer fatally shooting armed man*, Tulsa World (Apr. 23, 2015), perma.cc/V8CQ-Y2HY.....34

Ortiz, *George Holliday, Who Taped Rodney King Beating, Urges Others to Share Videos*, NBC NEWS (Jun. 9, 2015), perma.cc/CP5V-5YAM.....26

Pennsylvania State Police ePATCH (June 29, 2016) https://epatch.state.pa.us/Home.jsp.....20

Police Body Cam Footage: Just Another Public Record, Yale Law School Media Freedom & Information Access Clinic (Dec. 2015), perma.cc/A6PQ-24FH.....14

Schneider, *Do Americans trust their cops to be fair and just? New poll contains surprises*, Reuters (Jan. 15, 2015), https://perma.cc/YW5E-AGDP.....26

TASER, TASER Reports Record Quarterly Revenue of $50.4 million (Nov. 3, 2015), http://bit.ly/1GJtrz7.....14

Michael Brown's family in Atlanta to begin campaign for police body cameras, WSB-TV (Sep. 21, 2014), http://bit.ly/1JVxxWs, perma.cc/8Y9D-JDC6.....26

Police Body Cam Footage: Just Another Public Record, Yale Law School Media Freedom & Information Access Clinic at 6 (Dec. 2015), perma.cc/A6PQ-24FH (the "Yale Report").....27, 28, 34

INTEREST OF *AMICUS CURIAE*

The Pennsylvania NewsMedia Association ("PNA") is a Pennsylvania nonprofit corporation with its headquarters located in Harrisburg, Pennsylvania. The Association represents the interests of over three hundred (300) daily and weekly newspapers and other media-related organizations across the Commonwealth of Pennsylvania in ensuring that the press can gather information and report to the public. A significant part of the Association's mission is to defend the media's statutory rights of access to public records in Pennsylvania.

The Reporters Committee for Freedom of the Press ("RCFP") is an unincorporated nonprofit association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has participated as a party and as *amicus curiae* in First Amendment and freedom of information litigation since 1970. Journalists and members of the news media, including the Reporters Committee, rely on public records laws to gather information about the government and report on matters of vital public concern. The Reporters Committee thus has a strong interest in ensuring that such laws are interpreted by courts in a manner that facilitates public access to government records and assures government accountability.

The present case raises important issues regarding public access to records under Pennsylvania's Right to Know Law, including the nature and scope of access to documentary records created and maintained by law enforcement agencies in the Commonwealth. If this Court were to adopt the position of the Pennsylvania State Police in this case, it would negatively impact the public's ability to access public records - and obtain accountability - from the Pennsylvania State Police and law enforcement agencies throughout the Commonwealth.

PNA and RCFP seek to participate pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure, both to emphasize the important access issues raised by this case, and to stress the legal and policy considerations that mandate an interpretation of the Right to Know Law to require the presumption of access to apply to dash camera video gathered by the Pennsylvania State Police and law enforcement agencies throughout the Commonwealth.

COUNTERSTATEMENT OF THE QUESTIONS INVOLVED

A. Whether police dash camera video records are presumptively public records under the Right to Know Law?

[Suggested answer in the affirmative]

B. Whether police dash camera video records are public under the Criminal History Record Information Act?

[Suggested answer in the affirmative]

C. Whether the Pennsylvania Wiretap Act must be construed in a manner that enables the presumption of access in the Right to Know Law to apply to police dash camera video?

[Suggested answer in the affirmative]

D. Whether public policy supports presumptive access to police dash camera video records?

[Suggested answer in the affirmative]

SUMMARY OF THE ARGUMENT

The Right to Know Law (RTKL) requires the presumption of access to apply to police dash camera videos such as the one at issue in this case. As remedial legislation, the RTKL is intended to increase public access and accountability, and its exemptions must be narrowly construed to give effect to the legislative intent that provides the foundation of the law.

Under the RTKL, records that document government agency and public employee conduct are presumptively public, and police dash camera videos (MVRs) provide a basic measure of accountability for Pennsylvanians seeking to understand and gauge the appropriateness of police responses in their communities. MVRs are documentary and are distinguishable from other records made *for the purpose of* investigating a crime. Everything a police officer does is not "investigatory," and the RTKL cannot be construed in a manner that allows a cloak of secrecy to be applied to an entire class of records where the legislature did not intend such a result.

Further, the Criminal History Record Information Act (CHRIA) does not apply to MVRs because the records are not the type intended to be covered by the CHRIA. Instead, they are routine, documentary recordings which are not criminal history record information and can be distinguished from investigative information

as defined by CHRIA. To the extent an MVR contains investigatory information collected subject to CHRIA, the RTKL permits redaction.

Moreover, the Wiretap Act, by its plain terms does not apply to video. The audio portions of the records in the case are not subject to the Act because there is no reasonable expectation of privacy. Alternatively, even if there was an expectation of privacy, the Wiretap Act must be construed in a manner consistent with the RTKL's redaction provision so that only exempt information is withheld from public access, while the remainder of the record is released.

Finally, access to police videos like MVRs is going to be a continuing issue as more agencies continue to put this technology into widespread use. Public policy supports public access to MVRs, as they provide the best evidence of police action in the community, which serves to foster public understanding of police conduct, promote confidence in the criminal justice system, and spur changes in law and policy when necessary.

ARGUMENT

I. Police dash camera video records are presumptively public records under the Right to Know Law

The foundational premise of the Right to Know Law makes records that document the actions of government agencies and public employees presumptively public, so that citizens can understand government action and hold public officials accountable. 65 P.S. §§ 67.102, 67.305. This presumption of access can only be overcome if an agency can show that the records are exempt under section 708, protected by a lawful privilege, or confidential under other law or court order. Id. Moreover, as remedial legislation designed to facilitate public access and accountability, the RTKL must be construed in manner that maximizes the public's right to know, and its exemptions must be "narrowly construed." Bowling v. Office of Open Records, 990 A.2d 813, 824 (Pa. Cmwlth. 2010), *aff'd* 75 A.3d 453 (Pa. 2013); Carey v. Pennsylvania Department of Corrections, 61 A.3d 367, 371 (Pa. Cmwlth. 2013).

A careful review of MVRs, as a general class of records, reveals the documentary, non-investigatory nature of the information collected. The evidence shows that dash camera video recording is activated *any time* an officer activates the police vehicle's lights or sirens. This action, in itself, is not investigatory. Rather, these recordings are documentary and illustrate police performing their public duties and their interactions with citizens. The videos reveal the same

information one would observe by watching an officer perform his or her duties in the community.

Police do not perform their duties in the community under a cloak of absolute confidentiality, and the RTKL must be construed in a manner that recognizes the critical - and statutorily guaranteed - role that public access and accountability play in the proper function of law enforcement agencies and the criminal justice system as a whole. The Commonwealth Court's holding in this case recognizes that the RTKL's rebuttable presumption of access strikes the right balance between public access and the need for investigatory confidentiality.

A. Section 708(b)(16) does not apply to all MVR records

The Pennsylvania State Police (PSP) ask this Court to find that every MVR is investigative when there is no evidence to support such a showing, and such a result is contrary to both the language of the law and the public interest. If the PSP's position is accepted, every MVR showing police activity is criminal investigative material and exempt from public access. That proposition is simply not tenable under the RTKL or in an open, democratic society.

The criminal investigation allows agencies to withhold from public access the following:

> "[R]ecords 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.

65 P.S. § 67.708(b)(16)

This provision of the law does not - and was not intended to – shield purely factual police records that document officer activity in the community. The foundational principle of the RTKL is to provide accountability for government action, and the language of the RTKL must be construed in a manner that recognizes and preserves the law's intent. The PSP's position in this case would render basic information about police action in the community non-public without a showing of necessity, and would remove the public's ability to understand and hold law enforcement agencies accountable for officer conduct.

The term "investigate" is not defined by the RTKL, but the common definition is "to observe or study by close examination and systematic inquiry; to

make a systematic examination; to conduct an official inquiry." Merriam-Webster's Collegiate Dictionary 659 (11th ed. 2004). By this definition, the term implies detailed observation and inquiry over a period of time, which would amount to a high level of police involvement or activity. Pennsylvania State Police v. Office of Open Records, 5 A.3d 473 (Pa. Cmwlth. 2010) (Pellegrini, dissenting).

MVRs, as a general class of information, contain none of the hallmarks of an investigatory record. MVRs are not detailed observations made by an officer, or systemic examinations of the facts and circumstances of a case, nor do they reveal a high level of police involvement or activity. MVRs are not investigatory in nature because they show the same information one could observe by watching an officer perform his or her public duties on the side of a public roadway. MVRs are purely factual, and the RTKL presumes this information to be a public record.

The RTKL must guarantee a basic measure of accountability for police action separate and distinct from criminal investigations, and the presumption of access enshrined in the RTKL provides that basic measure of accountability.

B. Redaction under section 706 is permitted if investigatory material appears on an MVR

There may be occasions when an MVR contains investigatory information, but as the Commonwealth Court held, the RTKL permits such information to be

redacted. 65 P.S. § 67.706.[1] Blanket withholding of an entire class of records, without a showing of necessity or appropriateness, is contrary to plain letter and intent of the law. Bowling, *supra.*

Redaction under section 706, when consistent with the exemptions in the law, allows the RTKL to function in a manner that protects public access and accountability while preserving agencies' ability to withhold non-public information. The RTKL's redaction provision recognizes the presumption of access and burden of proof intended by the Legislature to promote accountability. 65 P.S. § 67.102, 67.305. Moreover, the redaction process enables the public to appeal an agency's decision and seek further review. 65 P.S. § 67.1101. The PSP's position in this case ignores the presumption of access, burden of proof, redaction provision, and the public's right to appeal, in favor of blanket

---

[1] Section 706 of the RTKL states:

> "If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9."

65 P.S. § 67.706

confidentiality for all MVRs. Such a holding is in direct conflict with the plain letter and intent of the law.

Moreover, blanket denial of MVRs also puts the public at a distinct disadvantage in holding criminal justice agencies responsible for their actions. The Commonwealth Court correctly noted that MVRs "document law enforcement officers' conduct in carrying out their duties" which is "at the core of enabling the public to scrutinize the actions of public officials, and make public officials accountable for their actions." Pennsylvania State Police v. Grove, 1119 A.3d 1102, 1108 (Pa. Cmwlth. 2015).

The police provide critical services to the public, and accountability must follow this function. Making MVRs presumptively public provides community members, and others, with vital information about police responses in their communities, while allowing law enforcement agencies the ability to redact portions of the record if any rise to the level of investigatory information under the law, while preserving the public's right to appeal. Basic facts about police actions are critical to community members who strive to understand police response in the community and hold law enforcement agencies accountable.

C. Section 705 does not apply, and technology and costs cannot be used to thwart public access

Section 705of the RTKL states:

> When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.
>
> 65 P.S. § 67.705

To the extent an MVR is determined to contain exempt information, the law requires the State Police to redact only that portion of the MVR that contains exempt information and release the remainder. 65 P.S. § 67.706; Advancement Project v. Pennsylvania Department of Transportation, 60 A.3d 891 (Pa. Cmwlth. 2013). Redaction of an MVR under section 706 does not trigger section 705, and such a holding would render the RTKL's redaction provision meaningless, a result the Courts are constrained from reaching. 1 Pa.C.S. § 1921(a); Com, Off. Of the Governor v. Donahue, 98 A.3d 1223, 1228 (Pa. 2014).

MVRs, like so many records in today's technological society, are electronic records with easily modified, digitized content, and PSP has a duty to make public information accessible. If electronic redaction triggers section 705 as PSP suggests, electronic records would never be required to be redacted, a result that is simply not acceptable.

Moreover, the Commonwealth Court has held that pulling relevant data from an electronic record is not "creating" a record under section 705, because a holding to the contrary would encourage agencies to store records in a non-accessible format. Dept. of Environmental Protection v. Cole, 52 A.3d 541 (Pa. Cmwlth.

2012). This analysis is equally applicable to records such as MVRs, and a holding that allows the State Police to avoid public access based on the format would only encourage other law enforcement agencies to adopt similar, non-accessible technology.

Further, redacting information from an MVR is not "creating a record" under section 705, nor does it require an agency to "compile, maintain, format or organize" the MVR in the manner envisioned by section 705. Section 705, by its plain terms, is intended to prevent agencies from expending time and resources creating records that do not already exist. There is no question that the MVRs already exist and are maintained by the State Police. The only issues are whether and how much, if any, of the MVR may be redacted. Removing a section of an MVR does not require the State Police to "create" or "compile, maintain, format or organize" an MVR in the same way that using a black marker on a paper record is not creating, compiling, maintaining, formatting or organizing a record under the RTKL.

Technology will continue to advance, and the law must be interpreted in manner that recognizes the public's presumptive right to access public records, which are defined as "[i]nformation, *regardless of physical form or characteristics*, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity

of the agency." 65 P.S. § 67.701, *emphasis added*. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, *information stored or maintained electronically* and a data-processed or image-processed document." Id. There is no question that MVRs are electronic records, created and maintained in an electronic format.[2] One of the advantages of digital recording is the ease with which the information can be stored and modified.[3]

The PSP's argument that electronic redaction is somehow different than paper redaction, or that it triggers section 705, elevates the form of records over their content, and that would create a gaping hole in the RTKL at a time when more and more public records are created, stored and maintained in electronic format. Public access and accountability cannot be thwarted based on the format of the record; content is, and must remain, the factor that guides access.

---

[2] Note the different between digital and film recording, the latter of which is not an electronic record and would require significantly different redaction techniques.

[3] The technological capability to efficiently review and redact video records for release to the public already exists. For example, thousands of agencies use TASER International's Axon body-worn cameras and Evidence.com service. See TASER, TASER Reports Record Quarterly Revenue of $50.4 million (Nov. 3, 2015), http://bit.ly/1GJtrz7 (estimating 33,000 total paid users of Evidence.com in September 2015). Among other things, Evidence.com offers an "automated redaction tool" designed to "take[] the pain out of current manual processes and makes it easier to fulfill requests." Axon, The Future of FOIA: Find, Redact, Deliver, Axon Webinar, http://bit.ly/1JY6qtw. In addition, a variety of free and low-cost tools exist to enable automated facial blurring that could be used to obscure the identities of police informants, witnesses, or other exempt parties under the RTKL. See Police Body Cam Footage: Just Another Public Record, Yale Law School Media Freedom & Information Access Clinic at 23 (Dec. 2015), archived at perma.cc/A6PQ-24FH (referencing automated redaction tools such as ObscuraCam, the NVeiler Video Filter plug-in, and automated facial blurring on YouTube). Accordingly, law enforcement agencies are able to redact any information that properly falls within an exemption and release the rest of an MVR upon request.

PSP's position in this case ignores the requirements of the law, and would allow agencies to use technology – or lack thereof – as a means to avoid the public access requirements of the RTKL. The public cannot control which technology PSP uses to collect and maintain MVRs, and PSP's failure to maintain MVRs in a way necessary to meet its obligations under the Right to Know Law (RTKL) cannot be a basis for denial. See Com., Dept. of Environmental Protection v. Legere, 50 A.3d 260 (Pa. Cmwlth. 2012), *reconsideration denied.*

Likewise, the PSP cannot avoid public access under the RTKL based on cost. RTKL compliance – and public accountability – is a necessary and proper expenditure of public funds, and the RTKL does not permit an agency to deny public access on the basis of cost.

II. CHRIA does not apply to the records in this case

The touchstone of statutory interpretation is that when the words of a statute are clear, there is no need to look beyond its plain meaning. Colville v. Allegheny County Retirement Bd., 926 A.2d 424, 431 (Pa. 2007) (internal citations omitted). The Criminal History Record Information Act[4] (CHRIA) does not apply to MVRs, because the evidence does not show that MVRs are "investigative information" under CHRIA. Furthermore, even if MVRs contain information subject to CHRIA,

[4] 18 Pa.C.S.A. § 9101, *et seq.*

such information can be redacted under section 706 of the RTKL, in harmony with CHRIA.

CHRIA defines the parameters of government retention, access to and dissemination of criminal history information about individuals, and the law protects individuals' right to be made aware of this system[5] and challenge its application[6]. CHRIA was not intended to be – and does not function as – a confidentiality shield for all records maintained by PSP or other law enforcement agencies in the Commonwealth. CHRIA enables PSP to retain and disseminate information related to individuals, and like the RTKL, CHRIA provides accountability and enables citizens to challenge its application. MVRs document police performing their public duties and provide a measure of accountability; the plain letter and intent of CHRIA do not reach this kind of record.

A. MVRs are not "criminal history record information"

CHRIA defines and limits the type of information PSP can maintain about individuals' criminal history in its central repository, delineates which parties have access to this information, and sets out the procedures by which retention of this information can be challenged or expunged. 18 Pa.C.S. § 9101, *et seq*. CHRIA

[5] Section 9107 of CHRIA requires PSP to provide public notice of the existence, purpose, use and accessibility of the criminal history record information they maintain and the requirements of the repository for identification on individual access and review. 18 Pa.C.S. § 9107.

[6] See 18 Pa.C.S. § 9151-9153, enabling individual right of access, review, challenge and appeal retention of information under CHRIA, and 18 Pa.C.S. § 9122 enabling expungement of information.

enables PSP to maintain information about individuals who have been arrested, charged with or convicted of a crime, as well as the dates and outcomes of each case in an electronic central repository. This information is considered "criminal history record information" and is defined as:

> "Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom."
>
> 18 Pa.C.S. § 9102

MVRs do not fit this definition because they do not arise "as a result of initiation of criminal proceedings" and they do not relate to individuals or contain "identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom." Extending CHRIA to MVRs and other routine, documentary law enforcement files ignores the plain letter and intent of the CHRIA and the RTKL. MVRs are, on their face, not covered by CHRIA as "criminal history record information."[7]

B. <u>MVRs are not "investigative information" under CHRIA</u>

PSP's reliance on section 9106(c)(4) as a basis for CHRIA application and denial is misplaced because MVRs document what happened after an officer

[7] Moreover, to the extent an MVR contains investigatory information subject to redaction under the RTKL, CHRIA expressly excludes investigatory information from the definition of "criminal history record information" that can be maintained in the State Police central repository, and CHRIA further expressly excludes "investigation information" *as a whole* from the Act. 18 Pa.C.S. § 9102, 18 Pa.C.S. §9105.

activated lights or sirens on a police vehicle; they are not *per se* investigatory records under CHRIA or RTKL.

Further, PSP's position on section 9106 misconstrues its nature and scope, and would apply CHRIA to a broad class of records when the law's application is limited.

Section 9106 cannot be read in a vacuum, and as with all statutes, it must be read in context and in a manner that gives effect to the remaining provisions of the law. 1 Pa.C.S. § 1921(a); Com, Off. Of the Governor v. Donahue, 98 A.3d 1223, 1228 (Pa 2014). Statutes must "be construed, if possible, to give effect to all its provisions," so that no provision is reduced to mere surplusage. Id.

Section 9106, titled "Information in central repository or automated systems," in pertinent part, is limited to "criminal history record information" stored in PSP's central repository and "investigative information" maintained in other "automated or electronic criminal justice systems." 18 Pa.C.S. § 9106.

As explained above, MVRs are not "criminal history record information," and there is no evidence to suggest that MVRs are "investigatory information" stored in an "automated or electronic criminal justice system" maintained by PSP under section 9106.

The fact that a file is electronic does not trigger section 9106(c)(4), because this section does not cover *every* electronic record created by PSP. On the

contrary, Section 9106 only deals with "investigative information" gathered from law enforcement files and placed by PSP into an "automated or electronic criminal justice system" under section 9106(b)(3).[8]

Section 9106(b)(3) allows investigative information "contained in files of any criminal justice agency" to be "placed within an automated or electronic criminal justice information system" subject to limitations on access. 18 Pa.C.S. § 9106(b)(3). Section 9106(b)(3) requires affirmative action by the PSP to collect investigative information from separate law enforcement files and place it within an electronic system authorized by CHRIA. There is no evidence to suggest this is the case with MVRs.

Moreover, MVRs do not meet the definition of "investigative information" *per se* under CHRIA because they are not assembled as a result of an inquiry into criminal incident or allegation of wrongdoing.

9102 defines "investigative information" as:

> "Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information"

---

[8] Section 9106(b)(3) states:

> Investigative information and treatment information contained in files of any criminal justice agency may be placed within an automated or electronic criminal justice information system, provided that access to the investigative information and treatment information contained in the automated or electronic criminal justice information system is restricted to authorized employees of that agency and cannot be accessed by individuals outside of the agency.

18 Pa.C.S. § 9106(b)(3).

18 Pa.C.S. § 9102

MVRs are created *anytime* an officer activates lights or sirens, and there is no evidence to show that light and siren operation is limited to instances where crimes are investigated or wrongdoing has been alleged.

Additionally, there is no evidence that PSP maintains MVRs or any component part of an MVR in an automated or other electronic criminal justice information system used to gather investigative materials pursuant to section 9106 of CHRIA.

CHRIA defines "automated system[9]," but it does not expressly define the terms used by section 9106: "automated or electronic criminal justice information system." CHRIA cannot, and was not intended to, apply to *all* electronic files maintained by the State Police, and such a result is simply not acceptable in an open, democratic society.

CHRIA, first enacted in 1979, is a creature of its time and was intended to allow the State Police to harness the power of the burgeoning computer industry by allowing PSP to use technology to collect and exchange information about individuals involved in the criminal justice system and criminal case data, and to provide such information in accordance with the law. Today, PSP uses the

[9] "A computer or other internally programmed device capable of automatically accepting and processing data, including computer programs, data communication links, input and output data and data storage devices." 18 Pa.C.S. § 9102.

P.A.T.C.H. and ePATCH systems[10] to share information gathered and maintained pursuant to CHRIA, but there is no evidence to suggest that MVRs are a part of the PATCH system or other specially designated automated or electronic criminal justice information system authorized under section 9106(b)(3). The fact that an electronic record is gathered by a state trooper does not automatically trigger CHRIA, and CHRIA does not extend to every electronic record held by the State Police.

Moreover, even if MVRs *contain* investigation information subject to redaction under the RTKL, there is no evidence to show that this information meets the definition of investigative information in CHRIA, or that it is has been gathered from the MVR and placed into PATCH or other automated or electronic criminal justice system in accordance with section 9106(b)(3).

Section 9106(c)(4) prohibits dissemination of criminal investigative information only if the requirements of the law have been met. In order for all provisions of CHRIA to have meaning, the prohibition in 9106(c)(4) must be read in conjunction with section 9106(b)(3), which is limited to "investigative information" gathered from criminal justice agency files and affirmatively placed into an automated or electronic criminal justice information system. That is simply

[10] See Pennsylvania State Police ePATCH website https://epatch.state.pa.us/Home.jsp

not the case with MVRs, which are purely factual, documentary records unrelated to CHRIA information gathered and stored by the PSP.

All electronic files created by state troopers are not investigation information subject to CHRIA, and the intent and plain letter of the law limits CHRIA's applicability to information not present in this case.

III. The Wiretap Act does not apply to MVR video or audio

The Pennsylvania Wiretap Act does not apply to MVRs as a general class of records. The general rule of the Act limits the law's applicability to recording oral communications, where there is a reasonable expectation of privacy. 18 Pa.C.S. §§ 5702, 5703. Video is not covered by the Act, so at a minimum, the video portions of the MVRs are – on their face – not subject to the Act.

Audio portions of the MVRs are likewise not subject to the Wiretap Act because the Act only applies where there is a reasonable expectation of privacy. 18 Pa.C.S. § 5702. Under Pennsylvania's Wiretap Act, the standard for determining a justifiable expectation of non-interception is whether the speaker had a justifiable expectation of privacy. 18 Pa.C.S.A. § 5702; Schwartz v. Dana Corp./Parish Div., E.D.Pa.2000, 196 F.R.D. 275.

In order to determine if an oral conversation is subject to the Act, the proper inquiries are whether the speaker had a specific expectation that the contents of the discussion would not be intercepted, and whether that expectation was justifiable

under the existing circumstances. Agnew v. Dupler, 717 A.2d 519 (Pa. 1998). An expectation of privacy is present when the individual's conduct exhibits an actual expectation of privacy, which is recognized by society as reasonable. Id. The standard applied when determining reasonableness is objective, rather than based on the subjective expectations of the particular parties. Id.

In this case, there is no evidence to suggest that Ms. Grove exhibited any expectation of privacy in the conversation captured on the MVR, and the notice of recording provided by the trooper would have rendered any such expectation unreasonable. PSP's reliance on section 5704(16) of the Wiretap Act is misplaced because the Wiretap Act, as a whole, does not apply where there is no reasonable expectation of privacy in a conversation. 18 Pa.C.S. § 5702.

Further, even if there was an expectation of privacy, section 5704(16)[11] is limited to instances where an officer is recording a conversation "between

---

[11] 18 Pa.C.S. § 5704(16) states:

> A law enforcement officer, whether or not certified under section 5724 (relating to training), acting in the performance of his official duties to intercept and record an oral communication between individuals in accordance with the following:
>
> (i) At the time of the interception, the oral communication does not occur inside the residence of any of the individuals.
>
> (ii) At the time of the interception, the law enforcement officer:
>
> (A) is in uniform or otherwise clearly identifiable as a law enforcement officer;
>
> (B) is in close proximity to the individuals' oral communication;
>
> (C) is using an electronic, mechanical or other device which has been approved under section 5706(b)(4) (relating to exceptions to prohibitions in possession, sale, distribution, manufacture or advertisement of

individuals;" it does not apply to the officer recording his or her own conversation with members of the public. 18 Pa.C.S. § 5704.

Finally, even if there was no notice provided by the trooper, the Wiretap Act is not applicable to MVRs because there is no reasonable expectation of privacy in conversations that take place in public places like public roads. Anyone in the immediate vicinity of the officer and Ms. Grove could readily hear the conversation and observe their interaction.

Further, the press and public enjoy a Constitutional right to record police officers performing their duties in public places, and anyone in the vicinity could have recorded the interaction between Ms. Grove and the officers in this case. Kelly v. Borough of Carlisle, 622 F.3d 248, 260 (3d Cir. 2010) (quoting Gilles v. Davis, 427 F.3d 197, 204 n.14 (3d Cir. 2005) (citing Smith v. City of Cumming, 212 F.3d 1332, 1333 (11th Cir. 2000))(videotaping or photographing the police in the performance of their duties on public property may be a protected activity). The federal court for the Eastern District of PA recently held that individuals in

---

electronic, mechanical or other devices) to intercept the oral communication; and

(D) informs, as soon as reasonably practicable, the individuals identifiably present that he has intercepted and recorded the oral communication.

(iii) As used in this paragraph, the term "law enforcement officer" means a member of the Pennsylvania State Police or an individual employed as a police officer who holds a current certificate under 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training).

that case did not enjoy a *per se* First Amendment right to record police in public absent some expressive conduct, however this holding was clarified in a subsequent memorandum where the Court explained that its holding was limited to the litigants in the case and was not intended to apply to the broader Constitutional rights of the press. Fields & Geraci, v. Philadelphia, --- F.Supp.3d ----2016 WL 2754014 (E.D. Pa. 2016); *clarified by* Geraci v. Philadelphia, 2016 WL 1060250, n.6.

Finally, even if the Wiretap Act is found to apply to some conversations on the MVR in this case, the law does not allow the entire MVR to be withheld. The RTKL allows non-public information to be redacted from a public record and requires the remainder of the record to be released. 65 P.S. § 67.706. The RTKL and the Wiretap Act would operate in harmony and would not trigger the RTKL conflict provision[12] because the statutes can be construed in harmony.

IV. Access to law enforcement videos is crucial for the public and the press to understand the actions of their government and engage in democratic oversight

A. Law enforcement video technologies have been implemented to ensure transparency and accountability

Law enforcement agencies across the country are adopting and implementing the use of video technologies, first and foremost, to increase transparency and accountability at a time of significant public mistrust of law

[12] 65 Pa.C.S.§ 67.3101.1

enforcement. *See, e.g.*, Bill Schneider, *Do Americans trust their cops to be fair and just? New poll contains surprises*, Reuters (Jan. 15, 2015), *archived at* https://perma.cc/YW5E-AGDP (finding that 31% of Americans believe police officers "routinely lie to serve their own interests"). In the last few years, videos of use-of-force incidents involving citizens and law enforcement have increasingly been at the center of public debates concerning, among other things, race in the criminal justice system. *See* Damien Cave and Rochelle Oliver, *The Videos That Are Putting Race and Policing Into Sharp Relief*, N.Y. Times (Nov. 24, 2015), http://nyti.ms/1IMtFWL. And while videos of troubling incidents of police use-of-force are not new, *see* Erik Ortiz, *George Holliday, Who Taped Rodney King Beating, Urges Others to Share Videos*, NBC NEWS (Jun. 9, 2015), *archived at* perma.cc/CP5V-5YAM, a rash of such videos in recent years, along with advances in technology, have led to calls for the implementation of body-worn cameras ("bodycams") and other forms of technology to provide additional mechanisms for public oversight of law enforcement. *See, e.g.*, *Michael Brown's family in Atlanta to begin campaign for police body cameras*, WSB-TV (Sep. 21, 2014), http://bit.ly/1JVxxWs, *archived at* perma.cc/8Y9D-JDC6. While the videos at issue in this case were created by MVRs, the issues before this Court will have ramifications as law enforcement agencies across the state adopt policies authorizing or requiring police officer body cameras. *See, e.g.*, House Bill No. 420

(2015), *archived at* https://perma.cc/RAM8-FETW (proposed legislation requiring law enforcement officers to wear bodycams).

Videos of interactions between law enforcement personnel and members of the public, whether recorded by MVRs or bodycams, help to ensure that a more objective record of those interactions is available in cases of contested or uncertain narratives. One of the motivations behind the widespread adoption of dashcams more than a decade ago was to address complaints of racial profiling. *See* Robinson Meyer, *Seen It All Before: 10 Predictions About Police Body Cameras*, The Atlantic (Dec. 5, 2014), *archived at* https://perma.cc/8DMZ-CEW8. More recently, continued concerns over police use-of-force incidents have been the impetus behind the adoption of new video technology in the form of bodycams. As noted in a recent Yale Law School report, "[l]egislatures and police departments have created body cam programs to promote transparency, enable accountability, and improve relationships between police and communities. *Police Body Cam Footage: Just Another Public Record*, Yale Law School Media Freedom & Information Access Clinic at 6 (Dec. 2015), *archived at* perma.cc/A6PQ-24FH (the "Yale Report"). These goals, as applied to MVRs, were correctly recognized by the Commonwealth Court below:

> MVRs are created to document troopers' performance of their duties in responding to emergencies and in their interactions with members of the public, not merely or primarily to document, assemble or report on evidence of a crime or possible crime.

Pennsylvania State Police v. Grove, 119 A.3d 1102, 1108 (Pa. Cmwlth. Ct. 2015). *See also* Ward & Lee, P.L.C. v. City of Claremore, 2014 OK CIV APP 1, ¶ 14, 316 P.3d 225, 228 (holding dashcam videos must be released under the Oklahoma Open Records Act because they document "facts concerning the arrest[]" of an individual).

Yet MVRs and bodycam technology cannot accomplish these goals and serve the purpose of increasing transparency if the videos they capture are withheld from the public and the press. As the Yale Report explains:

> Unlike most categories of public records, which serve some function even if they cannot be released to the public, body cam footage serves no legitimate purpose without public oversight. Without an affirmative right of public access, police departments would have a strong incentive to only release footage in which they appear sympathetic—law enforcement officials have succumbed to such temptation in the past.

Yale Report, *supra*, at 7. Similarly, as the executive director of the Police Executive Research Forum has stated:

> A police department that deploys body-worn cameras is making a statement that it believes the actions of its officers are a matter of public record. . . . And with certain limited exceptions . . . body-worn camera video footage should be made available to the public upon request—not only because the videos are public records but also because doing so enables police departments to demonstrate transparency and openness in their interactions with members of the community.

Letter from the PERF Executive Director in *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, United States Dep't of Justice (2014), http://1.usa.gov/1s7UIxl.

This widespread consensus on the necessity of public access to bodycam videos, the reasons for which apply equally to MVRs, is ignored by PSP, who seek to shield such records from public view in all cases. *See* Br. of Appellant at 11-12. Without the ability to obtain access to these videos through the RTKL, however, it is questionable whether the public is any better off than it would be with no cameras at all.

B. The news media has a special interest in ensuring access to law enforcement videos in order to inform the public about the workings of government

As this Court has held, the purpose of the RTKL is to promote "access to official government information in order to prohibit secrets, scrutinize actions of public officials, and make public officials accountable for their actions." Levy v. Senate of Pennsylvania, 619 Pa. 586, 619, 65 A.3d 361, 381 (2013). And "in a society in which each individual has but limited time and resources[,]" such scrutiny takes place, in large part, though the press, which the public relies on to gather and disseminate facts about the operations of government. *See* Cox Broad. Corp. v. Cohn, 420 U.S. 469, 491 (1975). Accordingly, it is especially important

for the media to have access to MVRs and bodycam videos, just like other public records.

On numerous occasions access to, and publication of, videos depicting interactions between police and members of the public has promoted government accountability. In Texas, for example, a local TV station was able to show that troopers from the Department of Public Safety ("DPS") were inaccurately recording the race of minority drivers, despite a Texas law that aimed to reduce racial profiling by requiring police to document the race of drivers they stop. *See* Brian Collister & Joe Ellis, *Texas troopers ticketing Hispanic drivers as white*, KXAN (Nov. 6, 2015), *archived at* https://perma.cc/G8ZJ-TSSP. One of the centerpieces of the report was an MVR, obtained through a public records request, of the stop of Pastor Gonzalez Sosa for speeding. Id. The MVR shows Mr. Sosa speaking Spanish to the trooper, as well as identifying himself as being from Mexico. Id. The trooper, nevertheless, failed to identify Mr. Sosa as Hispanic, marking his race on the citation as "white." Id. That incident, along with the analysis of other MVRs (all obtained through public records requests) and other data, called into question the accuracy of DPS's statistics. Id. KXAN's reporting prompted a state senator to request an explanation from the DPS, other lawmakers to call for a hearing on the issue, and DPS to request help from outside experts to evaluate its traffic stop data. Ultimately, DPS made a change in its protocol to

afford a person who is stopped the opportunity to confirm or object to the race category selected. *See id.*; Brian Collister, *Lawmaker calls for hearing over DPS wrongly reporting race of drivers*, KXAN (Nov. 10, 2015), *archived at* https://perma.cc/LAG9-UAFU; Brian Collister & Joe Ellis, *DPS seeks outside review of traffic stop data*, KXAN (Dec. 17, 2015), *archived at* https://perma.cc/85LJ-RRDZ; Brian Collister & Joe Ellis, *DPS troopers to stop asking drivers' race*, KXAN (Dec. 30, 2015), *archived at* https://perma.cc/X37J-N97M. Without access to the MVRs, neither KXAN's reporting, nor the reforms it prompted, would have been possible.

Access to MVRs has proved invaluable in helping the public understand the actions of law enforcement personnel in other situations as well. Just months ago, a court ordered the release of an MVR depicting the shooting of seventeen-year-old Laquan McDonald in response to a public records request, holding that the Chicago Police Department failed to show that withholding the video was authorized under the Illinois Freedom of Information Act. *See* Smith v. Chicago Police Department, No. 2015 CH 11780 (Cir. Ct. of Cook County, Nov. 19, 2015), *available at* https://perma.cc/EL4E-2MUZ. The court rejected the City's assertions that, *inter alia*, release of the video would interfere with or obstruct an ongoing criminal investigation, finding that it had presented "conclusory and inadequate" information to justify ongoing secrecy. *See id.* at *14. Disclosure of

that video, in which McDonald was shot 16 times, sparked national outrage and debate over the officer's actions, who was charged with first-degree murder, and contributed to a decision by the Justice Department to launch an investigation into the Chicago Police Department. *See, e.g.*, Jason Meisner, Jeremy Gorner, & Steve Schmadeke, *Chicago releases dash-cam video of fatal shooting after cop charged with murder*, Chicago Tribune (Nov. 24, 2015), *archived at* https://perma.cc/W6JK-XTMV; Monica Davey & Mitch Smith, *Justice Officials to Investigate Chicago Police Department After Laquan McDonald Case*, The N.Y. Times (Dec. 6, 2015), http://nyti.ms/1Iymh1k.

Bodycam videos have, likewise, proved to be an invaluable tool for ensuring accountability of law enforcement officers. In Denver, for example, a local TV station obtained bodycam video—though a public records request—of an arrest that led to an officer's discipline for use of excessive force. Brian Maass, *New DPD Body Cam Video Shows Excessive Force*, CBS Denver (Mar. 12, 2015), *archived at* https://perma.cc/SP7Y-ZYTH. Contrary to the officer's statements that he had placed his knee on the suspect's shoulders, the video showed that his knee had been placed on the suspect's neck. *Id.* BWC video of that incident not only resulted in the suspension of the officer, but its disclosure to the press resulted in important information being disseminated to the public, which facilitated public debate about the propriety of the officer's actions. *See id.* Numerous other

instances of bodycam video contradicting officer reports abound, and the dissemination of those videos likewise plays an important role in discussions on legal and policy reform. *See, e.g.*, David Kravets, *Body cam footage leads to indictment for cop accused of beating woman*, Ars Technica (Jan. 13, 2016), *archived at* perma.cc/FAW6-V5UX; Conor Friedersdorf, *When Police Shoot Dogs: Disturbing Footage from a Body Cam Prompts a Public Outcry*, The Atlantic (Oct. 21, 2014), http://theatln.tc/ZFjXzD; Andy Grimm, *NOPD Ignored, Mischaracterized Evidence in Officer-Involved Shooting, Monitor Finds*, The Times-Picayune (Aug. 4 ,2015), http://bit.ly/1QFBQEH.

Access to law enforcement videos is important not only to show officer misconduct, but also to help the media explain and illustrate lawful use-of-force to the public. This has already happened in Ohio, where the public release of bodycam video led to widespread praise of Officer Jesse Kidder, who did not respond with lethal force to a homicide suspect that charged at him. Jackie Congedo, *Officer: 'I wanted to be absolutely sure before I used deadly force'*, WLWT5 (Apr. 20, 2015), http://bit.ly/1EXuKaK, *archived at* perma.cc/7HM8-JXEU. Because the public was able to see exactly what transpired, the public's trust in that officer, and indeed the police department, undoubtedly increased. In another incident where a civilian was shot and killed by police in Oklahoma, bodycam video released to the public showed the civilian pointing a gun at an

officer just before he was shot—providing an objective basis for the police department to reassure the community that use-of-force in that situation was appropriate. *See* Rhett Morgan, *Sand Springs police release body-cam video of officer fatally shooting armed man*, Tulsa World (Apr. 23, 2015), *archived at* perma.cc/V8CQ-Y2HY. This and other incidents show bodycams can speed up the process of exonerating police officers who have not committed misconduct. Yale Bodycam Report at 7.

In Utah, an MVR released pursuant to a public records request helped to explain an incident in which a police chase ended in an exchange of gunfire. *See* Geoff Liesik, *Dashcam video captures shootout between Utah officer, parolee*, KSL-TV (Nov. 10, 2015), http://www.ksl.com/?nid=148&sid=37312413. As shown in the video, the short chase ends as a pickup truck crashes into a dark field, and the officer tells the driver to show his hands. Instead, the driver fires a handgun at the officer, who returned fired before seeking cover. *Id.* The event was so sudden that the officer failed to turn on the bodycam he was wearing, leaving the MVR as the only video of the exchange. *Id.* Access to the video and its publication by the press helped the public to understand the incident and the reasons for the officer's weapons discharge—which is reflected in the comments that accompany the article. *See id.*

In sum, excluding MVR and/or bodycam videos from the disclosure requirements of the RTKL will mean that law enforcement and law enforcement alone will decide when and what the public is entitled to see when it comes to an interaction between an officer and a citizen, even when serious questions are raised about the propriety of the officer's actions. Such secrecy is not only antithetical to Pennsylvania's long-standing commitment to transparency, but will undermine the primary purpose of these technologies.

CONCLUSION

For all the foregoing reasons, *Amici* urge this honorable Court to affirm the Commonwealth Court and protect the public's presumptive right to access records that document police action in the community.

Respectfully submitted,

June 30, 2016

Melissa Bevan Melewsky
I.D. No. 91886
Pennsylvania Newspaper Association
3899 North Front Street
Harrisburg, PA 17110
(717) 703-3048
Counsel for the Pennsylvania Newspaper Association

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served two true and correct copies of the foregoing Brief of *Amici Curiae* upon the following persons in the manner indicated below:

Via First Class Mail, postage prepaid:

Helen A Stolinas
Mazza Law Group, PC
2790 W College Ave
State College, PA 16801
Counsel for Appellee

Pennsylvania State Police
Nolan Meeks, Counsel
Pennsylvania State Police Headquarters
1800 Elmerton Ave.
Harrisburg, PA 17110

Scott Coburn
PA State Association of Township Supervisors
4855 Woodland Dr
Enola, PA 17025
Appellant Amicus

Dated: June 30, 2016

Melissa Bevan Melewsky
PA ID No. 91886
Pennsylvania Newspaper Association
3899 N. Front Street
Harrisburg, PA 17110
(717) 703-3048