



FINAL DETERMINATION

IN THE MATTER OF

**JOSHUA BURT AND FARMERS
INSURANCE,
Requester**

v.

**ALLENTOWN CITY,
Respondent**

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Docket No: AP 2022-1819

On July 19, 2022, Joshua Burt and Farmers Insurance (collectively “Requester”) submitted a request (“Request”) to Allentown City (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking video footage of an accident involving a pedestrian. On July 26, 2022, the City denied the Request, arguing that recordings made by law enforcement agencies are not accessible under the RTKL. *See* 42 Pa. C.S.A § 67A03.

On August 4, 2022, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the City to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On August 15, 2022, the City submitted a position statement and the sworn affidavit of Assistant Chief Gress, who attests, among other things, that the recording was made by the

¹ The appeal form states that the Request was made on August 4 and denied on August 18, 2022. However, as the appeal was filed on August 4, 2022, these dates are plainly incorrect. Furthermore, James Gress, Assistant Chief of Police, confirms that the Request was received by the Solicitor’s Office on July 19, 2022. Gress Aff. at ¶ 18.

Allentown Police Department and is maintained by the City's IT Department under the supervision of the Police Department. Gress Aff. at ¶ 19.

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. A “[l]aw enforcement agency” includes “an agency that *employs* a law enforcement officer.” 42 Pa.C.S. § 67A01 (emphasis added). 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.*

Here, the City's Police Department is unquestionably a law enforcement agency as contemplated by Act 22. Accordingly, the request for the video footage should have been filed pursuant to Act 22, rather than the RTKL. As such, the OOR lacks jurisdiction to consider the appeal of the City's denial of the requested footage.²

For the foregoing reasons, the Requester's appeal is **dismissed for lack of jurisdiction**, and the City is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Lehigh County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

² However, nothing in this Final Determination prevents the Requester from filing a request for the footage with the Allentown Police Department pursuant to of Act 22 and appealing any resulting denial to the Lehigh County Court of Common Pleas, *see* 42 Pa.C.S. § 67A06(a). The OOR has developed a [request form](#) for such requests.

³ *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: August 16, 2022

/s/ Blake Eilers

Blake Eilers, Esq.

Appeals Officer

Sent via email to: Joshua Burt and Sarah Rotz, Esq.