



FINAL DETERMINATION

IN THE MATTER OF

**JOSEPH WALL,
Requester**

v.

**TOWN OF MCCANDLESS,
Respondent**

&

**NORTH ALLEGHENY SCHOOL
DISTRICT,
Direct Interest Participant**

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Docket No: AP 2022-1744

FACTUAL BACKGROUND

On June 3, 2022, Joseph Wall (“Requester”) submitted a request (“Request”) to the Town of McCandless (“Town”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Police report...number MCP2109581 regarding an incident [at] the North Allegheny Intermediate High School on September 2, 2021. I would like to have the police report and any and all associated video related to the incident as filed by [School Resource Officer (“SRO”)] Michael Metzgar.

On June 8, 2022, the Town invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b).

On July 7, 2022, the Town denied the Request, arguing that the responsive records are exempt from disclosure as records related to a non-criminal investigation, 65 P.S. §67.708(b)(17),

as records regarding the discipline of an employee of a public agency that did not result in demotion or discharge, 65 P.S. §67.708(b)(7)(viii), and as education records protected by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g.

On July 26, 2022, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Town to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On August 16, 2022, the Town submitted a position statement reiterating its grounds for denial. The Town also argued that the responsive records could be exempt as records relating to a criminal investigation, 65 P.S. §67.708(b)(16). In support of its position, the Town submitted the attestations, made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, of its Open Records Officer, John Bojarski (“Bojarski Attestation”), and of Town Police Officer, Michael Metzger (“Metzger Attestation”). Officer Metzger is also the SRO at the North Allegheny School District (“District”) Intermediate High School. Additionally, the Town submitted the sworn affidavits of the Director of Human Resources for the District, Marijane Treacy (“Treacy Affidavit”), and of the District’s Assistant Superintendent of Secondary Education, Dr. Joseph Sciullo (“Sciullo Affidavit”).²

On that same day, the District submitted a Request to Participate pursuant to Section 1101(c) of the RTKL, 65 P.S. § 67.1101(c). As the Requester has not challenged the Request to Participate and the responsive records pertain to an incident that occurred at a District school

¹ In the appeal, the Requester granted the OOR an additional thirty days to issue this Final Determination. *See* 65 P.S. § 67.1101(b)(1).

² The Treacy Affidavit and the Sciullo Affidavit are both sworn and made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

building, involving a District student and a District employee, the District's request to participate is granted. The District also submitted a position statement reiterating the Town's grounds for denial. In support of its position, the District submitted copies of the Treacy Affidavit and the Sciullo Affidavit.

Also, on that same day, the Requester submitted a position statement in support of the appeal and addressing the arguments raised by the District.

LEGAL ANALYSIS

"The objective of the Right to Know Law...is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the request" and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The Town is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §

67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder...to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. The Request cannot be modified on appeal

The Town argues that the Requester is improperly attempting to modify the Request on appeal. As stated above, the Requester submitted a position statement with the appeal. In the position statement, the Requester states:

...I am expanding the request to include any, and all documentation (interrogatory notes, memorandum, and any other documentation) relating to the official investigation by Officer Metzgar, [t]he Town...Police Department, and the [District] as you have enjoined them, and the investigation in question is part and parcel to their duties under the laws of the Commonwealth of Pennsylvania.

However, the Request states that the Requester is seeking only the identified Police Incident Report and any associated video record. Specifically, the Request seeks:

Police report...number MCP2109581 regarding an incident [at] the [District] Intermediate High School on September 2, 2021. I would like to have the police

report and any and all associated video related to the incident as filed by SRO Michael Metzgar.

A requester may not modify, explain or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Pa. Dep't of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a requestor requests a specific type of record...the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request”). Therefore, the OOR’s review on appeal is confined to the Request as written, and any modification or explanation of the Request on appeal will not be considered.

2. The Town demonstrated that the responsive records are exempt from disclosure as records related to a noncriminal investigation

The Town identified two records as responsive to the Request, “a [P]olice [Incident] [R]eport generated by the Town Police Department...and a video recorded by and obtained from the [District.]” *See* Bojarski Attestation, ¶¶ 5-6. The Town argues that both records are exempt from disclosure under Section 708(b)(17) of the RTKL as records of a noncriminal investigation “generated due to the Town Police Department’s investigation into the incident depicted [on the video recording] and that such records existed within the possession of the Town due to its role in providing a Town Police Officer to serve as [SRO] for [the District’s] Intermediate High School.” *See* 65 P.S. §67.708(b)(17).

The Requester argues that “no investigation was conducted as is the responsibility of the [District,] and that the claims of assault in the incident in question[] were simply dismissed with no accountability, either by the Town[] or by the...District.” The Requester also cites the Commonwealth Court’s decision in *Port Authority of Allegheny Cnty. v. Towne*³ and notes that, in

³ In *Towne*, the Commonwealth Court addressed whether surveillance video from an agency bus could be related to a noncriminal investigation. 174 A.3d 1167, 1171. The Court concluded that the video was exempt from disclosure,

that instance, the agency permitted the requester “to view [the responsive] video, and[,] additionally, permitted subsequent viewing of video to promote transparency[,]” which is “an option [that] has [not] been offered to this [R]equestor.”⁴ 174 A.3d 1167, 1171 (Pa. Commw. Ct. 2017).

Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “complaints” and “[i]nvestigative materials, notes, correspondence and reports.” 65 P.S. §§ 67.708(b)(17)(i)-(ii). For this exemption to apply, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *See Pa. Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be “conducted as part of an agency’s official duties.” *Id.* at 814; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Pa. Dep’t of Pub. Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” *Id.* at 259.

a. The Town demonstrated that the responsive Police Incident Report is exempt from disclosure

The first record that the Town identified as responsive to the Request is a Police Incident Report created by Officer Metzger. In support of the Town’s position that the responsive Police Incident Report is exempt from disclosure, the Metzger Attestation, in pertinent part, states:

reasoning that videos “created before investigations and accessed only when necessary can constitute [an] investigative record[], especially when the agency asserts that [its] only purpose is for use in investigations.” *Id.*

⁴ The OOR notes that the instant Request seeks copies of the responsive Police Incident Report and associated video. While the OOR encourages the parties to cooperate when possible, there is no provision in the RTKL requiring an agency to offer a requester access to responsive records in a medium other than that specified in the request.

3. ...On May 21, 2018, the Town entered into an agreement with the [District] in which the Town agreed to station two Town Police Officers at District [s]chools ("SRO Agreement"). The Town and District are authorized to enter into the SRO Agreement pursuant to 24 P.S. §13-1313-C.
4. In addition to my duties as a Town Police Officer I have been assigned to be stationed at the [District] Intermediate High School as its SRO.
5. In my capacity as a Town Police Officer and the SRO I am familiar with...[Town] procedures and the statutorily granted investigatory authority of the Town Police as delegated to me as a Police Officer.
6. As a Town Police Officer[,] I am granted authority under the laws of the Commonwealth, particularly Title 42 Section 8952(2)[,] to enforce the laws of the Commonwealth or to otherwise perform acts necessary to "preserve protect or defend persons...or to otherwise maintain the peace and dignity of this Commonwealth." 42 Pa.C.S. §8952. This includes the authority to institute official investigations into incidents, whether criminal or noncriminal, which could impact the peace and or dignity of the Commonwealth.
7. Under the Public School Code, the District is required to ensure the safety of its students, and to report certain offenses occurring on school property to the police. *See* 24 P.S. §§13-1302.1-A; 22 Pa. Code §10.1.
8. Under these laws, and the SRO Agreement, I am authorized to investigate incidents occurring at the [District Intermediate High] School, whether criminal or noncriminal.
9. As a Town Police Officer, I am required to generate an incident report in response to certain complaints or incidents in order to memorialize any notes, observations, conclusions and courses of action taken or proposed.
10. As a Town Police Officer, I am also required to obtain, compile, or maintain evidence related to certain complaints or incidents, including in some instances videos of incidents under investigation.
11. An official investigation into a matter or incident occurring at the [District Intermediate High] School may result in further action being taken by the Town Police, further action being taken by the [District], a determination that no additional action needs to be taken, or referral to another agency or entity for further review or action.
12. In order for a determination to be made as to what next steps, if any, are required, I must conduct an official probe into what occurred and must document this investigation through the generation of an incident report and the

creation of an investigatory file which includes any evidence obtained or utilized in my investigation.

13. I am not a security officer and I do not routinely review surveillance footage at the [District Intermediate High] School unless there is a specific incident under investigation....
17. ...On September 2, 2021, [the District's Intermediate High] School [A]dministration, in particular Dr. John Morey, requested that I pull the responsive [v]ideo and review it in order to officially investigate the incident depicted[,] which involved a [District Intermediate High] School employee and student.
18. The only reason the [v]ideo is in the possession of the Town is due to its use in my official investigation into the incident depicted therein.
19. I reviewed the [v]ideo for the purpose of determining what occurred and what next steps, if any, were required by the Town Police or what course of action should be suggested to the [Intermediate High School].
20. In my review of the [v]ideo I determined that the incident could possibly result in criminal charges.
21. Following my review of the [v]ideo, I generated the Police Report which outlines my observations, and generally describes my investigation into the underlying matter.
22. Based on my understanding and belief no criminal charges have been brought in regard[] to the underlying incident and the matter was handled as a noncriminal disciplinary matter by the [Intermediate High] School and [the] District.
23. The Police Report and [v]ideo were only retained by the Town as part of its official investigation into the matter and have no other use or purpose outside [of] this investigation.
24. The Police Report and [v]ideo are investigative materials directly related to my official probe into a possible criminal incident occurring at the [District Intermediate High] School which ultimately was handled as a noncriminal matter by the District and has not, to my knowledge, resulted in criminal charges. The investigation was conducted as part of my official legislatively granted investigatory powers and their release would clearly reveal the institution, progress or result of the Town and [the District Intermediate High] School's investigation into the matter.

See Metzger Attestation, ¶¶ 3-13, 17-24.

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Town acted in bad faith, “the averments in [the attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Municipal police departments, such as the Town’s Police Department, are empowered to enforce the laws of the Commonwealth or otherwise perform the functions as to “any ... event that occurs within his primary jurisdiction and which reasonably requires action on the part of the police in order to preserve, protect or defend persons or property or to otherwise maintain the peace and dignity of this Commonwealth.” 42 Pa.C.S. § 8952. The OOR has found that this statutory authority grants municipal police departments the ability to conduct noncriminal investigations. *See Subhash v. Horsham Twp. Police Dep’t*, OOR Dkt. AP 2019-2421, 2020 PA O.O.R.D. LEXIS 306 (finding that dispatch notes in an incident report relate to a local police department’s noncriminal investigation); *see also Alasevich v. Horsham Twp. Police Dep’t*, 2019- 2054, 2020 PA O.O.R.D. LEXIS 72. Further, the Metzger Attestation demonstrates that the Town and the District are statutorily authorized to enter into the SRO Agreement, 24 P.S. §13-1313-C, and that pursuant to the Pennsylvania Public School Code, the District is required to ensure the safety of its students, and to report certain offenses occurring on school property to the police[.]” 24 P.S. §§13-1302.1-A; 22 Pa. Code §10.1. *See Metzger Attestation*, ¶¶ 3, 7. As such, the Town demonstrated that its Police Department is statutorily vested with the power to investigate incidents that occur at the District’s Intermediate High School.

Based on a review of the evidence presented, the Metzger Attestation sufficiently demonstrated the circumstances surrounding the Town Police Department's response to the request from the District's Intermediate High School Administration to review the potential criminal incident involving a District employee and District Intermediate High School student rose to the level of a "systematic or searching inquiry [and] a detailed examination," because Officer Metzger obtained a copy of the surveillance video depicting the incident, reviewed the video, and generated the responsive Police Incident Report, outlining his observations and, generally, describing the investigation he undertook. *See Metzger Attestation*, ¶¶ 17-21. Further, the Metzger attestation shows that no criminal charges resulted from the incident. *See Metzger Attestation*, ¶¶ 22, 24. Accordingly, the Town demonstrated that the responsive Police Incident Report is exempt from disclosure because it relates to a noncriminal investigation conducted by a Town Police Department officer in accordance with the Town's statutorily granted investigative powers, 65 P.S. § 67.708(b)(17). *See Dickens v. Town of McCandless*, OOR Dkt. 2020-1960, 2020 PA O.O.R.D. LEXIS 3001; *see also Narisi v. Buckingham Twp. Police Dep't*, OOR Dkt. AP 2019-0489, 2019 PA O.O.R.D. LEXIS 564; *Miller v. Upper Providence Twp. Police Dep't*, OOR Dkt. AP 2018-0497, 2018 PA O.O.R.D. LEXIS 571 (each holding investigative reports prepared as a result of a noncriminal investigation are exempt from disclosure).

b. The Town demonstrated that the responsive surveillance video is exempt from disclosure

The second record identified by the Town as responsive to the Request is a surveillance video obtained by the Town from the District, which captures the incident involving a District Intermediate High School student and staff member. *See Bojarski Attestation*, ¶ 4.

The Pennsylvania Supreme Court has observed that the mere use of a surveillance video in an investigation does not mean the video itself is exempt from disclosure. *Pa. State Police v.*

Grove, 161 A.3d 877 (Pa. 2017); *see also Pa. State Police v. Kim*, 150 A.3d 155, 158 (Pa. Commw. Ct. 2016) (finding that “records connected to a criminal proceeding are ‘not automatically exempt’ as investigative records”); *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173 (Pa. Commw. Ct. 2019). Rather, the question of whether a video recording contains investigative material must be determined on a case-by-case basis. *Grove*, 161 A.3d at 894.

As noted above, in *Towne*, the Commonwealth Court addressed whether surveillance video from an agency bus could be related to a noncriminal investigation. 174 A. 3d 1167, 1171. The Court concluded that the video was exempt from disclosure, reasoning that videos “created before investigations and accessed only when necessary can constitute [an] investigative record[], especially when the agency asserts that [its] only purpose is for use in investigations.” *Id.*; *see also California Borough v. Rothey*, 185 A.3d 456 (Pa. Commw. Ct. 2018) (finding that surveillance video from a police department’s holding cell was exempt from disclosure under both the criminal and noncriminal investigative exemptions because the video depicted a criminal assault of a detainee by a police officer). More recently, in *Central Dauphin Sch. Dist. v. Hawkins*, the Commonwealth Court decided that a school bus video was public record after it analyzed the video, which captured a confrontation between a student and an adult related to a noncriminal investigation. The court decided the video could not be withheld under Section 708(b)(17). 199 A.3d 1005 (Pa. Commw. Ct. 2018), *vacated by* 238 A.3d 337 (Pa. 2020), *remanded to* 2021 Pa. Commw. LEXIS 367 (Pa. Commw. Ct., Apr. 22, 2021), *decided on alternate grounds*, 253 A.3d 820 (*Hawkins II*). The Court distinguished its decisions in *Towne* and *Rothey*, concluding that the video in *Hawkins* could not be withheld because the school district “offered no evidence that the school bus video captured the noncriminal investigation[,]” “did not explain how the video...related to the discipline it imposed” on the student and a staff member or whether the discipline was

imposed as a result of the video or witness statements taken thereafter, and that the school district failed to “establish how the video related to its investigation of the staff member” 199 A.3d at 1019.

In support of the Town’s position, here, the Metzger Attestation states that Officer Metzger is not a security officer and...[does] not routinely review surveillance footage at the [District Intermediate High] School unless there is a specific incident under investigation.” *See Metzger Attestation*, ¶ 13. The Metzger Attestation also states that District Intermediate High School Administration asked Officer Metzger to review the video specifically because the video depicts an incident between a student and a staff member, and that “[t]he only reason [that] the [v]ideo is in the possession of the Town is due to its use in [Officer Metzger’s] official investigation into the incident depicted therein.” *See Metzger Attestation*, ¶¶ 17-18. In further support of the Town’s position, the Sciullo Attestation, in pertinent part, states:

6. ...On the morning of September 21, 2021, the [District] Intermediate [High] School...Administration, Principal Caitlin Ewing and Assistant Principal John Morey, contacted...Marijane Treacy, the Director of Human Resources for the School District, about an incident involving a...District employee and a student. The undersigned was involved in the internal investigation as it involved student conduct.
7. Based upon the allegations regarding the incident, an internal investigation was commenced as the conduct alleged could result in employee or student discipline. Ms. Treacy was informed by Dr. Morey that statements and video were being obtained.
8. Around 11:30 am on September 21, 2022, Dr. Morey sent [the] video (which is the subject of [the]...[R]equest) of the incident to Ms. Treacy, copying [District Intermediate High School] Administration. At that time, initial student statements were also shared with Ms. Treacy.
9. The undersigned and Ms. Treacy viewed the video as part of the Third Party internal investigation to review the interaction between the employee and the student to determine whether the actions of either warranted discipline.

10. Around noon, Dr. Morey provided his summary statement in which he indicated that he requested that [Officer] Metzger pull the video (which is the subject of [the]...[R]equest) of the incident. [Officer] Metzger retrieved the video due to the request and direction of Dr. Morey.
11. The next day, on September 22, 2022, the undersigned, Dr. Friez, and Ms. Treacy received an email from Mr. Dan Stack, Manager of School Safety, with an attached police report from [Officer] Metzger...in which [Officer] Metzger summarized his observations from viewing the video. The report refers to the employee and the student and was prepared by [Officer] Metzger based on Dr. Morey's request for him to pull the video.
12. The undersigned and Ms. Treacy then reviewed the video several more times and compared it with the description provided in the police report. Based upon that review, the undersigned and Ms. Treacy sought clarification from [District Intermediate High School] Administrators and an additional review of the witness statements and Dr. Morey's statement.
13. Based upon all information reviewed in this investigation, including the video and police report, Ms. Treacy then met with and conducted an interview of the employee. The video was viewed during the investigatory interview. Quotes from available witness statements also were referred to in the interview.
14. At the conclusion of the investigation, discipline was imposed against the employee, which was not discharge or demotion, and which has been retained as part of the employee's personnel file with the...District.
15. At the conclusion of the investigation, it was determined that the student would not be disciplined.

See Sciullo Attestation ¶¶ 6-15. The Treacy Attestation also states that the District Intermediate High School Administration asked Officer Metzger to obtain the video and review it because it depicts the incident between an Intermediate High School student and a District staff member, that District Administrators also viewed the video as a part of the District's review of the incident, and that based on a totality of the video's contents, witness statements, and the Police Incident Report created by Officer Metzger, the District disciplined the employee. *See Treacy Attestation, ¶¶ 7-14.*

Based on a review of the evidence provided by both the Town and the District, although the instant Request is directed to the Town, rather than to the District, the instant video record is more analogous to the video records at issue in *Towne*⁵ and *Rothey*⁶ than to the video record at issue in *Hawkins*.⁷ While school surveillance videos can be used for a variety of purposes, such as discouraging certain types of student behavior, as stated in the Metzger Attestation, Officer Metzger is not a surveillance officer and that the only reason the Town is in possession of the video was so that Officer Metzger could review the incident the video depicts to, and based on his observations, create a Police Incident Report. *See* Metzger Attestation, ¶¶ 13, 17-18; *see also e.g. Commonwealth v. Pa. State Police*, 146 A.3d 814 (Pa. Cmwlth. 2016) (noting that “the surveillance video was recorded by a third party, and then obtained by [the Pennsylvania State Police (“PSP”)] when it assembled material for its criminal investigation[,]” and that “[t]he surveillance video only came into PSP’s possession as part of its investigation of a crime.”). The Metzger Attestation also states that the video has “no other use or purpose [for the Town] outside [of] [Officer Metzger’s] investigation,” conducted in his capacity as the District’s SRO. *See* Metzger Attestation, ¶ 23. Further, unlike in *Hawkins*, even though the Request was directed to the Town, not the District, both the Town and the District, through the Sciallo and Treacy Attestations, provided evidence that the responsive video captured the incident in question, and demonstrated how the video was used as an integral part of the District’s noncriminal investigation into the conduct of both the student and the staff member, which resulted in discipline of the staff member.

⁵ 174 A. 3d 1167.

⁶ 185 A.3d 456.

⁷ 199 A.3d 1005.

Accordingly, based on the evidence provided, the Town demonstrated that the responsive video is exempt from disclosure because it relates to a noncriminal investigation conducted by a Town Police Officer in accordance with the Town's statutorily granted investigative powers.⁸ 65 P.S. § 67.708(b)(17).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Town 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 Allegheny 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. 65 P.S. § 67.1303. 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.⁹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 6, 2022

/s/ Erika Similo

APPEALS OFFICER
ERIKA SIMILO, ESQ.

Sent to: Joseph Wall (via email only);
Stephen L. Korbel, Esq. (via email only);
Falco Muscante, Esq. (via email only);
John Bojarski (via email only)

⁸ Because the Town proved that the requested records are exempt from disclosure pursuant to 65 P.S. § 67.708(b)(17), the OOR need not reach the Town's alternative grounds for denying access. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

⁹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).