



**DISTRICT ATTORNEY'S OFFICE OF CHESTER COUNTY**  
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IN THE MATTER OF	:	DISTRICT ATTORNEY'S OFFICE
	:	
LISA AULD,	:	CHESTER COUNTY, PENNSYLVANIA
Requester	:	
	:	RIGHT TO KNOW APPEAL
v.	:	
	:	FINAL DETERMINATION
UWCHLAN TOWNSHIP P.D.,	:	
Respondent	:	DA-RTKL NO. 2015-006

**INTRODUCTION**

On August 25, 2015, Lisa Auld ("Requester") filed a right-to-know request with the Uwchlan Township Police Department ("Respondent"), pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*, seeking what car Officer Diane P. Ahern was driving on July 2, 2012, and the "Dash Cam footage from 10am - 2 pm on 7-2-12." On September 14, 2015, the request for what car was driving was granted. The request for the "Dash Cam footage" was denied because the requested video was not in the possession of the Department, and was deemed to be a criminal investigative record.

On October 1, 2015, Requester mailed an appeal to the Chester County District Attorney's Office, pursuant to 65 P.S. § 67.503(d) and 65 P.S. § 67.1101(a), which was received on October 5, 2015.

For the reasons set forth in this Final Determination, the appeal is **DENIED** and the Respondent is not required to take any further action.

### **FACTUAL BACKGROUND**

On August 25, 2015, Lisa Auld ("Requester") filed a right-to-know request with the Uwchlan Township Police Department ("Respondent"), pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*, seeking what car Officer Diane P. Ahern was driving on July 2, 2012, and the "Dash Cam footage from 10am - 2 pm on 7-2-12." On September 14, 2015, the request for what car was driving was granted. The request for the "Dash Cam footage" was denied because the requested video was not in the possession of the Department, and was deemed to be a criminal investigative record. On October 1, 2015, Requester mailed an appeal to the Chester County District Attorney's Office, pursuant to 65 P.S. § 67.503(d) and 65 P.S. § 67.1101(a), which was received on October 5, 2015.

On October 5, 2015, this Appeals Officer for the Chester County District Attorney's Office gave Notice to the parties of the following:

Unless the Requester agrees otherwise, as the appeals officer, I shall make a final determination, which shall be mailed to the Requester and the Respondent, within 30 days of October 5, 2015, which is November 4, 2015. 65 P.S. § 67.1101(b)(1). If a final determination is not made within 30 days, the appeal is deemed

denied by operation of law. 65 P.S. § 67.1101(b)(2). Prior to issuing a final determination, a hearing may be conducted. However, a hearing is generally not needed to make a final determination. The final determination shall be a final appealable order, and shall include a written explanation of the reason for the decision. 65 P.S. § 67.1101(b)(3).

The Supreme Court of Pennsylvania has held that a Respondent is permitted to assert exemptions on appeal, even if the agency did not assert them when the request was originally denied. Levy v. Senate of Pennsylvania, 619 Pa. 586, 65 A.3d 361 (2013).

The Commonwealth Court of Pennsylvania has held that, pursuant to 65 P.S. § 67.1101(a), the appeal shall state the grounds upon which the Requester asserts that the record is a public record and shall address any grounds stated by the agency for denying the request. When a Requester fails to state the records sought are public, or fails to address an agency's grounds for denial, the appeal may be dismissed. Padgett v. Pennsylvania State Police, 73 A.3d 644 (Pa. Cmwlth. 2013); Saunders v. Department of Correction, 48 A. 3d 540 (Pa. Cmwlth. 2012); Department of Corrections v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011).

If the Respondent wishes to supplement the reasons for the denial of the Right to Know request, it must do so on or before October 13, 2015. The Respondent should clarify whether the requested "Dash Cam footage" exists, and if it does who has possession of it. *See* 65 P.S. § 67.506(d)(1).

If the Requester wishes to submit a response, it must do so on or before October 20, 2015.

**Any statements of fact must be supported by an Affidavit made under penalty of perjury by a person with actual knowledge.** However, legal arguments and citation to authority do not require Affidavits. All parties must be served with a copy of any responses submitted to this appeal officer.

October 5, 2015 Letter of Chief Deputy District Attorney Nicholas J. Casenta, Jr.

Requester did not submit an additional response. On October 13, 2015,

Respondent submitted an additional response, which stated in part:

In response to your letter dated October 5, 2015 regarding Lisa Auld (Requester) v. Uwchlan Township Police Department (Respondent) DA-RTKL-A NO. 2015-006, please be advised that in reviewing the incident it has been determined that there is no "Dash cam footage" from vehicle 3307. The camera unit in that vehicle was inoperable on July 2, 2012. Additionally, please be advised that any and all evidence collected for this incident was turned over to the Federal Bureau of Investigations once it was determined that they would be prosecuting this case.

October 13, 2015 Additional Response of Respondent.

### **LEGAL ANALYSIS**

The Chester County District Attorney's Office is authorized to hear appeals relating to access to criminal investigative records in the possession of a local agency located within Chester County. 65 P.S. § 67.503(d)(2) ("The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.").

The Uwchlan Township Police Department ("Respondent") is a local agency subject to the RTKL that is required to disclose public documents. 65 P.S. § 67.302. Records of a local agency are presumed "public" unless the record: (1) is exempt under 65 P.S. § 67.708(b); (2) is protected by privilege; or (3) is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. § 67.305.

“Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.306.

The Respondent bears the burden of proving, by a preponderance of the evidence, that the document requested is exempt from public access. 65 P.S. § 67.708(a)(1). A preponderance of the evidence, means, by a greater weight of the evidence. Commonwealth v. Brown, 567 Pa. 272, 284, 786 A.2d 961, 968 (2001). “A ‘preponderance of the evidence’ is defined as ‘the greater weight of the evidence ... evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other....’ Black’s Law Dictionary 1301 (9th ed. 2009).” Mitchell v. Office of Open Records, 997 A.2d 1262, 1264 n.3 (Pa. Cmwlth. 2010); *See also* Commonwealth v. Williams, 532 Pa. 265, 284-286, 615 A.2d 716, 726 (1992) (preponderance is more likely than not).

There is sufficient evidence, the sworn statement of Susan Benson, to support the determination that the requested “Dash Cam footage” does not exist and is therefore not available for disclosure. Consequently, all other arguments will not be discussed.

### CONCLUSION

For the foregoing reasons, the appeal is **DENIED**, and the Respondent is not required to take any further action. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may

petition for review, to the Chester County Court of Common Pleas, pursuant to 65 P.S. § 67.1302(a). All parties must be served with a copy of the petition for review. The Chester County District Attorney's Office shall also be served with a copy of the petition for review, pursuant to 65 P.S. § 67.1303(a), for the purpose of transmitting the record to the reviewing court. See East Stroudsburg University Foundation v. Office of Open Records, 995 A.2d 496, 507 (Pa. Cmwlth. 2010).

**FINAL DETERMINATION ISSUED AND MAILED ON: October 28, 2015**

APPEALS OFFICER:

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FINAL DETERMINATION MAILED TO:

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## INDEX OF APPENDICES

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- APPENDIX "B"** Response to Right to Know Request
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- APPENDIX "D"** October 5, 2015 Letter of CDDA Nicholas J. Casenta, Jr., Esquire  
Appeals Officer for District Attorney's Office of Chester County
- APPENDIX "E"** Additional Response of Respondent