

1-6-24

ORIGINAL

NEXSTAR MEDIA, INC.,

Petitioner

v.

PENNSYLVANIA STATE POLICE,

Respondent

: IN THE COURT OF COMMON PLEAS,
: DAUPHIN COUNTY, PENNSYLVANIA

: NO. 2025-CV-05096

: CIVIL ACTION - LAW

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MEMORANDUM OPINION

Presently pending before this Court is a Petition for Review under Act 22 of 2017, 42 Pa. C.S. §§67A01 *et seq.* (“Act 22”). The background of this case is as follows: on April 4, 2025, an individual by the name of Deshawn Leeth was involved in a car crash on the Ohio Turnpike. When the Ohio State Highway Patrol responded to the crash, Mr. Leeth had an altercation with one of the officers and ultimately stole that officer’s police vehicle. Mr. Leeth thereafter drove the stolen vehicle into Beaver County, Pennsylvania.

Once Mr. Leeth crossed the border into Pennsylvania, the Pennsylvania State Police (“PSP”) began to chase him, which ultimately resulted in the crash of the stolen police vehicle. Following the crash, Mr. Leeth was involved in an altercation with the PSP, which resulted in him being shot and killed by a PSP trooper.

Following the shooting, an investigation was performed to determine if there was any need for criminal charges against the trooper who shot and killed Mr. Leeth. On or around May 21, 2025, the Beaver County District Attorney ruled that there was no wrongdoing, and that the shooting was justified.

Chelsea Simeon is a digital executive producer for Nexstar in Ohio. On May 27, 2025, Ms. Simeon sent the PSP a request seeking body camera footage that captured the Leeth shooting incident (“Act 22 Request”). On June 6, 2025, the PSP issued a written denial of this request that was signed by Shane Thompson, the Deputy Agency Open Records Officer. In the denial, Mr. Thompson stated that the recording sought by Ms. Simeon’s request “contains potential evidence in a criminal matter, information pertaining to an investigation or a matter in which a criminal charge has been filed...and reasonable redaction...would not safeguard the evidence or information.” The letter also informed Ms. Simeon that the investigation remains open at this time.

Nexstar appealed this determination by filing a Petition for Review pursuant to 42 Pa. C.S. §67A06. The PSP filed a response to Nexstar’s Petition, and we heard oral argument on November 14, 2025. This matter is now ripe for decision.

In general, Act 22 allows individuals to request video and/or audio recordings that were created by law enforcement agencies. Martinez v. City of Reading Police Dep’t, 289 A.3d 1136, 1139 (Pa. Commw. Ct. 2023) (citing 42 Pa. C.S. §67A02). “Act 22 serves a similar purpose to the [Right to Know Law], which is remedial in nature and ‘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.’” Id. at 1139 n. 16 (citing Pa. State Police v. McGill, 83 A.3d 476, 479 (Pa. Cmwlth. 2014)).

Specifically, individuals who seek to obtain an audio recording or video recording made by a law enforcement agency shall serve a written request on the individual who is designated as the open records officer for the law enforcement agency within sixty (60) days of the date that

the recording was made. 42 Pa. C.S. §67A03(1). The requester must specify the incident or event that is the subject of the recording and must describe his or her relationship to same. 42 Pa. C.S. §67A03(2)(3).

Upon receiving this request, a law enforcement agency “shall provide the audio recording or video recording or identify in writing the basis for denying the request within 30 days of receiving the request, unless the requester and law enforcement agency agree to a longer time period.” 42 Pa. Cons. Stat. Ann. § 67A05(a). However,

if a law enforcement agency determines that an audio recording or video recording contains potential evidence in a criminal matter, information pertaining to an investigation or a matter in which a criminal charge has been filed, confidential information or victim information and the reasonable redaction of the audio or video recording would not safeguard potential evidence, information pertaining to an investigation, confidential information or victim information, the law enforcement agency shall deny the request in writing. The written denial shall state that reasonable redaction of the audio recording or video recording will not safeguard potential evidence, information pertaining to an investigation, confidential information or victim information.

42 Pa. Cons. Stat. Ann. § 67A04(a).

Upon receiving a denial from the law enforcement agency, the requester may appeal that determination to the appropriate Court of Common Pleas. Thereafter, the Court of Common Pleas that has jurisdiction over the matter may order disclosure of the audio or video recording only if

the court determines that the petitioner has established all of the following by a preponderance of the evidence:

- (1) The request was not denied under section 67A04 (relating to law enforcement review) or the request was denied under section 67A04 and the court of common pleas with jurisdiction determines that the denial was arbitrary and capricious.

(2) The public interest in disclosure of the audio recording or video recording or the interest of the petitioner outweighs the interests of the Commonwealth, the law enforcement agency or an individual's interest in nondisclosure. In making a determination under this paragraph, the court of common pleas may consider the public's interest in understanding how law enforcement officers interact with the public, the interests of crime victims, law enforcement and others with respect to safety and privacy and the resources available to review and disclose the audio recording or video recording.

42 Pa. Cons. Stat. Ann. § 67A06(e).

In the instant matter, Petitioner submitted a timely request for the body cam and dash cam footage of the PSP officers who were involved in the incident with Mr. Leeth. The PSP responded by denying Petitioner's request and asserting generally that the requested footage "contains potential evidence in a criminal matter, information pertaining to an investigation and reasonable redaction of the audio/video recording would not safeguard the evidence or information pertaining to the investigation." The PSP further averred that the investigation remained open as of the date of the letter of June 6, 2025.

Initially, we must determine if the PSP's denial of Petitioner's request was arbitrary and capricious. A denial is arbitrary and capricious "where it is unsupportable on any rational basis because there is no evidence upon which the action may be logically based." Cary v. Bureau of Prof'l & Occupational Affairs, State Bd. of Med., 153 A.3d 1205, 1210 (Pa. Commw. Ct. 2017) (citations omitted). For this request, the PSP only provided a general assertion that the investigation was ongoing and the requested footage contained evidence related to same. However, there is no evidence that the investigation is still ongoing.¹ In fact, the evidence showed

¹ At oral argument, Respondent merely provided this Court with a general statement that the investigation was "ongoing." However, they admitted that the District Attorney had declined to bring charges. Furthermore, it is unlikely that any internal affairs investigation would still be occurring nine months after the shooting occurred and

that the investigation had been completed, and no charges were brought against any of the involved officers. Furthermore, there could be no criminal investigation against Mr. Leeth, as he is now deceased. As such, since there were no pending criminal matters or investigations, there was no rational basis to deny production of the recordings.

Respondents argue that Act 22 does not require that there be a pending or prospective investigation in order for recordings to be exempt from public access. However, this would essentially nullify Act 22 since it would exempt from public access most, if not all, recordings made by law enforcement, since those would certainly capture audio and/or video related to some form of investigation, closed or otherwise. As such, we decline to find that Act 22 applies to all investigations, even if they have completed.

In addition to the fact that there is no evidence that an investigation is currently pending, Petitioners also provided evidence of the incident with Mr. Leeth that they had obtained from other sources. Specifically, the Ohio State Highway Patrol Officer who had the initial altercation with Mr. Leeth provided his bodycam footage as well as footage from the police vehicle that Mr. Leeth stole. The footage from the police vehicle included audio recordings that were taken after Mr. Leeth crashed the stolen vehicle, which necessarily contains some of the audio that would have been captured by the PSP officer's bodycams. Additionally, Petitioner obtained some bystander footage of the incident that shows PSP troopers and their vehicles with Mr. Leeth after he crashed the stolen vehicle. As such, any privacy concerns from producing the recordings are nullified by the fact that other recordings have already been publicized.

after the Beaver County District Attorney declined to bring charges. As such, we find that Respondent's general statement that the investigation is still "ongoing" is insufficient to prevent disclosure of the requested recordings.

For these reasons, we find that Respondent's denial was arbitrary and capricious. We now must determine if the public interest in disclosure of these recordings outweighs the interests of Respondent's interest in nondisclosure. In making this determination, we "may consider the public's interest in understanding how law enforcement officers interact with the public, the interests of crime victims, law enforcement and others with respect to safety and privacy and the resources available to review and disclose the audio recording or video recording." 42 Pa. Cons. Stat. Ann. § 67A06(e)(2).

The instant case revolves around an officer-involved shooting. There can be no question that an officer-involved shooting highly relates to the public's interest in understanding how law enforcement officers interact with the public. Thus, the public has a weighty interest in the disclosure of the subject recordings.

On the other side of the scale is the interest of the law enforcement officers with respect to their safety and privacy as well as the interest of crime victims. As noted above, Mr. Leeth is now deceased and has no concern for further safety or privacy. Mr. Leeth's family may still have an interest in privacy related to this incident, but that interest is discounted by the fact that audio and video recordings of the subject incident have already been released to the public. With respect to the safety and privacy of the PSP officers who were involved in the shooting, Respondent only provided vague assertions that the officers involved in this incident may be subject to harassment or threats. However, Respondent did not provide any affidavits or testimony identifying any potential threats or harassment. Furthermore, as stated above, the public has already seen some footage of the PSP officers who were involved in this incident.

Without any specific safety concerns, and in light of the fact that the public has already seen some footage of the involved officers, we find that the officers' interests in safety and privacy cannot outweigh the public's heavy interest in disclosure. As such, we find that the requested recordings are subject to disclosure pursuant to Act 22. For these reasons, we hereby enter the following Order:

NEXSTAR MEDIA, INC.,

Plaintiff

v.

PENNSYLVANIA STATE POLICE,

Defendant

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: DAUPHIN COUNTY, PENNSYLVANIA

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: NO. 2025-CV-05096

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ORDER

AND NOW, this 6th day of January, 2026, upon consideration of

Plaintiff's "Petition for Review" and Defendant's Answer thereto, and having heard oral argument on November 14, 2025, it is hereby ORDERED, for the reasons set forth in the accompanying Memorandum Opinion, that Plaintiff's Petition is GRANTED. Within thirty (30) days of the date of this Order, Defendant shall disclose the requested footage to Plaintiff.

BY THE COURT:



Andrew H. Dowling, J.

Distribution:

The Hon. Andrew H. Dowling

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