Sample outline of the required procedure to request a copy of LE audio/video recording

REQUESTS FOR AUDIO RECORDINGS OR VIDEO RECORDINGS

Recently, Act 22 of 2017, amending the Wiretap Act and the Judicial Code and addresses the use of Body Worn Cameras, Car Cameras and other recording made by the police and the release of those recording to the public was signed into law.

Under the new Act, the request for police recording will no longer be made pursuant to the Right to Know Law. Rather the request and release of these recording will be governed by § Pa CS, Title 42, Chapter 67A.

LIMITATION--Nothing in § Pa CS, Title 42, Chapter 67A or the Right-To-Know Law shall establish a right to production of an audio recording or video recording made inside a facility owned or operated by a law enforcement agency or to any communications between or within law enforcement agencies concerning an audio or video recording.

Portions of Chapter 067A. - Title 42 - JUDICIARY AND JUDICIAL PROCEDURE

§ 67A03. Requests for law enforcement audio recordings or video recordings.
The following shall apply:
(1) An individual who requests an audio recording or video recording made by a law enforcement agency shall, within 60 days of the date when the audio recording or video recording was made, serve a written request to the individual who is designated as the open-records officer for the law enforcement agency under section 502 of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law. Service is effective upon receipt of the written request by the open-records officer from personal delivery or certified mail with proof of service.
(2) The request under paragraph (1) shall specify with particularity the incident or event that is the subject of the audio recording or video recording, including the date, time and location of the incident or event.
(3) The request shall include a statement describing the requester's relationship to the incident or event that is the subject of the audio or video recording.
(4) If the incident or event that is the subject of the audio recording or video recording occurred inside a residence, the request shall identify each individual who was present at the time of the audio recording or video recording unless not known and not reasonably ascertainable.

§ 67A04. Law enforcement review.
(a) Determination.--Except as provided in this section, 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.

§ 67A05. Procedure.
(a) Disclosure.--A law enforcement agency that receives a request under section 67A03 (relating to requests for law enforcement audio recordings or video recordings) for an audio recording or video recording 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. If an agreement under section 67A04(b)(2) (relating to law enforcement review) is in effect between the law enforcement agency and the Attorney General or district attorney with jurisdiction, then an agreement to a longer time period must be between the requester and the Attorney General or District Attorney with jurisdiction.
(b) Denials by operation of law.--The request under section 67A03 shall be deemed denied by operation of law if the law enforcement agency does not provide the audio recording or video recording to the requester or explain why the request is denied within the time period specified or agreed to under subsection (a).
(c) Preservation.--A law enforcement agency that has received a request for an audio recording or video recording shall preserve the unaltered audio recording or video recording that has been requested for no less than the time periods provided in this chapter for service of and responses to written requests for the production

of the audio recording or video recording and any period within which a petition for judicial review is allowable or pending.

(d) Fees.--A law enforcement agency may establish reasonable fees relating to the costs incurred to disclose audio recordings or video recordings. The fees shall be paid by the requesting party at the time of disclosure of the audio recording or video recording.

(e) Construction.--Nothing in this section shall be construed to prohibit a law enforcement agency from redacting an audio recording or video recording in order to protect potential evidence in a criminal matter, information pertaining to an investigation, confidential information or victim information.

§ 67A06. Petition for judicial review.

(a) Petition.--

(1) If a request under section 67A03 (relating to requests for law enforcement audio recordings or video recordings) is denied, the requester may file a petition for judicial review in the court of common pleas with jurisdiction within 30 days of the date of denial.

(2) The respondent to a petition filed under this section shall be the entity that denied the request for the audio recording or video recording under section 67A05(a) (relating to procedure) unless the request is denied under section 67A05(b), in which case the law enforcement agency that created the audio recording or video recording shall be the respondent.

(b) Duties of petitioner.--A petitioner under this section shall have the following duties:

(1) The petitioner shall pay a filing fee of $125.

(2) If the incident or event that is the subject of the request occurred inside a residence, the petitioner shall certify that notice of the petition has been served or that service was attempted on each individual who was present at the time of the audio recording or video recording and on the owner and occupant of the residence. Notice shall not be required under this paragraph if the identity of an individual present or the location is unknown and not reasonably ascertainable by the petitioner. Service shall be effective upon receipt from personal delivery or certified mail with proof of service.

(3) The petitioner shall include with the petition a copy of the written request under section 67A03 that was served on the law enforcement agency and any written responses to the request that were received.

(4) The petitioner shall serve the petition on the open- records officer of the respondent within five days of the date that the petitioner files the petition with the court of common pleas with jurisdiction, and service shall be effective upon receipt by the open-records officer for personal delivery or certified mail with proof of service.

(c) Intervention as matter of right.--If not a respondent, a prosecuting attorney with jurisdiction may intervene in the action as a matter of right.

(d) Summary dismissal.--It shall be grounds for summary dismissal of a petition filed under this section if:

(1) the request to the law enforcement agency under section 67A03 or the filing of the petition under subsection (a) is untimely;

(2) the request to the law enforcement agency failed to describe with sufficient particularity the incident or event that is the subject of the audio recording or video recording, including the date, time and location of the incident or event; or

(3) the petitioner has not complied with the requirements of subsection (b)(1), (2), (3) and (4).

(e) Approval.--A court of common pleas with jurisdiction may grant a petition under this section, in whole or in part, and order the disclosure of the audio recording 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.