pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
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KEVIN MARINO and MARINO, TORTORELLA & BOYLE, P.C., Requester	:	
	:	
v.	:	**Docket No: AP 2025-2914**
	:	
PENNSYLVANIA GAMING CONTROL BOARD, Respondent	:	

FACTUAL BACKGROUND

On September 25, 2025, Kevin Marino, Esq., and Marino, Tortorella & Boyle, P.C. (collectively the "Requester"), submitted a request ("Request") to the Pennsylvania Gaming Control Board ("Board") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> 1. Any report created by Spectrum Gaming Group regarding Evolution AB and/or any subsidiary or affiliate thereof, including Evolution US LLC, Evolution New Jersey LLC, Ezugi NJ LLC, Evolution Malta Holding Ltd., Evolution Malta Limited, Evolution Pennsylvania LLC, Evolution Services Sweden AB (formerly NetEnt AB) and SIA Evolution Latvia (collectively, "Evolution").
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> 2. All communications between the [Board] and the New Jersey Division of Gaming Enforcement ("DGE") from November 11, 2021 to February 22, 2024, regarding any investigation of Evolution, including any investigation regarding the "allegations made by an unidentified firm of Evolution operating in prohibited jurisdictions[,]" as referenced in the attached February 22, 2024 letter from Paul Mauro to Lloyd Levenson.

> 3. All communications between the [Board] and Evolution (or its attorney, including Cooper Levenson or Kirkland & Ellis LLP) from November 11, 2021 to February 22, 2024, regarding any investigation of Evolution, including any documents provided by Evolution or its attorneys to the [Board].
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> 4. Transcripts, notes or memoranda of any interviews conducted by the [Board] or the DGE of any employees, representatives or agents of Evolution in connection with any investigation of Evolution between November 11, 2021 and February 22, 2024, including Jonas Engwall, Kfir Kugler, Niklas Jönsson, Anton Bargel, Artyom Ustinov, Sergey Pshenichnykh, Jens Von Bahr, Sandra Urie, Ian Livingstone, Joel Citron, Fredrik Österberg and Mimi Drake.

On October 2, 2025, the Board denied the Request. The Board denied Items 2 through 4, claiming any responsive records are exempt noncriminal investigative materials, 65 P.S. § 67.708(b)(17), and would be confidential under the Pennsylvania Race Horse and Gaming Act ("Act"), 4 Pa.C.S. § 1101 *et seq*. Additionally, the Board denied the Request as a whole, including Item 1, arguing the Request is insufficiently specific, 65 P.S. § 67.703.

On October 14, 2025, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. Specifically, the Requester notes the Request is sufficiently specific, as Item 1 seeks the "Spectrum Report," and Items 2 through 4 relate to the DGE's investigation of the allegations of wrongdoing in the Black Cube Report.[1] Additionally, the Requester asserts that the responsive records are not exempt noncriminal investigative records, as the Board did not conduct its own investigation. The OOR invited both parties to supplement the record and directed the Board to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).[2]

[1] Of note, we must look to the Request, as written. The OOR has repeatedly held that a requester may not modify 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. 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").

[2] On October 16, 2025, the Requester granted the OOR a four-week extension to issue a Final Determination. *See* 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).").

On November 12, 2025, the Board submitted a position statement, reiterating its grounds for denial of the Request. In support of its position, the District submitted attestations made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by Luana DeBernardis ("DeBernardis Attestation"), the Board's Agency Open Records Officer ("AORO"), and Paul Mauro ("Mauro Attestation"), the Board's Director for the Bureau of Investigations and Enforcement ("BIE").

On November 12, 2025, the Requester submitted an affidavit ("Marino Affidavit"), duly sworn, providing further background for the Request and again asserting that the Board did not engage in any investigatory efforts, but relied upon the investigation performed by DGE and Evolution's attorneys.[3]

LEGAL ANALYSIS

The Board is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Board is required to demonstrate, "by a preponderance of the evidence," that records are exempt from public access. 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)).

[3] All submissions made after November 4, 2025 were received after the evidentiary record closed; however, to develop the record, the submissions were considered. *See* 65 P.S. § 67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

1. The Request seeks exempt noncriminal investigative materials

The Board asserts that records responsive to Item 2 of the Request are exempt because the records relate to noncriminal investigations conducted. The Board further asserts that any potential responsive records responsive to Items 3 and 4 are facially exempt, as those Items clearly seek records related to investigations performed by the Board. Section 708(b)(17) of the RTKL exempts from disclosure records of an agency "relating to a noncriminal investigation," including "[c]omplaints submitted to an agency," "[i]nvestigative materials, notes, correspondence and reports" and "[a] record that, if disclosed, would … [r]eveal the institution, progress or result of an agency investigation." 65 P.S. §§ 67.708(b)(17)(i)-(ii); 65 P.S. § 67.708(b)(17)(vi)(A). In order 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). The OOR must also consider uncontradicted statements in the appeal filing when construing exemptions. *See Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016).

In support of its position, the Mauro Attestation indicates, in relevant part, the following:

> 2. [The BIE] is responsible for the investigation of all licensees, permittees, registrations, and other persons regulated by the Board for noncriminal violations of the Act, including potential violations referred to [BIE] by the Board or other person, 4 Pa.C.S. §1517(a.1)(3). Upon the receipt of information regarding potential violations, my Bureau opens a noncriminal investigation file and begins an investigation into the allegations.

…

> 4. Ms. DeBernardis specifically inquired whether BIE had any records responsive to [Item 2], only as to communications between the [Board] and the [BGE] regarding a February 22, 2024 letter included in the Request.[4]
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> 5. The records requested directly implicate an ongoing investigation by BIE. All information within our investigative files, including any correspondence, under the Act, are not permitted to be provided to any individual who requests them, except as permitted by Section 1517(f), pertaining to sharing with law enforcement within the Commonwealth; the Attorney General; and law enforcement in other jurisdictions, including the Federal Bureau of Investigations. The release of confidential information by any person constitutes a misdemeanor of the third degree and will also result in disciplinary action against the person disclosing that information. *See* 4 Pa.C.S. § 1206(f)(4), § 1206(f)(6).[5]
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> 6. At the time the February 22, 2024, letter was sent to Lloyd L[]evenson, I consulted with Cyrus Pitre, Chief Enforcement Counsel for the [Board]'s Office of Enforcement Counsel ("OEC"). I regularly consult with Mr. Pitre for guidance and legal advice throughout our investigations. Mr. Pitre makes the ultimate determination of whether to file any enforcement actions.
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> 7. As stated in the February 22, 2024, letter, BIE and OEC were not taking any action at that time in response to allegations made regarding Evolution.
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> 8. I advised Ms. DeBernardis on September 26, 2025, that the records sought are part of an ongoing investigation and confidential under the Act.

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 Board has acted in bad faith, "the averments in the [attestations] 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)).

[4] *See also* DeBernardis Attestation ¶ 8.
[5] *See also* DeBernardis Attestation ¶ 9.

The Act provides the BIE[6] with the power to "[i]nvestigate licensees, permittees, registrants and other persons regulated by the [B]oard for noncriminal violations of this part, including potential violations referred to the [BIE] by the [B]oard or other person." 4 Pa.C.S. §1517(a.1)(3).[7] Further, the OOR has previously found that the Board has legislatively granted investigative powers to conduct noncriminal investigations. *See Collazo v. Pa. Gaming Control Bd*., 2019 Pa. Commw. Unpub. LEXIS 688 (Pa. Commw. Ct. 2019); *see also Haverstick v. Pa. Gaming Control Bd*., OOR Dkt. AP 2022-2579, 2023 PA O.O.R.D. LEXIS 1731; *Kelly v. Pa. Gaming Control Bd*., OOR Dkt. AP 2023-2098, 2023 PA O.O.R.D. LEXIS 2575.

Section 708(b)(17)(vi)(A) sets forth an exception to the exemption, requiring that records documenting "the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization...or an executed settlement agreement..." be disclosed. *See* 65 P.S. § 67.708(b)(17)(vi)(A). The Board's evidence addresses the exception, namely noting that the Board was not taking "any action" and that the investigation is "ongoing." *See Hess v. Northampton County*, OOR Dkt. AP 2023-2980, 2024 PA O.O.R.D. LEXIS 93 (an agency is required to provide evidence that records do not contain the information listed in Section 708(b)(17)(vi)(A)); *see also* Mauro Attestation ¶¶ 7, 8.

The Board's authority to conduct noncriminal investigations is not disputed by the Requester, rather the Requester claims the Board has not conducted a noncriminal investigation. Here, the evidence clearly establishes that there is an ongoing noncriminal investigation that has produced records responsive to Item 2 of the Request, despite the Requester's assertion to the

[6] The BIE is legislatively created by the Board to perform investigations pursuant to the Act. *See* 4 Pa.C.S. § 1202(b)(17).

[7] While not noted by the Requester or the Board, Evolution is an online gaming entity that partners with at least 15 other online gaming entities, and has multiple brands. See https://www.evolution.com/who-we-are/ (last accessed by OOR on December 9, 2025).

contrary.[8] Moreover, on its face, Items 3 and 4 of the Request, as well as the information provided in the appeal filing by the Requester referring to an investigation repeatedly, indicate that Items 3 and 4 of the Request clearly seek investigative records from the Board. *See Pa. Game Comm'n v. Fennell*, 148 A.3d 101 (Pa. Commw. Ct. 2016) (explaining that the OOR must consider uncontradicted statements contained in the appeal as evidence); *Office of the Governor v. Davis,* 122 A.3d 1185 (Pa. Commw. Ct. 2015) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). Based on the evidence presented, the Board has demonstrated that it conducts noncriminal investigations as part of its legislatively granted authority. Thus, the OOR finds that the records responsive to Item 2, as well and any potential responsive records to Items 3 and 4, are facially exempt noncriminal investigative records pursuant to Section 708(b)(17) of the RTKL. *See* 65 P.S. § 67.708(a)(1).[9]

2. Item 1 is sufficiently specific

The Board argues that Item 1 of the Request is insufficiently specific as it lacks a subject matter that allows the Board to identify a transaction or activity of the Board, contains a broad scope and encompasses a lengthy timeframe. Section 703 of the RTKL states that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." 65 P.S. § 67.703. When determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

[8] The Requester asserts that there is no investigation being conducted by the Board. *See* Marino Affidavit ¶ 9.
[9] Because the Board has demonstrated that records responsive to Item 2 through 4 are exempt noncriminal investigative records, the OOR need not reach the Board'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.

First, "[t]he subject matter of the request must identify the 'transaction or activity' of the agency for which the record is sought." *Id.* at 1125 (quoting 65 P.S. § 67.102). Second, "[t]he scope of the request must identify 'a discrete group of documents, either by type … or by recipient.'" *Id.* (quoting *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)). Finally, "[t]he timeframe of the request should identify a finite period of time for which records are sought." *Id*. at 1126 (citing *Carey*, *supra*). "The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request's timeframe is narrow enough is generally dependent upon the specificity of the request's subject matter and scope." *Id.*

The above factors are intended "to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested…. The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements." *Pa. Dep't of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting "the valid part of the request was included in a laundry list of requested materials").

In support of the Board's position, the DeBernardis Attestation indicates, in relevant part, the following:

> 3. Upon review of [Item 1], I was unable to identify a discrete group of documents [the Requester] was seeking. [The Requester] seeks "any report" created by an entity named Spectrum Gaming Group, involving Evolution AB and/or any of their subsidiaries or affiliates collectively identified by [the Requester] as Evolution, without detailing any subject matter or business activity of [the Board] that these reports would relate to, or providing any time frame within which he seeks these records. I concluded that [Item 1] was insufficiently specific.

Here, when without the context of the remainder of the Request, Item 1 of the Request lacks a specific activity, category or transaction for which records are being sought and no timeframe. However, Items 2 through 4 contain a timeframe of November 11, 2021 through February 22, 2024. Further, Items 2 through 4 reference an investigation that occurred during that timeframe involving Evolution. Therefore, a timeframe can be implied when considering Item 1 in conjunction with the other Items of the Request. Further, it is evident that Item 1 does not seek just any report that could contain the name of the entities listed. Rather, Item 1 seeks, at a minimum, a report or reports authored by Spectrum Gaming Group and related to the subject matter referenced in Items 2 through 4. *See Greim v. Pa. State Police*, 329 A.3d 873 (Pa. Commw. Ct. 2025) (finding that it was error for the OOR to consider one Item of a request as having nothing to do with the remainder of the request); *see also Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) ("the specificity of a request must be construed in the request's context, rather than envisioning everything the request might conceivably encompass.").

As noted in *Greim*, "[a] request need only provide enough information to inform "an agency of the records requested." *Id.* at 882 (quoting *Iverson*, 50 A.3d at 284, n.4). Accordingly, Item 1 of the Request meets the specificity requirements of Section 703 of the RTKL because the Request, as a whole, provides sufficient context to enable a search for records. *See* 65 P.S. § 67.703.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Board is required to conduct a good faith search for records responsive to Item 1 of the Request, as set forth above. If no responsive records exist, the Board is required to provide the Requester with a statement under the penalty of perjury or a sworn statement affirming the nonexistence of

responsive records. 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 Commonwealth Court. 65 P.S. § 67.1301(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.[10] 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: December 15, 2025

/s/ Bandy L. Jarosz

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BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent via portal only to: Kevin Marino, Esq.; Denise Miller-Tshudy, Esq.

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