



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>SUSAN LLOYD,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP 2026-1299</b>
	:	
<b>PENNSYLVANIA DEPARTMENT</b>	:	
<b>OF AGRICULTURE,</b>	:	
<b>Respondent</b>	:	

**FACTUAL BACKGROUND**

On March 24 and 25, 2026, Susan Lloyd (“Requester”) filed three requests (collectively “Requests”) with the Pennsylvania Department of Agriculture (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[Request 1]<sup>1</sup>

[C]omplaint filed by [the Requester] with all documents in the file related to all of the following case id numbers. Include any decisions made, actions taken, etc[.] - all documents

655 / 656 / 657 / 196 / 261 / 314 / 315 / 572 / 598 / 613 / 619 / 625 / 626 / 627 / 628 / 629 / 630 / 633 / 634 / 639 / 642 / 646<sup>2</sup>

<sup>1</sup> Department assigned: Request No. 260336.

<sup>2</sup> The case id numbers format was modified for space purposes in this Final Determination.

[Request 2]<sup>3</sup>

[C]omplaint filed by [the Requester] along with all documents in the file related to all of the following case id numbers. Include any decisions made, actions taken, ect[.] - all documents

[655-666]

[Request 3]<sup>4</sup>

I made complaint against tomlinson bomberger id 667. [I] want all records related to that complaint including copy of complaint [I] submitted, decision made, fines given, etc[.] - all documents<sup>5</sup>

On March 31, 2026, the Department denied the Requests, arguing that responsive records are not subject to public disclosure under the RTKL because the records are noncriminal investigative records. *See* 65 P.S. § 67.708(b)(17).

On March 31, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating that the Department has previously provided records but only stopped producing the responsive records due to separate, pending litigation.

The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On April 13, 2026, the Department submitted a position statement and an attestation made under the penalty of unsworn falsification to authorities<sup>6</sup> from Barbara K. Buckingham (“Buckingham Attestation”),<sup>7</sup> the Department’s Open Records Officer (“AORO”), asserting that the Requester did not adequately state grounds relied upon for the appeal, and reiterated its denial

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<sup>3</sup> Department assigned: Request No. 260337.

<sup>4</sup> Department assigned: Request No. 260342.

<sup>5</sup> The Request language was taken from the Department’s final responses, the Requester did not submit the Requests to the record.

<sup>6</sup> 18 Pa.C.S.A. § 4904.

<sup>7</sup> Under the RTKL, a sworn affidavit 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).

that the responsive records are exempt from disclosure under the RTKL as noncriminal investigatory records.<sup>8</sup> See 65 P.S. § 67.708 (b)(17); 65 P.S. § 67.1101(c).

On the same date, the Requester submitted a position statement reiterating grounds for disclosure and a copy of a federal civil pleading that involved the parties to this instant appeal.<sup>9</sup>

### LEGAL ANALYSIS

The Department 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 Department 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 factfinder ... 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 appeal is sufficient under Section 1101(a)(1).**

Preliminary, the Department argues that the appeal failed to comply with Section 1101(a)(1) of the RTKL because the “appeal neither stated the grounds upon which [the Requester] asserted that the records were public records nor addressed any grounds stated by [Department] for denying the [R]equest[s]. See 65 P.S. § 67.1101(a)(1).

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<sup>8</sup> The Department also asserts that filing three Requests into one appeal filing instead of filing three separate appeals is in contravention to 65 P.S. § 67.1101. There is no such requirement, and it is related to the OOR’s authority to consolidate appeal matters. 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”).

<sup>9</sup> The Requester’s federal pleading contains a docket number, 26-01058, but the pleading itself does not appear to be filed with the Federal Eastern District Court of Pennsylvania.

Section 1101(a)(1) of the RTKL requires requesters to “state the grounds upon which the requester asserts that the record is a public record...and...address any grounds stated by the agency for...denying the request.” 65 P.S. § 67.1101(a)(1). A general statement “that the records are public records that ‘do not qualify for any exemptions under [S]ection 708, are not protected by privilege, and are not exempted under any Federal or State law or regulation,’ is sufficient” to satisfy the requirements of Section 1101(a)(1). *See Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (“[I]t is appropriate and, indeed, statutorily required that a requester specify in its appeal to Open Records the particular defects in an agency’s stated reasons for denying a RTKL request”). Pursuant to this section, the Commonwealth Court has held that a requester must “state why the records [do] not fall under the asserted exemptions and, thus, [are] public records subject to access.” *See Saunders v. Pa. Dep’t of Corr.*, 48 A.3d 540, 543 (Pa. Commw. Ct. 2012).

In this instance, the Requester utilized OOR’s standard appeal form when submitting this instant appeal. The appeal form states: “By submitting this appeal, I am appealing the Agency’s denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.” The OOR has consistently found that this statement is sufficient to satisfy a requester’s burden under Section 1101(a) of the RTKL. 65 P.S. § 67.1101(a)(1); *see Barnett v. Pa. Dep’t of Pub. Welfare*, 71 A.3d 399 (Pa. Commw. Ct. 2013); *Feighery v. Pa. Dep’t of Corr.*, OOR Dkt. AP 2024-1278, 2024 PA O.O.R.D. LEXIS 1424. Additionally, the Requester asserts that the Department previously provided responsive records upon request, prior to pending separate litigation, and those requests for records

were not denied. The Requester has sufficiently challenged the Department's denial of the Requests to warrant consideration of the merits of the appeal. *See* 65 P.S. § 67.1101(a)(1).

**2. The Department demonstrated that responsive records are noncriminal investigative records and not subject to disclosure.**

The Department argues that responsive records are exempt noncriminal investigative records and cannot be disclosed under Section 708(b)(17) of the RTKL. *See* 65 P.S. § 67.708(b)(17). Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “complaints,” “[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), (vi)(A). In order for the noncriminal 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.

Additionally, the OOR has repeatedly held that agencies have the authority to conduct noncriminal investigations involving the conduct of its employees and officials. *See Coyne v. Pa. Dep’t of State*, OOR Dkt. AP 2023-0449, 2023 PA O.O.R.D. LEXIS 672 (the OOR determined the Department conducts noncriminal investigations pursuant to its regulatory function); *Anderson*

*v. Perry County*, OOR Dkt. AP 2019-0054, 2019 PA O.O.R.D. LEXIS 259 (holding that the agency had the authority to conduct a noncriminal investigation into the misappropriation of funds); *Needelman v. Spring-Ford Area Sch. Dist.*, OOR Dkt. AP 2018-1814, 2018 PA O.O.R.D. LEXIS 1526 (holding that the agency had the authority to conduct a noncriminal investigation into the conduct of a teacher); *Gallagher v. Scranton School Dist.*, OOR Dkt. AP 2021-2861, 2022 PA O.O.R.D. LEXIS 440; *Daly v. Pa. Dep't. of State*, 2025 PA O.O.R.D. LEXIS 2608, \*2-3, 2025 PA O.O.R.D. LEXIS 2608; *Sass v. Pa. Dep't of State*, OOR Dkt. AP 2024-0469, 2024 PA O.O.R.D. LEXIS 688.

Here, the Buckingham Attestation is authored by the Department's AORO, who is familiar with the Department's records, and conducted the search for the requested records. *See* Buckingham Attestation, ¶¶ 4-5. As a part of the search, the AORO communicated and coordinated with staff within the Department's Bureau of Plant Industry ("BPI"). *Id.* at 5. The Department provided the Buckingham Attestation, which provides in part:

5. Upon receipt of the initial above-captioned [R]equests, I conducted a thorough examination of files in the possession, custody and control of the Department for records responsive to th[e] [R]equest[s]. This search entailed coordinating with staff within the Department's Bureau of Plant Industry ("BPI"). BPI protects the state's plant resources, agricultural economy, and consumers by detecting and controlling destructive pests, managing invasive species, and regulating the sale of seeds, feed, fertilizers, liming materials, and pesticides. They also license nurseries and greenhouses and oversee the state's bee law.

*See* Buckingham Attestation, ¶ 5.

The Department claims that "the records at issue are related to investigations resulting from numerous complaints submitted by [the Requester], including internal documentation, and materials reflecting how the matter was handled." Department position statement, pg. 4, ¶ 4. The records relate to investigations that were conducted in response to complaints filed by the Requester with the Department's BPI. *See* Department position statement, pg. 3, ¶ 1. Each

complaint was assigned an identification number, an investigation of each complaint was conducted by the Department staff, the investigators did not find any violation of the law or regulations by the entity being investigated, and no fines, penalties or license actions were imposed as a result of the investigations. *See Id.* The Department's position is that because the investigations did not result in the imposition of a fine, penalty, license suspension, or settlement, the records are exempt in their entirety. *See* Department position statement, pg. 4, ¶ 4. Furthermore, the Requests expressly seek complaints and the records related to the resulting investigations based on the filing of those complaints. *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).

While the Requester argues that responsive records were previously provided upon request, the OOR recognizes that an agency has discretion to release records it may not otherwise disclose. *See* 65 P.S. § 67.506(c) (stating that an agency “may exercise its discretion to make an otherwise exempt record accessible . . .”). Section 506 of the RTKL generally affords agencies discretion to release otherwise nonpublic records, that decision is solely within the discretion of the agency and is not subject to the OOR's legal review. *See* 65 P.S. § 67.506(c). The Commonwealth Court has held that “[a]lthough Section 506(c) grants an agency the discretion to release an otherwise exempt record under certain circumstances, it does not require an agency to do so.” *Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 815 (Pa. Commw. Ct. 2010). Moreover, Section 506(c) leaves the discretion to release records solely to the agency head, and the RTKL does not provide the OOR with the authority to analyze whether the agency should have exercised this discretion in favor of disclosure. *See Nereim v. Pa. Dep't of Public Welfare*, OOR Dkt. AP 2011-

0187, 2011 PA O.O.R.D. LEXIS 639. Accordingly, the Department has met its burden of proof that the responsive records relate to noncriminal investigations conducted by the Department and, the Department can withhold such records because they are not subject to public disclosure under the RTKL.<sup>10</sup> See 65 P.S. § 67.708(b)(17); *Mahoney v. Dep't of Agriculture*, OOR Dkt. AP 2024-2609, 2024 PA O.O.R.D. LEXIS 2599.

### CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Department 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 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. 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.<sup>11</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED: April 24, 2026**

*/s/ Damian J. DeStefano*

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DAMIAN J. DESTEFANO  
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Susan Lloyd; Barbara Buckingham, AORO

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<sup>10</sup> The Requester's claims that pending litigation between the parties is what contributed to the Department denying the Requests. It is well settled that the existence of litigation outside of the RTKL process has no bearing on whether a request may be submitted under the RTKL. See *Office of the District Attorney of Phila. v. Bagwell*, 155 A.3d 1119, 1139 (Pa. Commw. Ct. 2017); *Chester Community Charter School v. Hardy*, 38 A.3d 1079, 1089 (Pa. Commw. Ct. 2012); *City of Allentown v. Brenan*, 52 A.3d 451 (Pa. Commw. Ct. 2012). In the instant matter, there has been no evidence to suggest that the existence of any litigation in which the requested records may be implicated is relevant to a determination of whether the records are accessible under the RTKL.

<sup>11</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).