



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

**IN THE MATTER OF**

**MICHELLE GRANT,  
Requester**

**v.**

**COLWYN BOROUGH,  
Respondent**

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**Docket No: AP 2026-0686**

**FACTUAL BACKGROUND**

On February 4, 2026, Michelle Grant (“Requester”) submitted a request (“Request”) with Colwyn Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, statin:

I am writing to follow up on my prior [RTKL] request concerning records related to police involvement in connection with the tow yard incident documented in [Borough] Police Operations Report Case No. 25-002902, dated October 21, 2025.

I understand that the prior [RTKL] Officer is no longer employed by the Borough and that you are now the appropriate point of contact.

For purposes of completing the record associated with Incident Report No. 25-002902, I respectfully request confirmation of the following, limited solely to records currently in the possession, custody, or control of the Borough:

1. Body-Worn Camera Records (October 21, 2025)
  - The body-worn camera retention policy in effect at the time of the incident, and

- The date on which any body-worn camera footage associated with Incident Report No. 25-002902 was deleted pursuant to that policy.

## 2. Additional Records Reflecting Police Presence or Involvement

- Whether any records exist, beyond those already produced, reflecting police presence or involvement at Advanced Financial Services or any tow and/or storage facility on October 21, 2025, including but not limited to:
  - CAD or dispatch entries
  - Officer activity or duty logs
  - Incident or investigative reports
  - Inter-agency communications
  - Any other records documenting police response, attendance, or involvement related to the above-referenced incident.

If no responsive records exist beyond those already produced in connection with Incident Report No. 25-002902, I respectfully request written confirmation that no additional records are maintained by the Borough.

This request does not seek the creation of any new records, statements, or explanations and is limited to existing records and confirmations permitted under the Pennsylvania Right-to-Know Law.

As the Requester did not receive the Borough's response within five business days of the Request, the Requester filed an appeal with the Office of Open Records ("OOR") on February 20, 2026, claiming that the Request was deemed denied. *See* 65 P.S. § 67.901.<sup>1</sup>

The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

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<sup>1</sup> The Requester granted the OOR a 30-day 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 April 30, 2026, the Borough submitted email correspondence between the parties prior to the appeal being filed, the Requester's appeal form, and a responsive police incident report.<sup>2</sup> The Requester did not make a submission during the appeal.

### LEGAL ANALYSIS

The Borough is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local 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 Borough 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)).

#### **1. The OOR does not have jurisdiction over audio / video recordings of a law enforcement agency.**

The Request seeks body camera records created by the Borough's Police Department. The RTKL does not apply to audio and video recordings made by a law enforcement agency; rather, there is a separate procedure governing access to these records. *See* 42 Pa.C.S. §§ 67A03-67A05. Further, any appeals are to be filed "in the court of common pleas with jurisdiction." 42 Pa.C.S. § 67A06. Therefore, the OOR does not have jurisdiction over the appeal of these records and the appeal should be made to the relevant court of common pleas.

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<sup>2</sup> The Borough's April 30, 2026, submissions were received after the record closed, however, to develop the record, the submissions were considered. *See* 65 P.S. § 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"). The OOR notes that the Borough's submissions are records that are already part of the record.

**2. The Borough must provide the remaining responsive records to the Requester.**

In this matter, the Borough did not comply with the RTKL by timely responding to the Request, nor did the Borough submit legal argument or evidence in support of withholding any records. Local agencies have the burden of proving that records are exempt from access. 65 P.S. § 67.708(a)(1). Based on the Borough's failure to comply with the statutory requirements of the RTKL or provide any evidentiary basis in support of an exemption under the RTKL, the Borough did not meet its burden of proof under the RTKL. Nevertheless, the OOR is mindful that an agency cannot be required to produce records that do not exist. 65 P.S. § 67.705. If the Borough searches for the requested records and determines that no records exist, it must provide the Requester with an attestation explaining the search and affirming that no responsive records exist within its possession, custody or control.

**CONCLUSION**

For the foregoing reasons, the appeal is **granted in part** and **dismissed for lack of jurisdiction in part** and the Borough is required to conduct a good faith search for responsive records and provide all records responsive to the Request, as outlined above, to the Requester within thirty days, or, in the alternative, a sworn affidavit or a statement made under the penalty of perjury documenting its search for responsive records and affirming that responsive records do not exist. 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 Delaware County Court of Common Pleas. 65 P.S. § 67.1302(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>2</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: May 1, 2026**

*/s/ Damian J. DeStefano*

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DAMIAN J. DESTEFANO  
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Michelle Grant;  
Christine Mason, AORO

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<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).