



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**VICTOR PEREZ,
Requester**

v.

**READING PARKING AUTHORITY,
Respondent**

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Docket No: AP 2026-1340

FACTUAL BACKGROUND

On February 25, 2026, Victor Perez (“Requester”) filed a request (“Request”) with the Reading Parking Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the following:

1. Any policies, procedures, ordinances, resolutions, or written directives authorizing the towing or impoundment of vehicles for parking violations.
2. Any agreements or contracts between the Reading Parking Authority and towing or impoundment service providers in effect from January 1, 2018, to present.
3. Any written criteria, thresholds, or guidelines governing when a vehicle may be booted, towed, or impounded.
4. Records identifying the authority responsible for approving or ordering vehicle impoundments. If no responsive records exist, please provide a written statement to that effect.

On April 1, 2026, after invoking a thirty-day extension to respond, *see* 65 P.S. § 67.902(b), the Authority denied the Request, arguing that Items 1, 3 and 4 are misdirected and no records exist that are responsive to Item 2.

On April 3, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Authority to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 7, 2026, the Requester filed three submissions, which, among other things, argue that the Authority has repeatedly invoked extensions to respond to his requests and then denied them on threshold issues or provided only conclusory evidence. The Requester also argues that the Authority has acted in bad faith.

On April 16, 2026, the Authority submitted a statement made under the penalties of unsworn falsification to authorities by Mahlon J. Boyer, Esq. (“Boyer Attestation”), the Authority’s Open Records Officer (“AORO”).

On April 17, 2026, the Requester filed another submission, arguing that the Authority has not provided evidence that Items 1, 3 and 4 were misdirected or that it conducted a good faith search for responsive records. The Requester argues that if the Authority relies on the City’s towing contract, then records reflecting that reliance may still exist within the Authority’s possession or control.

LEGAL ANALYSIS

Local agencies are 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

¹ The Requester argues that the Request was denied as duplicative and burdensome but later acknowledged that this was a misstatement.

by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Authority 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 Authority has not proven that Items 1, 3 and 4 are misdirected and has not proven that no records exist

The Authority argues that Items 1, 3 and 4 are misdirected, as they are based on City of Reading ordinances and should be directed to the City. However, as the Requester points out, the Request did not seek only ordinances. While it is possible that all responsive “policies, procedures, resolutions, written directives, criteria, thresholds, or guidelines and records identifying the authority responsible for approving or ordering vehicle impoundments” may indeed be *based* on City ordinances, the Authority provides no evidence that all responsive records must be records of the City, nor has it presented evidence that it performed a good-faith search for responsive records. *See* 65 P.S. § 67.901; *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020) (describing an agency’s obligation to conduct a good faith search).

“The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). As the Authority has produced no evidence, the OOR cannot conclude that it has met its burden of proof. *See id.*

2. The Authority has proven that no records responsive to Item 2 exist

The Authority argues that no records responsive to Item 2 exist. Attorney Boyer affirms that the Authority relies on a towing contract between the City of Reading and a towing contractor and does not have a direct agreement with any towing contractor. Boyer Attestation, ¶ 4.

On appeal, the Requester asks for records concerning the Authority's use of the City towing contract. However, the Request sought "agreements or contracts between the [] Authority and towing or impoundment service providers," and a requester may not modify or expand upon a request on appeal. *See McKelvey v. Off. of the Att'y Gen.*, 172 A.3d 122, 127 (Pa. Commw. Ct. 2017); *Smith Butz, LLC v. Pa. Dep't of Env't Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016). Therefore, the OOR's review on appeal is confined to the Request as originally written, and any modification or explanation of the Request on appeal will not be considered.

As the Authority has produced evidence that it does not have a towing contract, it has met its burden of proof. *See also Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (finding that in the absence of countervailing evidence establishing that the agency acted in bad faith or that the agency records exist, averments of nonexistence should be accepted as true.); *Campbell v. Pa. Interscholastic Athletic Ass'n*, 268 A.3d 502 (Pa. Commw. Ct. 2021), *appeal granted in part*, 280 A.3d 870, *aff'd*, No. 71 MAP 2022, No. 72 MAP 2022, 2024 Pa. LEXIS 1087 (Feb. 21, 2024) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, which is tantamount to a "more likely than not" inquiry).

3. The Authority has not acted in bad faith

The Requester asks the OOR to make a finding of bad faith. While the OOR may make findings of bad faith, only the courts have the authority to impose sanctions on agencies. *See*

generally 65 P.S. § 67.1304(a) (noting that a court “may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived the requester of access to a public record ... or otherwise acted in bad faith....”); 65 P.S. § 67.1305(a) (“A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith”); *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1172 (Pa. Commw. Ct. 2018), *aff’d*, 243 A.3d 19 (Pa. 2020); *see also Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119, 1140-41 (Pa. Commw. Ct. 2017). Bad faith involves failing to perform a detailed search and review of records to ascertain if the requested material exists or if any exclusion applies prior to denial of access. *See Uniontown*, 185 A.3d at 1172. The OOR has made a finding of bad faith where an agency fails to provide evidence that it conducted a good faith search, repeatedly ignored deadlines set by the OOR and by the RTKL, and declined to address the OOR’s requests for clarification. *See Towne v. Pittsburgh Water and Sewer Auth.*, OOR Dkt. AP 202s1-0292, 2021 PA O.O.R.D. LEXIS 307. The OOR has also found that an agency acted in bad faith where it demonstrated a pattern of invoking extensions but failing to respond to requests or participate in the appeals. *See Hayden v. City of Reading*, OOR Dkt. AP 2018-0244, 2018 PA O.O.R.D. LEXIS 402. Here, while the City has not submitted evidence of a good faith search for records responsive to three of the four Items of the appeal, it did respond to the Request, did not search for responsive records based on its interpretation of the Request and has participated on appeal. Therefore, the record does not support a finding of bad faith.

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted in part** and **denied in part**, and the Authority is required to perform a good faith search for records responsive to Items 1, 3 and 4 and provide all records that are discovered within thirty days. If no records are discovered,

the Authority shall provide a statement made under the penalties of perjury or a sworn affidavit 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 Berks 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, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.² 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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: May 11, 2026

/s/ Blake Eilers
Blake Eilers, Esq.
Senior Appeals Officer

Delivered via OOR E-file Appeal Portal to: Victor Perez; Mahlon J. Boyer, Esq.

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