



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

<b>IN THE MATTER OF</b>	:
	:
<b>JENNY MILLER,</b>	:
<b>Requester</b>	:
	:
<b>v.</b>	:
	:
<b>CITY OF MONONGAHELA,</b>	:
<b>Respondent</b>	:
	:
	:

**Docket No: AP 2026-1389**  
**(Consolidated with OOR Dkt. No.**  
**AP 2026-1390)**

### FACTUAL BACKGROUND

On March 24, 2026, Jenny Miller (“Requester”) submitted two requests (collectively, the “Requests”) to the City of Monongahela (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. [R]ecords pertaining to an appointed position employee of [the City]
  - a. Director of Communications – (Dorothea Pemberton)
  - b. Date position was advertised in local newspaper(s) \*who held this position prior
  - c. Job description
  - d. Educational qualification for such position
  - e. Educational credentials of individual to deem him/her “qualified” for said position
  - f. Number of individuals interviewed for position
  - g. Salary/hr. Wage – Healthcare Benefits – Amount the [C]ity pays into it

Time frame of requested documents to reflect Date of Hire to present.

2. ...[R]ecords in the matter of [the City] TAN loan obtained in December 2025 for a deficit.
  - a. Complete breakdown of ALL allocation of funds needed from December 2025 CFS Bank TAN loan... [i]ncluding but not limited to such “Professional Services” noted at the 1-14-26 council meeting

Time frame of requested documents to reflect the need for tax increase, and or when the deficit began. January 1, 2020 – January 1, 2026

Having received no response to the Requests within five business days, the Requester filed two separate appeals with the Office of Open Records (“OOR”) on April 7, 2026, alleging that the Requests were deemed denied. *See* 65 P.S. § 67.901.<sup>1</sup> The OOR invited both parties to supplement the record and directed the City to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On April 17, 2026, the City submitted unsworn position statements, arguing that the Requests are insufficiently specific to enable the City to adequately respond, *see* 65 P.S. § 67.703, and that the Requests ask questions and would require the City to create records which did not exist at the time the Requests were filed. The Requester did not submit any additional legal argument or evidence during the appeal.

### LEGAL ANALYSIS

The City 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 City is required to demonstrate, “by a preponderance of the evidence,”

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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).”). Additionally, because the appeals, which were docketed at OOR Dkts. AP 2026-1389 and AP 2026-1390, involve the same parties and similar issues, they are hereby consolidated into the appeal docketed at OOR Dkt. AP 2026-1389.

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)).

As a preliminary matter, the City claims that parts of the Requests demand answers to questions rather than seeking specified records. A RTKL request must seek records, rather than answers to questions. *See* 65 P.S. § 67.703; *Walker v. Pa. Ins. Dep’t*, No. 1485 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 425 at \*16 (Pa. Commw. Ct. 2012) (“The RTKL is not a forum for the public to demand answers to specifically posed questions to either a Commonwealth or local agency. In fact, there is no provision in the RTKL that requires an agency to respond to questions posed in a request.”). In this case, the Requests expressly seek records reflecting pieces of information regarding a certain position with the City, as well as financial records regarding a specified loan. *See generally* 65 P.S. § 67.102 (defining “record” as including “information, regardless of physical form or characteristics...”). Therefore, the Requests seek records under the RTKL.

Notably, however, in its position statement, the City acknowledges that portions of Request 1 seek valid records and the City agreed “to provide those records that were in possession at the time of the Request.” While the City argues that the appeal concerning those records (Request 1, items c and g) should be dismissed as moot, there has been no evidence submitted to confirm that the records have, in fact, been provided to the Requester. As such, the appeal must be granted as to “[t]he job description for the Director of Communications position; [b]udget documents

showing the salary/wage for this position; and [b]udget documents showing the healthcare benefits for this position.”

The City also argues that the Requests are insufficiently specific to enable the City to adequately respond. 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 multifactor test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

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).

Based upon the above multifactor test, Request 1 is sufficiently specific. The only items of Request 1 at issue are “records pertaining to” the City’s Director of Communications, identified

as Dorothea Pemberton, including the “date the position was advertised in local newspaper(s),” “who held this position prior,” “[e]ducational qualifications for such position,” “[e]ducational credentials or individual to deem him/her ‘qualified’ for said position,” and the “[n]umber of individuals interviewed for [the] position.” While Request 1 does not identify a specific type of record which may contain the information sought Items b, d, e and f, the subject matter and timeframe of Request 1 are clearly defined (i.e., the Director of Communications position and from the date of Dorothea Pemberton’s hiring to present), that the City should have had the knowledge to reasonably search for responsive records.

With respect to Request 2, the Request sought records regarding a specific TAN loan obtained in December 2025. More specifically, Request 2 sought the “breakdown of ALL allocation of funds needed for” the loan, [i]ncluding but not limited to such “Professional Services” noted at the 1-14-26 council meeting.” Like Request 1 above, the subject matter is defined—the identified TAN loan from December 2025, particularly as the records relate to “Professional Services” discussed at a City council meeting. Although the timeframe listed in Request 2 seeks records from January 1, 2020 through January 1, 2026, the context of the remainder of the Request, as well as the subject matter, sufficiently limit the scope of Request 2 to enable a search for responsive records to be performed. However, insofar as the Requester seeks records reflecting allocated funds other than “Professional Services,” as discussed at the identified City council meeting, that portion of Request 2 is insufficiently specific.<sup>2</sup>

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<sup>2</sup> The City has not raised any grounds for withholding responsive records; therefore, it has not met its burden of proving that the requested records, insofar as they exist, are exempt from disclosure under the RTKL. See 65 P.S. § 67.708(a)(1).

## CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and, within thirty days, the City is required to conduct a search for records responsive to the Requests, as explained above, and to provide the responsive records located during the search to the Requester. In the event the City's search does not identify the requested records, the City must provide the Requester with a sworn affidavit or statement made under the penalty of perjury describing its search for records and explaining that no such records were located. 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 Washington 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 65 P.S. § 67.1303, but 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>3</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 AND MAILED: 19 May 2026**

*/s/ Joshua T. Young*

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JOSHUA T. YOUNG, ESQ.  
SENIOR DEPUTY CHIEF COUNSEL

Sent via OOR e-file portal to: Jenny Miller; James P. McGraw, III, Esq.

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