

On April 24, 2026, the Requester appealed to 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 Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On May 6, 2026, the Department submitted a position statement reiterating its grounds for denial. The Department claims that the Request lacks specificity under Section 703 of the RTKL, seeks answers to questions rather than records, and that responsive records do not exist in the Department’s possession, custody or control. Requester also submitted a position statement on that same date, asking for a sworn affidavit or verification detailing the search taken to locate responsive records.

On May 7, 2026, OOR directed the Department to provide an attestation or sworn affidavit in support of its factual assertions. On May 12, 2026, the Department submitted the attestation of Chief Kevin Harris (“Harris Attestation”) in support of its argument. On that same date, Requester submitted a response to the Harris Attestation, finding it inadequate and noting its late submission.²

LEGAL ANALYSIS

The Department 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

¹ Requester acknowledges that the portion of her Request that sought invoices and payments from the City of Monongahela (“City”) to Lenzi Service Garage should have been requested directly to the City rather than the Department and has subsequently made a request for those records directly to the City. Requester states, “You will see my request also sought any invoices and payments paid from the [City] to Lenzi’s Service Station and/or Lenzi Towing from November 1, 2024 through April 14, 2026 – But I have since sent a separate request to [the City] to obtain the information in a RTK directly to them regarding this matter, after I got this denial.” *See* April 24, 2026 Requester Appeal Statement. As such, we consider this issue as waived on appeal and will not address it in this Final Determination.

² The OOR provided the Department until May 11, 2026 to provide an attestation or sworn affidavit to support its factual assertions; the Department submitted the Harris Attestation a day late, on May 12, 2026. Despite the late submission, the Harris Attestation was accepted into the record for its probative value. *See* 65 P.S. § 67.1102(a)(2) (stating that “[t]he appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute”).

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 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 Request is sufficiently specific

The Department asserts that the Request lacks sufficient specificity. 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 insufficiently 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). 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”).

The Department asserts in its position statement that the Request is insufficiently specific because it asks for “records sufficient to show” when the Department uses towing companies, rather than identifying specific types of documents.³ However, a continued reading of the Request provides that the scope of the records requested is limited to specific types of documents, including response logs, dispatch logs, tow logs, tow sheets, and/or administrative records. Furthermore, Requester seeks a specific timeframe consisting of records generated between November 1, 2024 through April 13, 2026. The Request also states a subject matter that identifies a specific activity of the Department, namely, when the Department requests, dispatches, or contacts a towing company and/or tow truck. Therefore, the Request is sufficiently specific to satisfy Section 703 of the RTKL. 65 P.S. § 67.703.

³ The Department also argues that the Request improperly seeks answers to questions; however, this argument is meritless as the Request clearly seeks records. *See* 65 P.S. § 67.102 (defining “Record” as “[i]nformation, regardless of physical form or characteristics...”).

2. The Township failed to prove records do not exist in their possession custody or control

The Department asserts that no responsive records exist in their possession, custody or control. In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the identified record[.]” 65 P.S. § 67.901.

While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v.*

Pa. Dep’t of Corr., the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining all potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020).

An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency’s records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep’t of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Chief Harris attests the following:

[a] sheet, list, log, spreadsheet or other document that summarizes the requested information does not exist. The Police Department does not make payments to Lenzi’s Service Station or Lenzi’s Towing, therefore, the records requested do not exist.

Chief Harris would have personal knowledge of the records kept by the Department and has established that the Department does not keep records that summarize its contact with towing

companies, such as the monthly summaries are spreadsheets requested.⁴ However, Chief Harris does not address responsive records that would “show each instance” in which a towing company was “requested, dispatched or contacted” by the Department. *See* Request. Requester sought individual records of the instances in which the Department contacted a towing company, not just summaries. Accordingly, the Department has not shown that it conducted a good faith search, nor has the Department met its burden of proof to demonstrate that responsive records seeking specific instances of a tow truck or tow company being requested, dispatched or contacted do not exist in their possession, custody, or control. *See Uniontown Newspapers, Inc.*, 185 A.3d at 1171-72.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required conduct a good faith search for time response logs, dispatch logs, tow logs, tow sheets or other administrative records that identify specific instances the Department requested a tow truck and/or tow company between November 1, 2024 through April 13, 2026 within thirty days. If no records are located as a result of its search, the Department shall provide an attestation or affidavit to the Requester confirming same. 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 according to court rules as per 65 P.S. § 67.1303, but as the quasi-judicial tribunal adjudicating

⁴ 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 Department has acted in bad faith or that additional responsive records exist, “the averments in [the attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. 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)).

this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁵ 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: May 22, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Debbie Behanna
 Kevin Harris
 James P. McGraw, Esq.

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