



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
JOHN LECA AND RETIRED LEO,	:
Requester	:
	:
v.	:
	:
	:
CITY OF PHILADELPHIA	:
POLICE DEPARTMENT,	:
Respondent	:

Docket No: AP 2026-1727

FACTUAL BACKGROUND

On April 27, 2026, John Leca and Retired LEO (collectively “Requester”) submitted a request (“Request”) to the City of Philadelphia Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[1.] A[ll] investigative materials, interviews, conclusions, emails and notes including handwritten and any and all electronic communications and recordings that were obtained, used or considered along with all information related to contacts with any and all local, state or federal agencies and the results related to any contacts. This is specifically in regard to complaint 26-0013-I.

[2.] Between the years 1994 to 1996 what Philadelphia Police were certified to perform polygraph examinations and only their badge numbers and rank?

[3.] Between the years 1994 to 1996 who was the “certifying agency” of those? As an example the “APA” was a certifying entity.

Advise if you need a separate request for this.

On April 29, 2026, the Department denied the Request, arguing that responsive records sought for Part 1 of the Request are exempt from disclosure as part of criminal 65 P.S. § 67.708(b)(16), and noncriminal, 65 P.S. § 67.708(b)(17), investigative records and pursuant to the Pennsylvania Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101 *et seq.* The Department also asserted that Part 1 is also insufficiently specific by the use of the term “Complaint 26-0013I” and the Department cannot interpret a meaning of the terminology used. Additionally, the Department denied Parts 2 and 3 of the Request and asserts that responsive records do not exist because the records are past its record retention schedule of twenty years. *See* 65 P.S. § 67.504.

On April 29, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.

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 11, 2026, the Department sought a brief extension to make submissions which was granted. On May 13, 2026, the Department submitted a position statement and attestation made under the penalty of unsworn falsification to authorities¹ from Lieutenant (“Lt.”) Barry Jacobs (“Jacobs Attestation”),² the Department’s Open Records Officer (“AORO”), reiterating its grounds for denial.³

¹ 18 Pa.C.S.A. § 4904.

² 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)).

³ The Department abandoned the criminal investigative records exemption under the RTKL and that the responsive records are exempt under CHRIA. *See* 65 P.S. § 67.708(b)(16); 18 Pa.C.S. §§ 9101 *et seq.*

On May 13, 2026, the Requester submitted a position statement asserting that the Request is sufficiently specific, clarifying the information sought in the Request, and the asserts that the Department’s reference to an Internal Affairs investigation does not establish any exemption under § 708 of the RTKL. *See* 65 P.S. § 67.708 *et seq.*

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 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 Department showed that responsive records sought in Part 1 of the Request are part of a noncriminal investigation.

On appeal, the Department argues that the reference to “complaint 26-0013-I” references records that are part of an Internal Affairs Bureau Investigation (“IAB”), a noncriminal investigation, and the records are exempt from disclosure under the RTKL.⁴ *See* 65 P.S. § 67.708(b)(17). Section 708(b)(17) of the RTKL exempts from disclosure records of an agency

⁴ “The Department initially denied part of the [R]equest as insufficiently specific because it merely provided a complaint number with no additional information or details. During the pendency of this appeal, the Department has come to believe the [R]equest is for an IAB investigation file. [...], [T]he naming convention looks like the naming convention used by the IAB to categorize Complaints Against Police (“CAPs”). [...] [T]he Department has come to believe the requested investigative materials related to an agency investigation related to a complaint against a police officer. While there is no complaint 26-0013-I, there is a pending complaint associated with 26-0013.” Jacobs Attestation, ¶¶ 6-10.

“relating to a noncriminal investigation,” including “[c]omplaints submitted to an agency” and “[i]nvestigative materials, notes, correspondence and reports.” 65 P.S. §§ 67.708(b)(17)(i), (ii). In order for this 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 non-criminal 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).

Additionally, the OOR has previously found that police misconduct complaints and related records, similar to those requested in this case, are exempt from public access under the RTKL. *See Green v. Phila. Police Dep’t*, OOR Dkt. AP 2023 1061, 2023 PA O.O.R.D. LEXIS 1250 (finding the portion of the request seeking misconduct allegations pertaining to six detectives sought records that were facially exempt noncriminal investigative records); *Byrd v. Phila. Police Dep’t*, OOR Dkt. AP 2019-2529, 2020 PA O.O.R.D. LEXIS 86 (finding Internal Affairs Division officer complaint records exempt under Section 708(b)(17) of the RTKL); *Revell v. Phila. Police Dep’t*, OOR Dkt. AP 2019-1997, 2019 PA O.O.R.D. LEXIS 1675 (police misconduct complaints found exempt under Section 708(b)(17) of the RTKL); *Rouse v. Phila. Police Dep’t*, OOR Dkt. AP 2019-1897, 2019 PA O.O.R.D. LEXIS 1602 (finding police misconduct complaints and information regarding whether IAB investigated those allegations exempt under the RTKL’s Section 708(b)(17)).

In this appeal, the Department, in support of its position, submitted the Jacobs Attestation that affirms that the Department is responsible for supervising and disciplining employees of the Department and is charged with investigating allegations of potential misconduct of Department employees. *See* Jacobs Attestation, ¶ 4. The Department’s authority for maintaining, supervising, and disciplining the Philadelphia Police is found in the Philadelphia Home Rule Charter Section § 5-200. *Id.*, ¶ 13. The Department explains that to implement its responsibility of supervising and disciplining employees, the Department has established the IAB, which is responsible for investigating allegations of employee misconduct. *See Id.*, ¶ 12.

Further, the Jacobs Attestation explains the process of conducting a complete investigation through IAB, which includes interviewing complainants, witnesses, and other Department employees, examining the scene of any alleged incident, and handling evidence related to any alleged misconduct. *See Id.*, ¶ 14. Lt. Jacobs also attests that upon completion of the investigation, “the IAB prepares an Investigation Report and, depending on the result of the investigation, the IAB may terminate the investigation, make recommendations for further action to be taken ... such as sanctioning ... or referring the employee to the Police Board of Inquiry (“PBI”) for further investigation and potential discipline.” *Id.*, ¶ 15.

Furthermore, Lt. Jacobs explains that “[c]omplaints submitted to the IAB do not result in the imposition of a fine or civil penalty, suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement.” *Id.*, ¶ 16. The Department specifically identified Complaint 26-0013 as an active and open IAB investigation. Accordingly, the Department has demonstrated that it has, as part of its official duties to supervise and discipline its employees, the authority to conduct investigations of alleged police officer misconduct. While the evidence confirms that IAB is conducting an

investigation, the Request, on its face, seeks investigative records for Complaint 26-0013I which are explicitly exempt under Section 708(b)(17) when related to a noncriminal investigation. *See* 65 P.S. § 67.708 (b)(17); *Gist v. Phila. Police Dep't.*, OOR Dkt. AP 2023-2461, 2023 PA O.O.R.D. LEXIS 2633; *Carr v. City of Phila. Police Dep't.*, OOR Dkt. AP 2022 2099, 2022 PA O.O.R.D. LEXIS 2305; *Jaynes v. Phila. Police Dep't.*, OOR Dkt. AP 2020-0392, 2020 PA O.O.R.D. LEXIS 1322; *see also Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal materials when determining whether an exemption applies) *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). Accordingly, the Department has demonstrated that the records responsive to Part 1 of the Request are exempt from disclosure under Section 708(b)(17) of the RTKL.⁵ *See* 65 P.S. § 67.708 (b)(17).

2. The Department demonstrated that additional responsive records do not exist based on the Department's records retention policy.

The Department asserts that responsive records do not exist for Parts 2 and 3 of the Request due to the Department's record retention policy of twenty years. 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). An attestation by the individual who searched for responsive records is sufficient to meet an agency's burden of proving the nonexistence of a record. *Id.*; *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (holding that, when there is evidence that a record does not exist, “[i]t is questionable to what degree additional detail and explanation are necessary”); *Campbell v. Pa.*

⁵ Given the Department identified responsive records, the OOR will consider the Department's specificity challenge of Part 1 of the Request abandoned on appeal.

Interscholastic Athletic Ass’n, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry).

Here, the Department provided the Jacobs Attestation, which was authored by the Department’s AORO, which affirms that all responsive records were identified, properly withheld under the RTKL, and that no additional records exist in its possession, custody or control. Lt. Jacobs describes the search for responsive records and explains that the lack of additional responsive records is due to the age of the requested information from 1994-1996 and the Department’s record retention policy of twenty years. *See* Jacobs Attestation, ¶¶ 26-30; 65 P.S. § 67.507 (“Nothing in this act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of an agency established pursuant to law, regulation, policy or other directive.”). The Requester has not presented evidence that questions the validity of the assertions of the Jacobs Attestation. Therefore, based on the evidence provided, the Department has met its burden of proof that responsive records sought in Parts 2 and 3 of the Request do not exist in its possession, custody, or control.⁶ *See Hodges*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

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 Philadelphia County Court

⁶ The OOR notes that the Department also argued that Parts 2 and 3 of the Request sought answers to questions and not records. *See* Jacobs Attestation, ¶¶ 23-25. A request must seek records, not answers to questions. *See Walker v. Pa. Ins. Dep’t*, No. 1485 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 425 at *16 (Pa. Commw. Ct. 2012). However, Section 102 of the RTKL defines a “record” as “[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102; *Gingrich*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 (noting that the inclusion of “information” in the definition of “record” begs the question of how any request that seeks information is not one that seeks records). Here, because the Request seeks information from the Department, it necessarily seeks “records” under the RTKL.

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 this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁷ 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 26, 2026

/s/ Damian J. DeStefano

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent via OOR E-file appeal portal to: John Leca; Lt. Barry Jacobs, AORO

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).