



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

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| IN THE MATTER OF | : |
| | : |
| STEPHEN WHITEHEAD, | : |
| Requester | : |
| | : |
| v. | : Docket No: AP 2026-1704 |
| | : |
| QUAKERTOWN BOROUGH, | : |
| Respondent | : |

FACTUAL BACKGROUND

On April 18, 2026, Stephen Whitehead (“Requester”) submitted a request (“Request”) to Quakertown Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

I request the following records related to the February 20, 2026 student protest in Quakertown:

1. All incident reports generated in connection with the February 20, 2026 protest, including any supplemental or follow-up reports.
2. All use-of-force reports submitted for that incident.
3. Any arrest reports and/or affidavits of probable cause related to arrests made during the protest.
4. Any internal memoranda or communications regarding the February 20, 2026 protest and the use of force on that date, including but not limited to emails, text messages, and messages sent through any internal messaging platforms,

between or among officers, supervisors, the chief of police, the borough manager, and/or school district officials.

5. The department's use-of-force policy in effect on February 20, 2026, including any sections that address interactions with minors, demonstrations or protests, and any prohibition or authorization of chokeholds or similar neck restraints.
6. Duty assignment logs, officer detail/assignment sheets, and officer dispatch records (including CAD logs) for February 20, 2026 between 7:00 a.m. and 11:59 p.m.
7. Any 911 call records (including call-for-service logs and CAD entries) related to the February 20, 2026 protest. I am not requesting audio recordings at this time, only logs and written records.
8. Any written agreements, memoranda of understanding, or mutual aid agreements between the Quakertown Police Department and the school district or any other law enforcement agency relating to policing at school events or protests that were in effect on February 20, 2026.
9. Any after-action reports, internal reviews, or post-incident summaries prepared in connection with the February 20, 2026 protest or the use of force at that event.

The Borough did not respond within five business days of the Request, and the Request was thus deemed denied on April 27, 2026. *See* 65 P.S. § 67.901. On April 28, 2026, the Requester appealed to the Office of Open Records (“OOR”), stating grounds for disclosure. 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).

On April 29, 2026, the Requester provided several submissions which appeared to show that the Borough provided an untimely response on April 28, 2026, and other correspondences exchanged with the Borough. The Borough granted the Request in part, providing the Quakertown Borough Police Department's (“Department”) use of force policy and officer assignment logs from the specified date responsive to Items 5 and 6 of the Request. The Borough denied the remainder of the Items, asserting that responsive records are exempt as relating to criminal and noncriminal investigations, and exempt pursuant to Pennsylvania's Criminal History Record Information Act

(“CHRIA”). 65 P.S. § 67.708(b)(16); 65 P.S. § 67.708(b)(17); 18 Pa. C.S. §§ 9101 *et seq.* The Borough also asserts that these Items are insufficiently specific. 65 P.S. § 67.703. Finally, the Borough asserts that it is not required to provide records that do not exist in its possession, custody or control.

Later that same day, the Requester submitted a position statement, first arguing that the Request and its remaining Items are sufficiently specific. The Requester also argues that the Borough failed to demonstrate that certain records are investigative and therefore exempt under the RTKL and CHRIA. The Requester argues that he only seeks existing records and does not seek any new compilations or summaries. Finally, the Requester also submitted a responsive memorandum of understanding document provided by the Borough as responsive to Item 8 of the Request.

On May 7, 2026, the Borough submitted a position statement in response to the appeal. Specifically, the Borough asserts that Items 1, 2, 3, and 9 were properly denied by the Borough in accordance with applicable exceptions based on the undisputed facts in the Request and the records requested, citing *Pa. Game Comm’n v. Fennell*, 149 A.3d 101, 104 (Pa. Commw. Ct. 2016). The Borough asserts that Item 4 of the Request is insufficiently specific, and records responsive to Item 7 of the Request do not exist in the Borough’s possession, custody or control.

On May 20, 2026, the OOR sought additional clarification and evidence from the Borough concerning the facts provided within its position statement, and to clarify whether responsive records, particularly in response to Items 1 and 9 of the Request, pertained to either a criminal or noncriminal investigation. On May 22, 2026, the Borough submitted a supplemental position statement, reiterating that a majority of the Items facially seek investigatory records. The Borough further advised that it has since provided an After-Action report responsive to Item 9 of the Request

to the Requester during the pendency of the appeal, attached as Exhibit “D” of the Borough’s supplemental submission. In support of its position, the Borough submitted the attestation of Joanna Meisner (“Meisner Attestation”), Open Records Officer (“AORO”) for the Borough, which further affirms that the facts provided within the Borough’s position statements are true and accurate.¹

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)). Likewise, “[t]he 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).

1. The appeal is dismissed as moot in part

During the pendency of the appeal, the Borough provided records responsive to Items 5, 6, 8, and 9 of the Request. Accordingly, insofar as these records are responsive to the Request that have been provided during the appeal, the appeal is dismissed as moot as to these records. *See*

¹ The Meisner Attestation made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

Chester Water Auth. v. Pa. Dep't of Cmty. & Econ. Dev., 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records and, thus, “the controversy has been mooted”).

2. Item 4 of the Request is insufficiently specific in part

The Borough argues that Item 4 of the Request is overly broad, and, therefore, insufficiently specific under Section 703 of the RTKL, which 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 three-part balancing 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”).

Item 4 of the Request seeks “[a]ny internal memoranda or communications regarding the February 20, 2026 protest and the use of force on that date, including but not limited to emails, text messages, and messages sent through any internal messaging platforms, between or among officers, supervisors, the chief of police, the [B]orough manager, and/or school district officials.” The Request does not offer a timeframe, but implies one by mentioning an event, *i.e.*, the February 20, 2026 student protest in Quakertown. The scope of the Request is somewhat broad, as the language of the Request seeks “communications,” “messages sent through any internal messaging platform,” and including language such as “including but not limited to,” but otherwise identifies discrete types of records such as memos, emails, and text messages. Finally, the Request does identify a very specific subject matter, as it seeks records regarding the February 20, 2026 student protest and the use of force on that date.

Notably, the Request references several groups of senders and recipients: “officers,” “supervisors,” “the chief of police,” “the [B]orough manager,” and/or “school district officials.” While the Borough can likely identify the Chief of Police, officers,² and the Borough Manager as specific individuals, the remaining senders and recipients as presented are vaguer terms. *See, e.g., Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (concluding a request which “does not identify specific individuals, email addresses, or even departments, but requests any applicable emails sent from the County’s domain to four other domains” was insufficiently

² See <https://www.quakertown.org/government/police/staff> Borough Police Department Staff (last accessed May 28, 2026).

specific); *Pa. Dep't of Educ.*, 199 A.3d at 1124-126 (“A request for a broad category of documents, such as all records, may be sufficiently specific if confined to a particular recipient or recipients”); *see also Carey*, 61 A.3d at 372 (concluding that the scope of the request must identify “a discrete group of documents, either by type ... or by recipient”). Therefore, to the extent that the Request seeks records sent to, or from, unnamed “supervisors,” and/or “school district officials,” there is a lack of specificity, even with the inclusion of any specific subject matter. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (finding the portion of a request seeking “manuals” to be sufficiently specific, and the portion seeking “any and all records” to be insufficiently specific).

Accordingly, based on the foregoing, the OOR finds that Item 4 of the Request is partially specific where it seeks “memos, emails, and text messages...between or among officers...the chief of police and the [B]orough manager.” Absent any additional argument, the Borough is required to conduct a good faith search for records responsive to Item 4 of the Request and provide those records to the Requester.

3. Records responsive to Item 7 of the Request do not exist in the Borough's possession, custody or control

The Borough asserts that records responsive to Item 7 of the Request, which seeks records of any 911 calls related to the subject student protest, do not exist in its possession, custody or control. In the Borough's position statement, where the facts therein have been affirmed as true and accurate by the Meisner Attestation, it affirms that “[t]he Bucks County Department of Emergency Communications receives and manages emergency calls for all of Bucks County[,] Pennsylvania. [The Borough] does not receive these calls and does not maintain records of them.” *See Borough Position Statement*, pg. 3.

Under the RTKL, an affidavit or statement made under 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Borough has acted in bad faith, or that records responsive to Item 7 of the Request do, in fact, 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 *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

In *Pa. Dep’t of Health v. Mahon*, the Commonwealth Court discussed the evidence required to establish the absence of records, quoting its previous decision in *Hodges v. Pa. Dep’t of Health*, which held that an agency “may satisfy its burden of proof...with either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record.” *Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (quoting *Hodges*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011)); *see also Campbell v. Pa. 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, in accordance with *Mahon*, the Borough has provided sufficient evidence to explain why these records would not exist in the possession of the Borough, as these types of records are handled in Bucks County Department of Emergency Communications, and therefore, the Borough does not receive these calls or retain records of them. Accordingly, the Borough has demonstrated that records of responsive 911 calls do not exist in its possession, custody or control. *See Mahon*, 283 A.3d at 936; *Hodges*, 29 A.3d at 1192.

4. The appeal is transferred in part

Finally, the Borough asserts that records responsive to Items 1-3 of the Request are facially exempt as relating to a criminal investigation pursuant to Section 708(b)(16) of the RTKL. Accordingly, the OOR must determine if it has jurisdiction over this appeal. Section 708(b)(16) of the RTKL exempts from disclosure “[a] record of an agency relating to or resulting in a criminal investigation, including: ...[c]omplaints of potential criminal conduct other than a private criminal complaint[,]... [i]nvestigative materials, notes, correspondence, videos and reports[,]...[v]ictim information...[and a] record that, if disclosed, would do any of the following: ...[r]eveal the institution, progress or result of a criminal investigation, except the filing of charges.” 65 P.S. §§ 67.708(b)(16)(i)-(ii), (v), and (vi)(A). While the RTKL does not define the phrase “criminal investigation,” our courts have observed that the term “clearly and obviously refers to an official inquiry into a possible crime.” *Cal. Borough v. Rothey*, 185 A.3d 456 (Pa. Commw. Ct. 2018) (citing *Pa. State Police v. Grove*, 161 A.3d 877 (Pa. 2017)).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). Section 503(d) creates a two-step analysis for determining when cases should be heard by the OOR and when they should be heard by the appeals officer appointed by a District Attorney. First, jurisdiction is properly transferred from the OOR to the District Attorney’s Office when an appeal on its face involves records that relate to a criminal investigation (*e.g.*, search warrants, witness statements, etc.). *See, e.g., Porter v. Allegheny Cnty. Sheriff’s Office*, OOR Dkt. AP 2014-1910, 2014 PA O.O.R.D. LEXIS 1444 (transferring an appeal where the request sought a search warrant, which was facially related to a criminal investigation).

Second, when it is unclear whether the requested records relate to a criminal investigation, the local agency must provide some evidence showing how the records relate to a specific criminal

investigation. While a low threshold for transferring a case is needed, an agency must provide more than a conclusory affidavit that merely repeats the language of Sections 503(d) and 708(b)(16). *See Bush v. Westtown-East Goshen Police Dep't*, OOR Dkt. AP 2016-1869, 2016 PA O.O.R.D. LEXIS 1708 (finding that an affidavit demonstrated how the requested records related to a specific criminal investigation); *Burgess v. Willistown Twp. Police Dep't*, OOR Dkt. AP 2013-1511, 2013 PA O.O.R.D. LEXIS 868 (holding that where a local agency made a preliminary showing that records relate to a criminal investigation, the OOR lacked jurisdiction to consider the merits of the appeal).

In support of the Borough's position, the Meisner Attestation states, in part:

6. I do hereby affirm that, to the best of my knowledge, information, understanding and belief, the records sought by [the Requester] in his April 18, 2026, Request when he requests "incident reports" are records that relate to a criminal investigation.
7. Records labeled "incident reports" in the possession of [the Borough] are generated by [the Department] and are used, in part, to document the facts and circumstances of an event so there is a record of a particular incident under investigation.
8. I do hereby affirm that, to the best of my knowledge, information, understanding and belief, the records sought by [the Requester] in his April 18, 2026, Request when he requests "use-of-force reports" are records that relate to criminal and noncriminal investigations.
9. Records labeled "Use of Force Report" in the possession of [the Borough] are generated by [the Department] and are used, in part, after a triggering event that is related to a criminal investigation and as a tool of internal investigation, or noncriminal investigation, to determine whether the reporting officer complied with [Department] policy.
10. I do hereby affirm that, to the best of my knowledge, information, understanding and belief, the records sought by [the Requester] in his April 18, 2026, Request when he requests "arrest reports and/or affidavits of probable cause related to arrests" are records that relate to criminal investigation.
11. Records labeled "arrest reports" or "affidavit of probable cause" in the possession of [the Borough] are generated by [the Department] and are used, in

part, during an active criminal investigation that has resulted in law enforcement action.

Here, concerning Items 1-3 of the Request that seeks incident reports, use-of-force reports, and any arrest reports and/or affidavits of probable cause related to arrests made during the protest, the Meisner Attestation is able to generally affirm that responsive records would be generated by the Borough's Police Department, and relates to an active criminal investigation. Moreover, the OOR also considers the language of the Request, as well as the record before the OOR, which demonstrates that due to the specified protest, there were issues of assault/disorderly conduct, vehicle damage, medical injuries, and several arrests, which reasonably support that this matter is related to criminal investigations. *See* After-Action Report, Exhibit "D" of Borough Supplemental Submission; *Fennell*, 148 A.3d 101 (Pa. Commw. Ct. 2016) (explaining that the OOR must consider uncontradicted statements contained in the appeal as evidence). Therefore, based on the totality of the evidence, there is a sufficient factual record before the OOR to transfer the appeal to the Bucks County District Attorney's Office ("Office") for disposition.³

Accordingly, the appeal is hereby transferred to the Appeals Officer for the Office to determine whether records responsive to Items 1-3 of the Request are exempt under Section 708(b)(16) of the RTKL and/or CHRIA. The OOR declines to transfer the appeal as to Item 4 of the Request because the Borough has not raised any investigative exemptions for those records on appeal. A copy of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Office.

³ Although the Borough also raised Section 708(b)(17) of the RTKL pertaining to Item 2 of the Request, the OOR did not find that there was enough evidence for the OOR to determine that records are exempt pursuant to that exemption.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part, dismissed as moot in part, and transferred in part**, and the Borough is required to conduct a good faith search for any “memos, emails, and text messages...between or among officers...the chief of police and the [B]orough manager” responsive to Item 4 of the Request within thirty days. 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 Bucks 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.⁴ 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 29, 2026

/s/ Tope L. Quadri

TOPE L. QUADRI
APPEALS OFFICER

Sent to: Stephen Whitehead (via portal)
Joanna Meisner, AORO (via portal)
Michael A. Tuosto, Esq. (via portal)
Appeals Officer, Bucks County District Attorney’s Office (via first class mail)

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).