



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JAMES JACKSON,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-1744
	:	
ERIE COUNTY DISTRICT	:	
ATTORNEY’S OFFICE,	:	
Respondent	:	

FACTUAL BACKGROUND

On April 6, 2026,¹ James Jackson (“Requester”) submitted a request (“Request”) to the Erie County District Attorney’s Office (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[A]ny documentation, submitted from the [Office], to the Parole Board at SCI Forest, during the years 2024-2025, in relation to the criminal matter for Parole No: 159KL suggesting any sort of recommendation pertinent to the Parole Status of.

As the Requester did not receive the Office’s response within five business days of the Request, the Requester filed an appeal with the Office of Open Records (“OOR”) on April 17, 2026,² claiming that the Request was deemed denied. *See* 65 P.S. § 67.901.

¹ The Requester submitted a certified mail receipt showing receipt of the Request by the Office on April 6, 2026.
² The OOR finds that appeal filing date with the OOR is the postmark date of the Requester’s appeal submission even though the Requester’s appeal is dated April 13, 2026. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997)(In an incarcerated requester’s appeal to the OOR, the postmark date is considered the date in which the appeal was filed.).

The OOR invited both parties to supplement the record and directed the Office to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On May 12, 2026, the Requester resubmitted the initial appeal submissions and completed OOR forms to participate in the appeal to the record. On May 27, 2026, the Office submitted a position statement and an attestation made under the penalty of unsworn falsification to authorities³ from Brendan P. Sala, Esq.,⁴ the Office’s Open Records Officer (“AORO”), asserting that responsive records were identified but the records are not subject to disclosure pursuant to Pennsylvania Board of Probation and Parole’s (“Board”) Regulation, 37 Pa. Code § 61.2 (relating to Confidentiality of records).⁵⁶

LEGAL ANALYSIS

The Office 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 Office 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)).

³ 18 Pa.C.S.A. § 4904.

⁴ Under the RTKL, a sworn affidavit 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).

⁵ The Office’s May 27, 2026 submission was received after the record closed; however, to develop the record, the submission was considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

⁶ The OOR notes that the Office’s AORO attests to an exemption log that was not submitted to the record.

In this appeal, the Office argues that the requested records are protected by a confidentiality regulation promulgated by the Board, which states:

Records, reports and other written things and information, evaluations, opinions, and voice recordings in the Board's custody or possession touching on matters concerning a probationer or parolee are private, confidential and privileged; except that a brief statement of the reasons for actions by the Board granting or refusing a parole will at all reasonable times be open to public inspection in the offices of the Board.

37 Pa. Code § 61.2. However, in this instance, the Request seeks records from the Office, not the Board. In the matter of *Diehl v. Delaware Cnty. Dist. Atty's Office*, OOR Dkt. AP 2019-1100, 2019 PA O.O.R.D. LEXIS 801, the OOR discussed the same issue and determined:

The regulation on which the Office relies expressly applies to “[r]ecords, reports and other written things and information, evaluations, opinions and voice recordings in the Board's custody or possession” and does not address the status of similar records in the custody or possession of another agency. While the records would be considered confidential had the same request been made to the Board, the plain language of 37 Pa. Code § 61.2 applies only to records in the ‘Board's custody or possession’ and, where the words of the regulation are plain, we may not disregard the letter of it under the pretext of pursuing its spirit. *See* 1 Pa. C.S. § 1921(b); *Pa. Dep't of Corr./State Corr. Inst.-Somerset v. Workers' Comp. Appeal Bd.* (Kirchner), 805 A.2d 633, 635 (Pa. Commw. Ct. 2002) (stating rules of statutory construction apply to regulations as well as statutes). To apply the Board's regulation to records in the possession of the Office, the OOR would need to insert additional language into the regulation or otherwise rewrite the regulation. *See Pa. Dep't of Health v. McKelvey*, 2018 Pa. Commw. Unpub. LEXIS 520, at *3, 10-12 (Pa. Commw. Ct. Sept. 27, 2018) (finding that the plain language of a confidentiality regulation made application reviewer information confidential only with respect to: (i) an applicant for a permit; and (ii) applicants whose applications have been denied).

See also Ruggieri v. Pa. Dep't of Corr., OOR Dkt. AP 2025-1243, 2025 PA O.O.R.D. LEXIS 1517. Accordingly, the Request was submitted to the Office seeking a record in its possession, custody or control, and the Board Regulation, 37 Pa. Code § 61.2, only applies to records in the Board's custody or possession. *See Webster v. Lehigh County District Attorney's Office*, OOR Dkt. AP 2018-1711, 2018 PA O.O.R.D. LEXIS 1336. Additionally, the Office has not raised any

additional grounds to withhold the records, and as such, the Office has not met its burden of proving that the responsive records are exempt from disclosure. *See* 65 P.S. § 67.708(a)(1).

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Office is required to provide all responsive records 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 Erie 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 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 29, 2026

/s/ Appeals Officer Name

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent to: James Jackson, SCI-Forest, #JX3638 (U.S. mail);
Brendan P. Sala, Esq., AORO (OOR E-file appeal portal)

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