



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ALEXIS GATES	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-1823
	:	
PENNSYLVANIA DEPARTMENT OF	:	
EDUCATION,	:	
Respondent	:	

FACTUAL BACKGROUND

On March 31, 2026, Alexis Gates (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Education (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

I am writing regarding the Complaint Investigation Report dated January 15, 2026, concerning the complaint I filed involving Montgomery County Intermediate Unit #23 Preschool Early Intervention Program.

I respectfully request that the Pennsylvania Department of Education release this Complaint Investigation Report, and any related final findings or closure documents, in redacted form and make the redacted version public.

Specifically, I request that PDE redact personally identifying and protected information, including the child’s name, parent/family address, and any other confidential student or family information, while preserving the substance of the report, including the factual findings, regulatory analysis, conclusions, and any corrective action determinations.

To the extent this request should be processed under Pennsylvania's Right-to-Know Law, please treat it as such. If PDE determines that any portion of the record is exempt from disclosure, please redact only the exempt material and release the remainder. If PDE does not ordinarily post these records publicly, then please treat this as a request for public release of a redacted version and advise me of the proper procedure for having the redacted findings made publicly available.

For ease of identification, the report is:

- Complaint Investigation Report dated January 15, 2026
- Re: Complaint for [xxxxx]
- Complainant: Alexis Gates, Ph.D.

On May 7, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department denied the Request, arguing the responsive records are exempt from disclosure under the RTKL's noncriminal investigative records exemption, 65 P.S. § 67.708(b)(17).

On May 7, 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 19, 2026, the Department submitted a position statement reiterating its grounds for denial. The Department claims that the records relate to a noncriminal investigation, including complaints submitted to an agency and investigative materials, notes, correspondence and reports. 65 P.S. §§ 67.708(b)(17)(i)-(ii). In support of its position, the Department submitted the attestations, made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities, of Angela Reigel, Agency Open Records Officer for the Department ("Reigel

Attestation”), and Emily Hackleman, Division Chief, Bureau of Early Intervention Services & Family Supports, Office of Child Development & Early Learning (“Hackleman Attestation”).¹

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 factfinder ... 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)).

Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “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.

¹ 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, the averments in the [Reigel and Hackelman attestations] 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)).

Commw. Ct. 2012). An official probe only applies to noncriminal 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).

In support of its position, Agency Open Records Officer Reigel attests:

6. Upon receipt of the Request, PDE reviewed its operations and programs and commissioned a search of PDE's records by inquiring with Emily Hackleman, Division Chief, Bureau of Early Intervention Services & Family Supports, Office of Child Development & Early Learning (OCDEL).

...

8. Emily Hackleman determined that the records sought in the Request, if any, would be the result of an investigation conducted as part of OCDEL's official duties.

As a State Educational Agency, the Department is authorized by 34 CFR §§ 300.151-300.153 to investigate and resolve complaints related to services for children with disabilities. As it relates to the Department's investigative duties and powers, Emily Hackelman attests:

3. OCDEL is a dual deputate of the Pennsylvania Department of Education (PDE) and the Department of Human Services (DHS).

4. OCDEL is responsible for implementing the majority of the Commonwealth's state and federally funded early learning initiatives including Early Intervention (EI) services birth through three and preschool EI, among others.

5. The Bureau of Early Intervention Services and Family Supports is responsible for managing the allocation of state and federal funding to EI programs, verifying compliance with state and federal EI requirements, and providing families with required supports and protections (including investigating formal complaints). The Bureau also collects, manages, and reports data regarding child count, compliance and other related information. *Id.*

6. OCDEL has an official duty established under 34 CFR §§ 300.151-300.153, to conduct yearly investigations of early intervention programs to ensure that children and families who may need early intervention are being adequately served.

7. These investigations include conducting family surveys, reviewing program data to determine compliance with federal and state regulations, reviewing records of staff qualifications and clearances, and collecting and reviewing complaints regarding the specific program.

.....

9. When OCDEL investigates a complaint, the findings are reported in a Complaint Investigation Report (CIR).

10. On April 8, 2026, I received a copy of the RTKL request at issue in the above-captioned appeal (Request) from Angela Riegel, Agency Open Records Officer for PDE.

11. After reviewing the Request and searching for potentially responsive records in OCDEL's possession, I determined that the records sought in the Request, if any, would be the result of an EI investigation conducted as part of OCDEL's official duties.

12. OCDEL does not publish copies of CIRs or otherwise make them available to the general public.

Based on the evidence presented, the Department has proven that it conducted a noncriminal investigation in response to a complaint pursuant to its legislatively granted fact-finding powers, that an EI investigation was conducted, and that any responsive records would relate to this investigation. *See* 65 P.S. §§ 67.708(b)(17)(i)-(ii).

Further, while the Department does not elaborate on what records exist, the Requester explains that she filed complaint with the Department and the Request specifically seeks a Complaint Investigation Report dated January 15, 2026, and the Request expressly states that the Requester is the complainant. The Commonwealth Court has concluded that uncontradicted facts from the face of the record may establish a RTKL exemption. In *Pa. Game Comm'n v. Fennell*, the Commonwealth Court held that the OOR can make a determination based on the record, and without a submission by either party, if a record is related to a noncriminal investigation under Section 708(b)(17) of the RTKL. 149 A.3d 101, 104-105 (Pa. Commw. Ct. 2016).

As a final note, although the Requester asks the Department to release redacted versions of the responsive records, the OOR cannot compel the Department to take such action. The

discretion to redact otherwise exempt records under the RTKL lies exclusively with the agency. *Levy v. Senate of Pennsylvania*, 94 A.3d 436 (Pa. Commw. Ct. 2014); 65 P.S. § 67.706.

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 Commonwealth Court. 65 P.S. § 67.1301(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.² 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/ Josh Macel

APPEALS OFFICER
JOSH MACEL

Sent *via* Appeals Portal to: Alexis Gates; Angela Riegel (AORO); Joshua Sollenberger, Esq.

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).