



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

<b>IN THE MATTER OF</b>	:
	:
<b>STUART DAY,</b>	:
<b>Requester</b>	:
	:
<b>v.</b>	: <b>Docket No: AP 2026-1878</b>
	: <b>Consolidated Appeal of OOR Dkt. Nos.</b>
<b>BIG BEAVER BOROUGH,</b>	: <b>AP 2025-1878, 2025-1879, and 2025-1880</b>
<b>Respondent</b>	:

### FACTUAL BACKGROUND

On March 26, 2025, Stuart Day (“Requester”) submitted five requests to Big Beaver Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, dealing broadly with a potential data center campus development on the site of a former race track located at 201 Penndale Road, including amendments to local ordinances

On May 1, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Borough responded to the five requests.

On May 7, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the partial denial of three of the five requests and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if

---

<sup>1</sup> The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c). Because the Requester attached a copy of the same request to all three of his appeals and wrote the same thing under “Records at Issue in this Appeal” on all three Appeal Forms, the OOR consolidated the three dockets on May 13, 2026. Based on subsequent submissions, it became clear that there are three distinct requests at issue. They are, in relevant part:<sup>2</sup>

Martone Request (“BigBeaver\_Ord245\_Martone\_Contracts.pdf”)

**All financial records, including contracts, engagement letters, invoices, payments, work orders, or agreements between Big Beaver Borough and Martone Engineering & Surveying LLC, or Dan Martone individually, from January 1, 2022 through the date of this request.**

.....

**This request also includes any records (for the aforementioned time period) reflecting subcontracting, assignment of work, or third-party engagement related to any contract or work performed for the borough, including but not limited to subcontractor agreements, invoices from subcontractors, pass-through billing, or payments made to any third party performing work associated with Martone Engineering & Surveying LLC or Dan Martone.**

Official Communications Request (“BigBeaver\_Ord245\_Data Center Comm.pdf”)

**All records... involving any borough official, council member, solicitor, or engineer referencing Pittsburgh International Race Complex, Pitt Race, data center, server farm, AES Corporation, or any developer, consultant, utility, or buyer of the property located at 201 Penndale Rd, Big Beaver Borough, from January 1, 2023 through the date of this request.**

LERTA Request (“BigBeaver\_Ord245\_LERTA.pdf”)

**All records related to Ordinance No. 246 (2025), including applications received, communications with any developer, property owner, consultant, or third party, financial analysis, correspondence, emails, memoranda, calendar entries, attachments, and communications conducted in connection with said ordinance (Local Economic Revitalization Tax Assistance), from January 1, 2024 through the date of this request.**

---

<sup>2</sup> The titles “Martone Request,” “Official Communications Request,” and “LERTA Request” were created by the OOR. The quoted portions of the titles in parentheses are file names created by the Requester for his initial Request.

The Borough partially granted the Martone and LERTA Requests, subject to redactions under 65 P.S. § 67.708(b)(6)(relating to personal identification information).<sup>3</sup> The Borough partially granted the Official Communications Request as well, though in doing so it claimed that the Official Communications Request does not identify or describe the records sought with sufficient specificity to enable the Borough to ascertain which records are being requested as required by 65 P.S. § 67.703. The Borough further claimed that “certain *potentially* responsive documents” to the Official Communications Request “are privileged communications” and include personal identification information as defined under Section 708(b)(6) of the RTKL (emphasis added).

For all three requests, the Requester challenges the scope of the search for responsive documents, and as it relates to the Official Communications Request the Requester asserts that it is sufficiently specific.

On May 22, 2026, the Borough submitted a position statement reiterating its grounds for denial and explaining that since the date of the appeal additional responsive records have been found and provided for each of the three requests at issue in this appeal. In support of its position, the Borough submitted affidavits from Jennifer Gasser, the Borough’s Open Records Officer.

On May 25, 2026, the Requester submitted a reply to the Borough’s position statement, again challenging the Borough’s claim that the Official Communications Request lacks sufficient specificity and arguing that the Borough failed to conduct a good faith search for all responsive records.

---

<sup>3</sup> Under the RTKL, information which an agency redacts from an otherwise responsive letter is deemed a denial; however, because the Requester does not challenge these redactions on appeal, they are not analyzed.

## 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)).

### **1. The Borough provided records on appeal**

The Borough states in its position statement that it located and provided the Requester with additional responsive records for all three requests. The Requester does not dispute receiving the records and, therefore, the appeal is moot as to these records. *See 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”); *Kutztown Univ. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. 2019) (holding that an appeal is properly dismissed as moot where no controversy remains).

### **2. The Borough proved that no additional records exist for the Martone and LERTA Requests**

The Requester challenges the adequacy of the Borough’s search for records and the completeness of the records provided in response to the Martone and LERTA Requests.

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). In support of the Borough’s argument that a good faith search was conducted and all responsive records have been provided for the Martone and LERTA Requests, the Gasser Affidavit states:

*Martone Request*

11. ... I reviewed the documents and records in the Borough’s custody, possession and control and discovered 100 pages of responsive records which I provided with my May 1, 2026, final response to [the Requester].
12. Upon receiving [the Requester’s] appeal of my final response, I supplemented the Borough’s response on May 19, 2026, by providing a letter from LSSE which enclosed a document that was included in the Borough’s original responsive documents as Page 77, as well as LSSE’s fee guide.
13. In particular, I retrieved and reviewed the Borough financial records including invoices and payments associated with Martone Engineering. I also examined any additional financial records, invoices or payments issued to vendors referenced within the Martone Engineering invoices such as LSSE.

14. The records in the Borough's possession, custody, or control which are responsive to this Appealed Request, that are not otherwise exempt from disclosure or redaction pursuant to the RTKL, have been reproduced.

*LERTA Request*

15. I reviewed the documents and records in the Borough's custody, possession and control and discovered 15 pages of responsive records which I provided with my May 1, 2026, final response to [the Requester].
16. Upon receiving [the Requester's] appeal of my final response, I supplemented the Borough's response on May 22, 2026, by providing three additional emails that I discovered upon additional review regarding the Borough's adoption of the LERTA Ordinance.
17. In particular, I searched the Borough's records pertaining to the subject matter contained in the request and performed a keyword search of my email account and consulted with all elected officials and relevant professionals to do the same to determine whether any responsive records exist.
18. After my review, there are no internal or third-party communications discussing how the amended LERTA would apply to industrial/data-center developments, or any applications or draft applications, financial analyses, tax-impact reviews, or communications tying Ordinance 246 to Ordinance 245.
19. The records in the Borough's possession, custody, or control which are responsive to this Appealed Request, that are not otherwise exempt from disclosure or redaction pursuant to the RTKL, have been reproduced.

Under the RTKL, a sworn 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 Township has acted in bad faith, "the averments in [the affidavit] 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)).

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*, 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). In this matter, the Borough responded to the Requester’s claims regarding the incompleteness of the records and the inadequacy of the search, by searching for and providing additional records, and submitting the affidavit from Borough Administrator Gasser that affirms no additional records exist. As discussed above, in *Mahon*, the Commonwealth Court opined 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 at 936 (Pa. Commw. Ct. 2022); *Campbell*, 268 A.3d 502. We note that the preponderance of the evidence is the lowest evidentiary standard. *Id.* The OOR makes no determinations as to whether additional records *should exist*, as our inquiry is limited to only whether or not records are “in existence and in possession of the ... agency at the time of the right-to-know request.” *Moore*, 992 A.2d at 909. Based on the Gasser Affidavit, the Borough has met its burden of proof by a preponderance of the evidence that no additional records exist that are responsive to the Martone and LERTA Requests. *Hodges*, 29 A.3d at 1192.

### 3. The Official Communications Request is sufficiently specific

The Borough granted in part and denied in part the Official Communications Request. The denial was based on the Borough's argument that the Official Communications Request is not sufficiently specific to enable it to locate all responsive records. Specifically, the Borough states in its denial letter that, "[t]his request is denied to the extent that the request of all records pertaining to the 'Pittsburgh International Race Complex' and 'Pitt Race' is insufficiently specific."

Section 703 of the RTKL provides, in part, 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 nonexclusive, multifactor test employed by the Commonwealth Court in *Pennsylvania Department of Education v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015). See *Pa. Office of the Governor v. Brelje*, 312 A.3d 928 (Pa. Commw. Ct. 2024). First, "[t]he subject matter of the request must identify the 'transaction or activity' of the agency for which the record is sought[,]" and "should provide a context to narrow the search." *Pittsburgh Post-Gazette*, 119 A.3d at 1125 (quoting 65 P.S. § 67.102; *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012)). 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*, 61 A.3d at 372). "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. May 13, 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022) (citations omitted).

The Borough claims that the Official Communications Request *is* sufficiently specific “regarding the data center, server farm, AES Corporation, or any developer, consultant, utility, or buyer of the property located at 201 Penndale Rd, from January 1, 2023 through the date of the request,” but “was too vague and lacked the transaction or activity sought pertaining to ‘Pittsburgh International Race Complex’ and ‘Pitt Race’ to facilitate the Borough in determining which records are being requested.” *See* Position Statement, p. 2. Likewise, Gasser states:

In my review, I discovered other Borough records within the timeframe requested such as prior land use and land development applications submitted by the former race track owners regarding changes to the existing race track, and emails and correspondence from residents and nonresidents pertaining to the operation of the race track and the closure of the former race track. However, I was not able to determine whether such records were responsive to the Request as the Request was insufficiently specific regarding what transaction or activity pertaining to “Pittsburgh International Race Complex” and “Pitt Race” were being requested. Therefore, such records were not produced and such part of the Request was denied.

Gasser Affidavit, ¶ 9. The Borough does not claim that it cannot identify records related to “Pittsburgh International Race Complex” and “Pitt Race,” just that it cannot discern which records are responsive. This claim is not persuasive. The subject matter – i.e., the activity of the agency – is any of several forms of communications to and from “any borough official, council member, solicitor, or engineer.” By naming specific record types, no judgment needs to be made as to the relation of any records to the Request. Further, “Pittsburgh International Race Complex” and

“Pitt Race” both refer to the racetrack and the specific property that underly the entire Request. The fact that the Borough was able to perform a search for records related to this property by address (201 Penndale Rd) and other companies (AES Corporation, potential developer/buyer) undermines the argument that the Request lacks specificity as to the racetrack. Indeed, an agency’s actual ability to search for, find, and produce responsive documents, although not controlling, does weigh in favor of a finding that the Request is sufficiently specific. *See, e.g., Brelje*, 312 A.3d at 933; *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 179 (Pa. Commw. Ct. 2019); *Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012), *appeal denied*, 54 A.3d 350 (Pa. 2012) (noting that “the request was obviously sufficiently specific because the School Borough has already identified potential records included within the request”); *Youman v. Juniata Township*, OOR Dkt. AP 2025-3043, 2025 PA O.O.R.D. LEXIS 3184.

The Borough notes that several potentially responsive documents would have nothing to do with the overall subject of the Request – namely, the development of a data center campus. An agency may interpret the meaning of a request for records, but that interpretation must be reasonable. *See Bradley v. Lehigh Area Sch. Dist.*, OOR Dkt. AP 2021-0333, 2021 PA O.O.R.D. LEXIS 715; *Ramaswamy v. Lower Merion Sch. Dist.*, OOR Dkt. AP 2019-1089, 2020 PA O.O.R.D. LEXIS 2095. When a request is subject to multiple reasonable interpretations, the OOR’s task on appeal is to determine if the agency’s interpretation was reasonable. *Ramaswamy*, 2020 PA O.O.R.D. LEXIS 2095. The OOR determines this from the text and context of the request alone, as neither the OOR nor the requester is permitted to alter a request on appeal. *See McKelvey v. Off. of the Att’y Gen.*, 172 A.3d 122, 127 (Pa. Commw. Ct. 2016); *Smith Butz, LLC v. Pa. Dept of Env’t Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016). Given the larger context of the Request,

read as a whole, the OOR finds that a reasonable interpretation of the Request is that it only seeks records referencing the development of the property.

It is worth noting that Gasser claims no additional records exist beyond those produced already; however, given the OOR's finding on specificity, the Borough must conduct a good faith search for records related to the development of the proposed data center "referencing Pittsburgh International Race Complex [and] Pitt Race" and provide all responsive records to the Requester. *See* 65 P.S. § 67.305.

### CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **dismissed as moot in part**, and the Borough is required to search for and provide all responsive records to the Official Communications Request which both relate to the development of the proposed data center and reference "Pittsburgh International Race Complex" and "Pitt Race" within thirty days or, in the alternative, a statement made under the penalty of perjury demonstrating that additional records do not exist. 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 Beaver 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.<sup>4</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: June 9, 2026**

---

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

*/s/ Josh Macel*

---

APPEALS OFFICER  
JOSH MACEL

Sent *via* Appeals Portal to: Stuart Day; Jennifer Gasser (AORO); Anthony Cosgrove, Esq.