



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

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**MARISSA HARRIS,  
Requester**

**v.**

**: Docket No: AP 2026-1247**

**SCRANTON SCHOOL DISTRICT,  
Respondent**

On February 23, 2026, Marissa Harris (“Requester”) submitted a request (“Request”) to the Scranton School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...[R]egarding the Assistant Softball Coach position at Scranton High School:

1. All interview scoring sheets, ranking forms, evaluation rubrics, and grading documents used to assess each candidate (personal identifying information of candidates may be redacted).
2. Any notes or written evaluations created by any individual involved in the hiring process, including administrators, athletic directors, principals, or district personnel, related to candidate interviews or selection.
3. All emails and text messages sent or received by the building Principal related to candidate interviews or selection, including information concerning:
  - the Assistant Softball Coach position
  - candidate evaluations
  - interview outcomes
  - the final hiring decision
  - protocol following the decision process

On March 29, 2026, following a thirty-day extension, 65 P.S. § 67.902(b), the District partially denied the Request, stating that the records responsive to Items 1 and 2 of the Request are exempt from disclosure as records related to a District employee, 65 P.S. § 67.708(b)(7)(i)-(ii).<sup>1</sup> On that same day, the District issued a second response letter purportedly granting the Request in full.

On March 30, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the partial denial<sup>2</sup> and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the District to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 1, 2026, the District submitted a copy of its March 29, 2026 response partially denying the Request.

On April 2, 2026, the Requester provided statement in support of the appeal.

On May 30, 2026, in response to the OOR’s request for clarification, the District submitted a statement stating that the records sought have “been provided in this [R]equest[,]” as well as in three other requests submitted by the Requester, and that the District “has no further information to provide” in response to the instant Request.

As an agency subject to the RTKL,<sup>3</sup> the District 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-

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<sup>1</sup> The District purported to grant Item 3 of the Request in full.

<sup>2</sup> The Requester argues that “[t]he District provided only scheduling emails and did not produce the[] [requested] records or state whether they exist.”

<sup>3</sup> The District is local agency subject to the RTKL and 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. §§ 67.302, 305.

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).

In response to the instant Request, the District argues that the records responsive to Items 1 and 2 of the Request are exempt under Section 708(b)(7), which exempts from disclosure “the following records relating to an agency employee:

- (i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.
- (ii) A performance rating or review.

65 P.S. § 67.708(b)(7)(i)-(ii). However, the District did not provide any legal argument or evidence in support of its argument. Accordingly, the District did not meet its burden of proof and, insofar as it withheld any records responsive to Item 1 or Item 2 of the Request, the records must be provided to the Requester. *See* 65 P.S. § 67.305.

Nonetheless, if a request for records implicates personal information that is not expressly exempt from disclosure under the RTKL, the Pennsylvania Supreme Court has held that individuals still possess a constitutional right to privacy in certain types of information. *Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142 (Pa. 2016). When considering information that is not expressly exempt from disclosure under the RTKL, the OOR must balance the individual’s interest in informational privacy with the public’s interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest. *Id*; *see also*

*Sapp Roofing Co. Inc. v. Sheet Metal Workers' International Assoc.*, 713 A.2d 627 (Pa. 1998) (finding names, home addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test); *Hartman v. Pa. Dep't of Conserv. & Nat. Res.*, 892 A.2d 897, 906-07 (Pa. Commw. Ct. 2016) (finding the names and home addresses of snowmobile registrants to be protected by the constitutional right to privacy).

Because the instant Request seeks records pertaining to candidates who applied for a District coaching position, the Request likely encompasses various types of personal identification information, such as home addresses, employee numbers, social security numbers and personal telephone numbers. Further, the Requester does not articulate any public interest in the release of such information, nor can the OOR perceive one. As such, personal identification information may be redacted pursuant to the constitutional right to privacy.

Additionally, on appeal, the District argues that it provided the Requester with all records responsive to the Request. 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 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 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 this instance, the District did not provide evidence that it provided all records responsive to Item 3 of the Request or evidence that no additional records responsive to the Request exist within its possession, custody or control. Therefore, the District did not meet its burden of proof, and absent the District providing a sufficient evidentiary basis that no responsive records exist, the OOR will order disclosure of responsive public records. *See Crist v. Derry Township*, OOR Dkt. AP 2022-2064, 2022 PA O.O.R.D. LEXIS 2386. However, the OOR is mindful that an agency “shall not be required to create a record which does not currently exist....” 65 P.S. § 67.705. Accordingly, the District is directed to conduct a good faith search for responsive records and provide such records to the Requester. To the extent responsive records do not exist, the District is required to provide a sworn affidavit, or a statement made under the penalty of perjury documenting its search for responsive records and affirming the non-existence of the records. *See 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).

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and, within thirty days, the District is required to provide the records responsive to Items 1 and 2 of the Request with appropriate redactions. The District is also required to conduct a good faith search for records responsive to Item 3 and additional records responsive to Items 1 and 2 of Request and to provide all records located to the Requester or, in the alternative, to provide an attestation explaining its search for responsive records and confirming that none were located. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any

party may appeal or petition for review to the Lackawanna 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 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.<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 website at: <http://openrecords.pa.gov>.

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

*/s/ Erika Similo*

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ERIKA SIMILO  
APPEALS OFFICER

Sent via OOR portal to: Marissa Harris  
Robert Gentilezza

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