



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MARK SEIBERLING AND KLEINBARD LLC, REQUESTER	:	
	:	
	:	Docket No: AP 2026-1891
V.	:	
	:	
WEST WHITELAND POLICE DEPARTMENT, RESPONDENT	:	
	:	

FACTUAL BACKGROUND

On, April 2, 2026, Mark Seiberling and Kleinbard LLC (collectively, “Requester”) submitted a request (“Request”) to the West Whiteland Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking incident reports, arrest records, citations, police logs, and communications concerning criminal activity arising from police responses to two specific properties since January 1, 2016.

On May 8, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department denied the Request as insufficiently specific under 65 P.S. § 67.703.

On May 12, 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 27, 2026, the Department submitted a position statement reiterating its grounds for denial. The Department claims that the Request lacks a clear subject matter and is overbroad in both scope and time. In support of its position, the Department submitted the affidavit of the Department's Chief of Police, Ralph Benson ("Benson Affidavit").

On May 26 and 27, 2026, the Requester submitted position statements arguing that the Request is narrowly tailored and identifies specific types of records.

LEGAL ANALYSIS

The Department is a local agency subject to the RTKL. 65 P.S. § 67.301. 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 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 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 Request is sufficiently specific

The Department argues that the Request is not sufficiently specific to enable it to locate all responsive records because the subject matter is too broad. 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 above factors are intended “to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested... [t]he 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”).

The Request has a scope – reports, arrest records, logs, emails, memoranda – a finite timeframe of approximately ten years, and the subject matter is the Department’s dispatches to two specific locations. This is an essential activity of the Department and these are all common types of records that the Department maintains and can search. There can be no doubt that the Department understands what the Requester means by “[a]ll incident reports, offense reports, and

arrest records,” “[a]ll incident reports, calls for service, investigations, citations, and arrest records,” “dispatch logs, CAD reports, or call logs,” and “written communications, including emails or memoranda.” The question is whether the Request provides enough context to narrow the search. For Part One of the Request, the search is limited to specific record types related to a shopping center called “Main Street at Exton” at 270 Indian Run St, Exton, PA 19341 from January 1, 2016 to April 2, 2026 (the date of the Request). For Part Two, the search is limited to specific record types related to the Crumbl Cookies store at 126 Woodcutter St Suite 100, Exton, PA 19341 from January 1, 2016 to April 2, 2026 (the date of the Request). For Parts Three and Four, the search is limited to specific record types for the properties locations identified in Parts 1 and 2 and for the same time period.

Read as a whole, the Request clearly seeks specific record types for two properties between January 1, 2026 and April 2, 2026, and the record types enumerated in the Request all refer to well-known police department activities.

2. The OOR lacks jurisdiction to order the release of records

Nevertheless, there are some instances in which uncontradicted facts from the face of the record may establish an RTKL exemption. The OOR must consider undisputed statements within the record when determining if exemptions apply. *See Pa. Game Comm’n v. Fennell*, 149 A.3d 101, 104-05 (Pa. Commw. Ct. 2016); *Office of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). In *Fennell*, the Commonwealth Court held that the OOR can decide based upon the record, without a submission by either party, if a record is related to a noncriminal investigation under Section 708(b)(17) of the RTKL, when the record established uncontradicted facts regarding a complaint made concerning a specific incident and the

Commonwealth agency known to be actively investigating the complaint, and the requester sought a copy of the report from that specific incident. 149 A.3d 101, 104-05 (Pa. Commw. Ct. 2016).

Here, the Request seeks incident reports, citations, arrest records, and correspondence relating to Department investigations at two specific commercial properties. The materials requested may fall into the category of “[i]nvestigative materials, notes, correspondence, videos and reports,” which are exempt under Section 708(b)(16)(ii) of the RTKL. *See Del. County v. Schaefer ex rel. Phila. Inquirer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012) (reiterating that “[a] preponderance of the evidence standard, the lowest evidentiary standard, is tantamount to a more likely than not inquiry”); *see also Corey Hughes v. Cheltenham Township Police Department*, OOR Dkt. AP 2023-2521 (the OOR transferred the matter to the respective Appeals Officer of the District Attorney’s Office where the request by its very wording sought records concerning a criminal matter).

On its face, and read as a whole, the Request involves records that may relate to a criminal investigation because the Request specifically seeks “arrest records” and records “concerning criminal activity.” Thus, the OOR lacks jurisdiction to order release of the records. *See* 65 P.S. § 67.503(d). Accordingly, the appeal is hereby transferred in part to the Appeals Officer for the Chester County District Attorney’s Office to determine what, if any, records are subject to disclosure, based upon the evidentiary record created during this appeal.¹

¹ The Appeals Officer’s review is necessarily limited to whether records are exempt criminal investigative records, as the Department did not raise any exemptions which the OOR has jurisdiction over. 65 P.S. § 67.503(d)(2). Further, we note that some potentially responsive records may not be subject to the RTKL’s criminal investigation exemption, such as police blotter and time response logs.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **transferred** to the Appeals Officer for the Chester County DA's Office. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Chester 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 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated 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: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 10, 2026

/s/ Josh Macel

JOSH MACEL
APPEALS OFFICER

Sent *via* Appeals Portal to: Mark Seiberling; Ralph Benson (AORO); James Gallagher, Esq.
Sent *via* Email to: Chester County DA Office RTKL Appeals Officer

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