



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**DEBBIE BEHANNA,  
Requester**

**v.**

**MONONGAHELA CITY,  
Respondent**

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**Docket No: AP 2026-1963**

## **FACTUAL BACKGROUND**

On May 8, 2026, Debbie Behanna (“Requester”) submitted a request (“Request”) to Monongahela City (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating, in part, as follows:

... I am requesting copies of records showing the promotional process used for current Lieutenant Ryan Lenzi’s promotion from Patrolman to Sergeant and also from Sergeant to Lieutenant within the City of Monongahela Police Department [(“Department”)].

Please provide:

[Item] 1. Records showing the dates of any civil service promotional examinations taken for Sergeant and Lieutenant; also record showing his start date as patrolman[;]

[Item] 2. Promotional, Application, eligibility lists, rankings, certifications, or score sheets;

[Item] 3. Civil Service Commission meeting minutes discussing, approving, certifying, or administering the promotional process;

[Item] 4. Notices, postings, advertisements, or announcements for promotional testing for Sergeant and Lieutenant;

[Item] 5. Resolutions, motions, council meeting minutes, appointment records, or mayoral approvals relating to the promotions;

[Item] 6. Any ordinance, charter provision, policy, rules, or procedure relied upon for the promotions;

[Item] 7. Any waiver, exemption, exception, or documentation showing the promotions were made without civil service testing or outside the standard civil service process. Any records showing that no civil service examination was required, waived, skipped, or not conducted.

I am not requesting confidential test questions, answer sheets, psychological evaluations, medical records, or private personnel evaluations.

If any portion of these records are maintained by another City office, Civil Service Commission, board, or official, please forward this [R]equest to the proper Open Records Officer or identify the office/person maintaining those records.

Request, p. 3.

As the Requester did not receive the City's response within five business days of the Request, on May 18, 2026, the Requester filed an appeal with the Office of Open Records ("OOR") arguing that the Request was deemed denied. *See* 65 P.S. § 67.901. The OOR invited both parties to supplement the record and directed the City to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On June 1, 2026, the OOR notified the City that it had not received a submission in support of the City's position on appeal, and it directed the City to inform the OOR as soon as possible as to whether it intended to make a submission.<sup>1</sup> To date, the City has not responded or supplemented the record.<sup>2</sup>

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<sup>1</sup> On June 1, 2026, the OOR also provided a second email address for James P. McGraw, Esq., City Agency Open Records Officer ("AORO"), with access to the appeal docket via the OOR's e-file Portal.

<sup>2</sup> The City accessed the appeal docket on multiple occasions from May 20, 2026 through June 2, 2026.

## LEGAL ANALYSIS

The City 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 City 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)). 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) (citing 65 P.S. § 67.708).

In this instance, the City did not comply with the RTKL by timely responding to the Request, nor did the City participate on appeal by submitting legal argument or evidence in support of withholding responsive records. Accordingly, the City did not meet its burden of proof under the RTKL. 65 P.S. § 67.305. Therefore, the City must conduct a good faith search for all records responsive to Items 1-7 of the Request and provide them to the Requester.<sup>3,4</sup> To the extent that no

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<sup>3</sup> The OOR makes no determinations as to whether any responsive 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 v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Further, an agency cannot waive a third party’s right in nondisclosure by action or inaction.” *Baron v. Dep’t of Human Servs.*, 169 A.3d 1268, 1275 (Pa. Commw. Ct. 2017). Thus, to the extent that personal identification information that is either expressly exempt under 65 P.S. § 67.708(b)(6)(i)(A) or protected by the constitutional right to privacy is contained within any responsive records, it may be redacted by the City.

<sup>4</sup> Based on the plain language of the Request, some of the requested records could be exempt under 65 P.S. § 67.708(b)(7)(iii). However, the City did not participate on appeal or raise that exemption as a grounds for denial. Further, the OOR is unable to make such a determination in this matter because it is not clear from the appeal record whether such records actually exist and/or are facially exempt under Section 708(b)(7) of the RTKL.

responsive records exist, the City is required to provide an affidavit or attestation describing the search for those records and affirming their non-existence. *See* 65 P.S. § 67.705 (“When responding to a request ..., an agency shall not be required to create a record which does not currently exist ....”).

### CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the City is required to conduct a good faith search for all records responsive to Items 1-7 of the Request and to provide them to the Requester within thirty days, or, in the alternative, provide a sworn affidavit or a statement made under the penalty of perjury demonstrating that such 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 Washington 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>5</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 12, 2026**

*/s/ Megan Burns*

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MEGAN BURNS  
APPEALS OFFICER

Sent via OOR Portal to: Debbie Behanna; James P. McGraw, Esq., AORO

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