



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**VINCENT SCIOLI,  
Requester**

**v.**

**MONTGOMERY TOWNSHIP,  
Respondent**

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**Docket No: AP 2026-1491  
(Consolidated appeal of OOR Dkt. Nos.  
2026-1491 and 2026-1492)**

## **FACTUAL BACKGROUND**

On March 5, 2026, Vincent Scioli (“Requester”) filed two requests (“Request” or “Requests”) with Montgomery Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* The first Request sought:

[A]ll records, in any format, in the possession, custody or control of the [ ] Township Police Department (including any predecessor agency then operating under a prior name, such as the Montgomeryville Police Department) bearing Requester’s name ... and originating or dated within January 1, 1991 through December 31, 1993.

Records responsive to this [R]equest include, but are not limited to:

1. Any incident reports, contact reports, or call-for-service logs reflecting Requester’s name as a complainant, victim, witness or subject;
2. Any officer notes, memoranda, or internal communications referencing Requester’s name;
3. Any records related to a walk-in visit or contact Requester made at the [T]ownship police station during this period, at which time Requester was a minor ..., in which Requester sought assistance from officers on duty;

4. Any referral records, intake logs, or notations-including any notations reflecting that no action was taken or that an individual was turned away;
5. Any other records in any form containing Requester's name within the specified date range.

The second Request sought:

[A]ll records, in any format, in the possession, custody or control of the [ ] Township Police Department ... bearing the name [of the Requester's now deceased father, an attorney who appeared at or contacted the Department on behalf of himself or his family] within the following period: January 1, 1991 through December 31, 2020. [ ]

Records responsive to this [R]equest include, but are not limited to:

1. Any incident reports, contact reports, call-for-service logs, or visitor intake records bearing the name [of the Requester's father] as a complainant, witness, visitor, or an involved party;
2. Any officer notes, memoranda, supervisor reports, or internal communications referencing [the Requester's father];
3. Any records reflecting appearances by [the Requester's father] at the police station or telephonic contacts initiated by him with the department, including walk-in visits to speak with officers or supervisors;
4. Any records in which [the Requester's father] is identified as acting on behalf of his son ... or other members of the Scioli family residing at [ ] any [ ] address associated with the Scioli family within [the] Township;
5. Any records reflecting complaints made by [the Requester's father] regarding police conduct towards family members, including any allegations of harassment, excessive force, or improper treatment;
6. Any records reflecting a joint visit or contact by both [the Requester and his father] with the department;
7. Any other records in any form containing the name [of the Requester's father] within the specified date range.

On April 1, 2026, after invoking a thirty-day extension of time to respond, the Township denied the Requests, arguing that Item 3 of the first Request and Items 1 and 2 of both Requests and seek records that are related to criminal investigations, 65 P.S. § 67.708(b)(16); Item 3 of the

first Request also seeks exempt records identifying a minor, 65 P.S. § 67.708(b)(30); records responsive to Item 4 of the first Request and Items 3-6 of the second do not exist in the Township’s possession, custody or control; and Item 5 of the first Request and Item 7 of the second are insufficiently specific, 65 P.S. § 67.703. The Department also noted that investigative reports are confidential under the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. § 9106.

On April 14, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the Township to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 18, 2026, the Requester submitted a verified position statement, reiterating his arguments.

On April 24, 2026, the Township submitted a position statement, reiterating its grounds for denial. In support, the Township submitted a statement made under the penalties of unsworn falsification to authorities by Deborah A. Rivas (“Rivas Attestation”), the Township’s Open Records Officer (“AORO”). On the same day, the Requester also submitted a position statement, challenging the Department’s arguments.

### **LEGAL ANALYSIS**

The Township 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

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<sup>1</sup> The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1). The Requester filed two appeals, which were docketed as OOR Dkt. AP 2026-1491 and OOR Dkt. AP 2026-1492. Because the appeals involved the same agency, requester and similar issues, the appeals were consolidated into OOR Dkt. AP 2026-1491 on April 17, 2026. *See* 65 P.S. § 1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”). In his appeal of the second Request, the Requester argues that a deceased individual has a diminished privacy interest. However, the Department does not assert privacy interests as a reason for denying either Request.

subject to the RTKL, the Township 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)).

The Requester asks the OOR to order the production of an exemption log, perform *in camera* review and hold a hearing. However, these requests are denied, as the parties have presented a sufficient factual record to enable the OOR to adjudicate the matter on the merits. *See* 65 P.S. § 67.1102(b)(3) (“In the absence of a regulation, policy or procedure ..., the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”); *Highmark Inc. v. Voltz*, 163 A.3d 485, 490-491 (Pa. Commw. Ct. 2017) (“In the RTKL context, a right to due process does not entail a right to a hearing.”) (international citation omitted).

#### **1. Certain records do not exist**

The Department argues that certain records do not exist. “The 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). An attestation by the individual who searched for responsive records is sufficient to meet an agency’s burden of proving the nonexistence of a record. *Id.*

The Rivas Attestation provides that inquiry with relevant personnel and a thorough examination of the Department’s computer databases led AORO Rivas to conclude that the Department does not possess the following: referral records, intake logs, notations, records

reflecting appearances, visits or contacts by the Requester's father or joint visits with his son, records in which the Requester's father is identified as acting on behalf of his son or other family members and records related to complaints made by the Requester's father regarding police conduct. Rivas Attestation, ¶¶ 3-5. AORO Rivas concludes that no other responsive records exist in the possession, custody or control of the Township. *Id.*, ¶ 9.

The Requester argues that it is improbable that no responsive records exist and that the Department's argument is contradicted by the argument that certain records are related to a criminal investigation. While the Department initially denied Items 1 and 2 of both Requests on the basis that records are related to a criminal investigation, the fact that the Rivas Attestation subsequently clarifies that a few of the multiple overlapping categories of records do not, in fact, exist, is insufficient to call the Rivas Attestation into question.

The Requester also argues that the Rivas Attestation is not credible because in a related proceeding before the OOR, an exemption log produced by the Department identified a record that was responsive when a previous attestation had affirmed the nonexistence of records. However, the Requester does not identify the proceeding, and even assuming, *arguendo*, the accuracy of the Requester's unverified assertion, the fact that AORO Rivas mistakenly affirmed that no records exist when the Department subsequently identified a responsive record does not impugn the credibility of the Rivas Attestation.

The Requester provides no competent evidence of the existence of records. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (finding that in the absence of countervailing evidence establishing that the agency acted in bad faith or that the agency records exist, averments of nonexistence should be accepted as true."); *Campbell v. Pa. Interscholastic Athletic Ass'n*, 268 A.3d 502 (Pa. Commw. Ct. 2021), *appeal granted in part*, 280 A.3d 870, *aff'd*,

No. 71 MAP 2022, No. 72 MAP 2022, 2024 Pa. LEXIS 1087 (Feb. 21, 2024) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, which is tantamount to a “more likely than not” inquiry). Accordingly, the Department has met its burden of proving that records enumerated above do not exist in its possession, custody or control. *See Hodges*, 29 A.3d 1192.

## **2. Information identifying a minor is exempt**

The Department argues that certain information identifying a minor is exempt. Section 708(b)(30) of the RTKL exempts “[a] record identifying the name, home address or date of birth of a child 17 years of age or younger.” 65 P.S. § 708(b)(30). The Rivas Attestation affirms that certain records contain information identifying a minor. Rivas Attestation ¶ 7.

Information identifying a minor is facially exempt and the Requester acknowledges that he was 14 years old at the time he sought help from the Department. *See Off. of the Governor v. Davis*, 122 A.3d 1185, 1194 (Pa. Commw. Ct. 2015) (en banc) (an affidavit may be unnecessary when an exemption is clear from the face of the record); *Pa. Game Comm’n v. Fennell*, 149 A.3d 101, 105 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal filing when construing exemptions). Accordingly, the Department has met its burden of proof. *See* 65 P.S. § 708(a).

The Requester argues that he should be entitled to information about himself. However, a requester’s identity or motivation for making a request is not relevant to determining whether a record is accessible under the RTKL. *Padgett v. Pa. State Police*, 73 A.3d 644, 647 (Pa. Commw. Ct. 2013). Under the RTKL, a record is either available to the public at large as a public record or it is shielded from disclosure. *See* 65 P.S. § 67.102; 65 P.S. § 67.305; *see also Cafoncelli v. Pa.*

*State Police*, 2017 Pa. Commw. Unpub. LEXIS 405 (Pa. Commw. Ct. 2017) (citing *Hunsicker v. Pa. State Police*, 93 A.3d 911, 912 (Pa. Commw. Ct. 2014)).

### **3. The OOR has no jurisdiction over records that may be related to a criminal investigation**

The Township is a local agency, and the OOR has no jurisdiction over appeals related to criminal investigative records held by local agencies. *See* 65 P.S. § 503(d); *Phila. Dist. Attorney's Off. v. Stover*, 176 A.3d 1024 (Pa. Commw. Ct. 2017) (holding that the OOR has jurisdiction to determine whether it actually has jurisdiction over the matter) (citation omitted). Instead, such appeals are to be heard by an appeals officer designated by the local district attorney. *See id.* First, jurisdiction is properly transferred from the OOR to a district attorney's office when an appeal on its face involves records that relate to a criminal investigation (e.g., search warrants, witness statements, etc.). *See California Borough v. Rothey*, 185 A.3d 456 (Pa. Commw. Ct. 2018) (quoting *Pa. State Police v. Grove*, 161 A.3d 877 (Pa. 2017) (holding that a "criminal investigation" "clearly and obviously refers to an official inquiry into a possible crime.")).

Second, when it is unclear whether the requested records relate to a criminal investigation, the local agency must provide some evidence showing how the records relate to a specific criminal investigation. While a low threshold for transferring a case is needed, an agency must provide more than a conclusory affidavit that merely repeats the language of Sections 503(d) and 708(b)(16). *Compare Walsh v. Penn Hills Twp.*, OOR Dkt. AP 2022-1336, 2022 PA O.O.R.D. LEXIS 1580 (finding that an affidavit demonstrated how the requested records related to a specific criminal investigation), *with Perlmutter v. Yardley Borough*, OOR Dkt. AP 2022-1150, 2022 PA O.O.R.D. LEXIS 2008 (retaining jurisdiction where the original affidavit mentioned records potentially related to a criminal investigation but a subsequent affidavit did not mention any particular criminal matter).

Initially, the OOR notes that both Requests seek incident reports. *See Fennell*, 149 A.3d at 105 (Pa. Commw. Ct. 2016). The Requests also seek contact reports, call-for-service logs, memoranda and internal communications related to the Requester and his father. The Rivas Attestation provides that the remaining responsive records—i.e. those not previously identified as not existing—are related to a criminal investigation, and the disclosure of those records is prohibited by CHRIA. Rivas Attestation, ¶¶ 6-7. The Department’s responses informed the Requester that he could appeal the denials as to criminal investigative records to the appeals officer appointed by the Montgomery County District Attorney’s Office.<sup>2</sup> Accordingly, the appeal is dismissed for lack of jurisdiction as to criminal investigative records.

**4. Item 5 of the first Request and Item 7 of the second Request are insufficiently specific**

The Department argues that Item 5 of the first Request and Item 7 of the second Request are insufficiently specific. Section 703 of the RTKL states 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 undertakes a nonexclusive, multi-factor test, considering “the extent to which the request specifies subject matter, the extent to which it defines the scope of the records it seeks, and the extent to which it limits the timeframe of the request.” *Pa. Off. of the Governor v. Brelje*, 312 A.3d 928, 937 (Pa. Commw. Ct. 2024) (citing *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015)). The test is not “a conjunctive, bright-line rule

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<sup>2</sup> The Requester argues that the Department should provide him redacted copies of records that it argues are related to a criminal investigation. Notwithstanding the fact that the OOR lacks jurisdiction over records that may be related to a criminal investigation, the OOR notes that agencies are not required to redact exempt records. *See, e.g., Castillo v. Pa. State Police*, 310 A.3d 831, 836 (Pa. Commw. Ct. 2024) (internal quotation and citations omitted); *Heavens v. Pa. Dep’t of Env’t Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013) (“the redaction requirement contained in Section 706 ... applies only to records that are public and contain information that is not subject to access.”).

requiring each ‘element’ of the test to be satisfied; rather, it [is] a flexible approach” consistent with relevant caselaw. *Id.*

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pittsburgh Post-Gazette*, 119 A.3d at 1125 (quoting 65 P.S. § 67.102). 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, supra*).

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. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022).

Here, the Items lack a defined scope and seek records from timeframes of two and 29 years, respectively. While the Items do not themselves identify a transaction or activity of the Department, seeking records containing the name of the Requester and his father, we must consider the context of the Requests, which indicates that the Items seek records related to police interaction, contact and investigation. *See Greim v. Pa. State Police*, 329 A.3d 873 (Pa. Commw. Ct. 2025) (finding that it was error for the OOR to consider one Item of a request as having nothing to do with the remainder of the request); *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (“the specificity of a request must be construed in the request’s context, rather than envisioning everything the request might conceivably encompass.”). However, the *Greim*

Court reiterated that “[a] request need only provide enough information to inform “an agency of the records requested.” *Id.* at 882 (quoting *Iverson*, 50 A.3d at 284, n.4).

Here, the Items do not inform the Department of the records being requested. After identifying a number of specific types of records, each Request proceeds to seek “[a]ny other records in any form,” and the Revas Attestation affirms that the Department is unable to ascertain what records these Items seek. *See* Revas Attestation. ¶ 8; *Se. Pa. Transp. Auth. v. Anderson and All That Philly Jazz*, No. 48 C.D. 2024, 2025 Pa. Commw. LEXIS 81 (May 1, 2025) (finding that the portions of a request that identified specific types of documents or senders and recipients of emails was sufficiently specific). Although the timeframe of the first Request is significantly shorter than that of the second, that does not change the fact neither Item seeks a clearly defined universe of responsive records. *See Off. of the Dist. Att’y of Phila. v. Bagwell*, 155 A.3d 1119, 1145 (Pa. Pa. Commw. Ct. 2017) (holding that a request is sufficiently specific where it enumerates a “clearly defined universe of documents.”). Because Item 5 of the first Request and Item 7 of the second Request do not identify a discrete group of documents, they are insufficiently specific. *See* 65 P.S. § 67.703.

## CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied in part** and **dismissed for lack of jurisdiction in part**, and the Township 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 Montgomery 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 Section 1303 of the RTKL, 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.<sup>3</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 12, 2026**

*/s/ Blake Eilers*

Blake Eilers, Esq.

Senior Appeals Officer

Delivered via OOR E-file Appeal Portal to: Vincent Scioli; Deborah A. Rivas

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