



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

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| IN THE MATTER OF | : |
| | : |
| JO CIAVAGLIA and BUCKS COUNTY | : |
| COURIER TIMES, | : |
| Requester | : |
| | : Docket No: AP 2026-1453 |
| v. | : |
| | : |
| BOROUGH OF QUAKERTOWN, | : |
| Respondent | : |

FACTUAL BACKGROUND

On February 26, 2026, Jo Ciavaglia and the Bucks County Courier Times (collectively “Requester”) submitted a request (“Request”) to the Borough of Quakertown (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[1.] Copies of all use of force reports for calendar year [] Jan[uary] 1, 2025 to YTD including Feb[ruary] 20, 2026.

[2.] Copies of written procedures officers use for each UOF report per;[sic] 2020 15 standards for Use of Force adopted by BC police departments for calendar year of Jan[uary] 1, 2025 to YTD including [sic].

[3.] Copies of any reports showing the analysis of each UOF incident, police and practices, one of the 15 standards BC police departments adopted in 2020 for the calendar years of Jan[uary] 1, 2025 through YTD including Feb[ruary] 20, 2026.

On March 27, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Borough denied the Request, arguing that the records are exempt, as they relate to

both criminal and noncriminal investigations. 65 P.S. § 67.708(b)(16); 65 P.S. § 67.708(b)(17). The Borough also claimed that the records are confidential under the Pennsylvania Criminal History Record Information Act (“CHRIA”). 18 Pa. C.S. § 9101 *et seq.*

On April 10, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 28, 2026, Michael Tuosto, Esquire, on behalf of the Borough, submitted a position statement reiterating its grounds for denial. On May 1, 2026, the OOR directed the Borough to submit an affidavit or attestation in support of the statements of fact contained within its position statement. On May 28, 2026, the Borough submitted an attestation made under penalty of perjury,² authored by Joanna Meisner (“Meisner Attestation”), the Agency Open Records Officer (“AORO”) for the Borough. AORO Meisner affirms that the facts contained in the position statement are true and correct. Meisner Attestation ¶ 8.

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

¹ 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).”).

² 18 Pa. C.S. § 4904.

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. Responsive records were provided on appeal

On appeal, the Borough provided some records responsive to Item 2 of the Request, including the Borough’s Use of Force Policy and a Use of Force Form. Therefore, to the extent the Request sought that information, the appeal is dismissed as moot. *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”).

2. The Borough proved that responsive records for Item 1 of the Request relate to a noncriminal investigation

The Borough denied public access to use of force reports requested in Item 1 of the Request due to the exemption under Section 708(b)(17) of the RTKL, which exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “complaints,” “[i]nvestigative materials, notes, correspondence and reports...”. 65 P.S. § 708(b)(17)(i); 65 P.S. § 708(b)(17)(ii). In order for this exemption to apply, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *See Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be “conducted as part of an agency’s official duties.” *Id.* at 814; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Pa. Dep’t of Pub. Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold

otherwise would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” *Id.* at 259.

The Borough provided a copy of its Use of Force Policy, the purpose of which is to establish policies and guidelines under which the use of force by police officers is permissible.³ *See* Use of Force Policy. The Policy indicates that violations of the Policy may form the basis for departmental administrative actions. *Id.* The Borough additionally provided a copy of its Use of Force Report Form, which requires a detailed account of a use of force incident to be completed by a police officer, as well as contact information for any relevant witnesses. *See* Use of Force Report Form. AORO Meisner indicates that these report forms are used as a tool to conduct an internal investigation into whether the reporting officer complied with the Use of Force Policy. Meisner Attestation ¶ 7.

Accordingly, the Borough has demonstrated that it has the legislatively granted authority to conduct noncriminal investigations in the event that a use of force occurs giving rise to the filing of the Use of Force form. Therefore, the responsive records to Item 1 of the Request are exempt from disclosure under Section 708(b)(17) of the RTKL.⁴ *See* 65 P.S. § 67.708(b)(17); *see also*, *e.g.*, *Segelbaum v. York County*, OOR Dkt. AP 2021-1543, 2021 PA O.O.R.D. LEXIS 1698 (finding that all documents memorializing a specific use of force incident were exempt from disclosure); *Jaafari v. Susquehanna Twp.*, OOR Dkt. AP 2020-1173, 2020 PA O.O.R.D. LEXIS 3013 (finding that use of force reports generated by a police department were related to

³ Pursuant to its Home Rule authority, the Borough’s Police Department enacted General Order 1.3.1 to govern its Use of Force policy and conduct administrative investigations regarding that policy. *See* Administrative Code of the Borough of Quakertown § 102 publicly accessible via the Borough’s website at <https://ecode360.com/14354060#14354062> (last visited June 2, 2026).

⁴ Because the Department has demonstrated that the requested records are exempt noncriminal investigative records, the OOR need not reach the Department’s alternative grounds for denying access. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

noncriminal investigations where the agency produced evidence that use of force reports were generated whenever force was used).

3. The Borough failed to prove additional records responsive to Item 2 and 3 of the Request do not exist in its possession, custody or control

The Borough also argues that responsive records for Items 2 and 3 of the Request seeking procedures officers use to complete each use of force report as well as analysis reports of the Use of Force incidents in 2025 do not exist. In response to a request for records, "...an agency shall make a good faith effort to determine...whether 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 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).

Here, AORO Meisner does not provide details regarding the search conducted for Items 2 and 3 of the Request. AORO Meisner notes that her "office searched for any public records" and as a result "found no public records." Meisner Attestation ¶¶ 4, 5. One can only assume AORO Meisner meant she could not find responsive records for Items 2 and 3, as she asserts that

responsive records for Item 1 are exempt. *Id.* at ¶¶ 6-7. AORO Meisner does not provide details regarding the locations searched or inquiries with any custodians that may possess potentially responsive records. This conclusory response is not sufficient to meet the Borough's burden of proof. Under the RTKL, an affidavit or statement made under 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). However, this affidavit must offer more than conclusory statements. *See Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (“[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records”); *see also Marshall v. Neshaminy Sch. Dist.*, OOR Dkt. AP 2010-0015, 2010 PA O.O.R.D. LEXIS 67 (finding that an agency's conclusory affidavit was insufficient). Based upon the conclusory evidence provided, the Borough failed to describe the good faith search conducted that would be reasonably calculated to identify the requested records or demonstrate that no additional records exist. *See Stookey v. Unionville-Chadds Ford Sch. Dist.*, OOR Dkt. AP 2018-2025, 2018 PA O.O.R.D. LEXIS 1359; *Pa. Dep't of Labor and Indust. v. Earley*, 126 A.3d 355 (Pa. Commw. Ct. 2015).

The Borough is therefore directed to conduct a supplemental good faith search for as set forth in 65 P.S. § 67.901, and provide any records discovered as a result of that search. However, the OOR is mindful that an agency cannot produce records that do not exist within its “possession, custody or control” and, accordingly, is not ordering the creation of any records. 65 P.S. § 67.705.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part, and dismissed as moot in part**, and the Borough is required to conduct a good faith search for written procedures

officers use for each UOF report and reports showing analysis of each UOF incident, police and practices from January 1, 2025 to February 26, 2026 within thirty days. However, if no additional records are located as a result of its search, the Borough shall provide a detailed attestation or affidavit to the Requester confirming same within thirty days. 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 Bucks County Court of Common Pleas. 65 P.S. § 67. 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.⁵ 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: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 17, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Jo Ciavaglia
Joanna Meisner, AORO
Michael Tuosto, Esq.

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