

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ERIC LOWRY,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-2005
	:	
LOWER MERION SCHOOL DISTRICT,	:	
Respondent	:	

FACTUAL BACKGROUND

On May 11, 2026, Eric Lowry (“Requester”) submitted a request (“Request”) to Lower Merion School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Please provide the internal bus video from bus 111 during the afternoon bus run on 5/11/26 between 3[:]15 pm and 3[:]40 pm. Please provide the names and titles of all staff on the bus.

As the Requester did not receive the District’s response within five business days of the Request, the Requester filed an appeal with the Office of Open Records (“OOR”) on May 20, 2026, claiming that the Request was deemed denied.¹ *See* 65 P.S. § 67.901.

¹ The OOR notes that the District did attempt to invoke a thirty-day extension to respond to the Request, but this notice was untimely provided to the Requester on May 19, 2026, after the Request was deemed denied. *See* 65 P.S. §§ 67.901, 902.

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 June 9, 2026, the District submitted a position statement and an attestation made under the penalty of unsworn falsification to authorities² from Denise D. LaPera (“LaPera Attestation”),³ the District’s Executive Assistant to the Superintendent, Board Secretary, and Open Records Officer (“AORO”), partially denying the Request by providing the responsive bus video subject to redactions. The responsive record consists of audio and video of the interior of a District school bus that includes images and audio of various students and three adults. The District redacted all student images, except the image of the Requester’s child from the video as well as the audio of voices of students other than the Requester’s child under the Pennsylvania Constitutional right to informational privacy. *See* Pa. Const., Art.1, §1. The District did not redact any images or audio associated with either the Requester’s child, or any of the adults on the bus.⁴

On June 10, 2026, the Requester submitted a position statement and makes clear that the appeal does not challenge the redaction of the students’ images or students’ audio as the Requester is “not interested” in that information. The Requester’s only contention on appeal is that the Requester has little faith in the District that it did not redact the adult voices from the video even

² 18 Pa.C.S.A. § 4904.

³ Under the RTKL, a sworn affidavit or statement made under the 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. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the District has acted in bad faith or that the requested records exist, “the averments in [the Attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

⁴ The OOR notes that the record closed on June 2, 2026. On June 8, 2026, the District sought a brief extension until June 9, 2026, to make a submission to the record. On June 9, 2026, the District made a submission that was received after the record closed, however to develop the record, the submission was considered. *See* 65 P.S. § 67.1102(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”).

though the District claims that it did not. The Requester asks that the OOR review the video to make that determination.⁵

LEGAL ANALYSIS

The District 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 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-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 appeal is moot in part.

The record reflects that on May 28, 2026, the District provided the Requester the responsive video subject to redactions and provided the names of the adults on the bus in response to the Request. The Requester has not submitted any evidence to the contrary. Therefore, because the District provided the responsive unredacted portion of the video and the names of the adults on appeal to the Requester, the appeal is dismissed as moot in part. *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”).

⁵ Given the limited issue raised by the Requester on appeal, the District’s grounds for the redactions of the students’ audio and video will not be discussed in this Final Determination.

2. The District did not operate in bad faith.

On appeal, the Requester essentially argues that the District is acting in bad faith by asserting that the audio of adults on the bus was redacted from the responsive video even though the District claims it did not redact that particular audio from said video. *See* LaPera Attestation, ¶ 11. While the OOR may make a finding of bad faith, only a court may impose related penalties. *See* 65 P.S. §§ 67.1304(a), 1305. Under the RTKL, a finding of bad faith may be appropriate where an agency refuses to comply with its statutory duties. *See Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161, 1171-74 (Pa. Commw. Ct. 2018), *aff'd*, 243 A.3d 19 (Pa. 2020) (bad faith involves failing to perform a good faith search and review of records to ascertain if the requested material exists or if any exclusion applies prior to denial of access); *see also Off. of the Dist. Att'y. of Phila. v. Bagwell*, 155 A.3d 1119, 1140-41 (Pa. Commw. Ct. 2017) (a finding of bad faith was warranted where the agency based a denial on the identity of the requester, refused to provide a legal rationale for denial and did not perform a good faith search). However, such a finding is typically reserved only for an egregious or blatant violation of the RTKL.

Here, the District searched for and produced the responsive video sought in the Request and participated on appeal. The District avers that it “did not redact the images or audio of any adults in the video.” LaPera Attestation, ¶ 11. The record does not reflect that the District refused to comply with its statutory duties under the RTKL and there is no evidence on the record to call into question the veracity of the District’s assertions.⁶ Accordingly, the OOR declines to find that

⁶ While the Requester sought an *in camera* review of the video, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter. Therefore, the request for *in camera* review is denied.

the County redacted any audio of any of the adults in the responsive video and that the County acted in bad faith in this matter.⁷

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed in part**, and the District 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 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.⁸ 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/ Damian J. DeStefano

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Eric Lowry; Denise D. LaPera, AORO;
Bethany L. O'Neill, Esq.

⁷ The OOR notes that “to the extent that any student names were said by any adults on the bus were inadvertently left on the video and not redacted, was an inadvertent omission by the District, and the District does not waive the privacy rights of the students, or the District’s ability to raise such claims.” District Position Statement, pg. 3, ¶ 2.

⁸ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).