



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**SERGEY TSVILIKHOVSKIY,  
Requester**

**v.**

**BUCKS COUNTY,  
Respondent**

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**Docket No: AP 2026-1664**

## **FACTUAL BACKGROUND**

On March 30, 2026, Sergey Tsvilikhovskiy (“Requester”) filed a request (“Request”) with Bucks County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the following records related to by the Bucks County Department of Health (“BCDH”) for the Panera Bread restaurant at 152 E Street Road, Feasterville, PA 19053, Facility ID#: 216023:

1. All Food Facility Inspection Reports, including initial inspections, reinspections, compliance inspections, and complaint-driven inspections
2. All consumer complaints, foodborne illness complaints, and/or reports of illness filed with the Department regarding this facility, including complaint intake forms, investigation notes, and any follow-up documentation
3. All foodborne illness investigation or epidemiological investigation records related to this facility, including but not limited to pathogen identification, food sample testing results, interviews with affected individuals, and any investigation reports or summaries
4. All correspondence, emails, letters, notices, warning letters, citations, orders, and/or enforcement actions issued by the Department to or regarding this facility,

including but not limited to closure orders, notices of license non-renewal, and any responses received from the facility, its owner, its management, American Bread Company L.L.C., or Strang Corporation

5. All food license and permit records for this facility, including applications, approvals, denials, suspensions, revocations, renewal records, and any periods during which the facility operated without a valid license

6. All records related to Certified Food Safety Manager (CFSM) registration or compliance for this facility, including SA-71 applications, registrations, and any notices of non-compliance

7. All records of regulatory fees, fines, or penalties assessed against or collected from this facility

8. All corrective action plans, repair invoices, equipment service reports, or other remediation documents submitted by the facility to the Department in response to inspection violations

9. All internal Department memoranda, notes, communications, or referrals regarding this facility, including any discussions or recommendations regarding enforcement action, legal action, or facility closure, and any referrals to other agencies

10. All photographs, images, or video captured by Department inspectors during any inspection of this facility

11. All temperature monitoring logs, food safety plans, or self-inspection records submitted by this facility to the Department

12. All communication logs or records of contact (including phone calls, emails, and in-person visits) between Department personnel and this facility's owner, on-site management, corporate representatives of American Bread Company L.L. C., or Strang Corporation

13. All records of any communication between the Department and any other government agency (including but not limited to the Pennsylvania Department of Agriculture and Lower Moreland Township) regarding this facility.

On April 23, 2026, after invoking a thirty-day extension to respond, *see* 65 P.S. § 67.902(b), the County granted Items 1, 4-7 and 12, providing responsive emails, BCDH licenses, the license applications, 87 pages of inspection reports and Certified Food Safety Manager certificates. However, the County denied Items 3, 8, 10-11 and 13, arguing that no responsive

records exist in its possession, custody or control. The County also argued that records responsive to Items 2 and 9 are related to noncriminal investigations. *See* 65 P.S. § 67.708(b)(17).

On April 24, 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 County to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On May 6, 2026, the County submitted a statement made under the penalty of unsworn falsification to authorities, 18 Pa.C.S. § 4904, by Laura Riba, Esq. (“Riba Attestation”), First Deputy County Solicitor for the County Law Department and the Agency Open Records Officer for the County Board of Commissioners and Administration. The Riba Attestation reiterates the County’s grounds for denial and argues that records responsive to Item 9 are also exempt because they reflect the County’s internal, predecisional deliberations.<sup>2</sup> *See* 65 P.S. § 67.708(b)(10)(i)(A).

On the same day, the Requester submitted a position statement, challenging the County’s evidence. On May 8, 2026, the Requester provided the OOR with additional time to issue a final determination in this matter, *see* 65 P.S. § 67.1101(b)(1), and the OOR established a briefing schedule.

On May 13, 2026, the County submitted a position statement, responding to the Requester’s submission, and on the next day, the Requester submitted a response. On May 21, 2026, the County indicated that it would not be making any further submission.

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<sup>1</sup> On appeal, the Requester states that he seeks aggregated data. However, the Request did not seek aggregated data, and a requester may not modify or expand upon a request on appeal. *See McKelvey v. Off. of the Att’y Gen.*, 172 A.3d 122, 127 (Pa. Commw. Ct. 2017); *Smith Butz, LLC v. Pa. Dep’t of Env’t Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016). In any case, the Riba Attestation affirms that the County does not have the requested aggregated data. *See* Riba Attestation, ¶ 13.

<sup>2</sup> Under the RTKL, an affidavit or statement made under penalty of perjury may serve as sufficient evidentiary support. *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).

## LEGAL ANALYSIS

The County 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 County 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 County has proven that records are related to noncriminal investigations**

The County argues that records responsive to Items 2 and 9 are related to noncriminal investigations. Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “[i]nvestigative materials, notes, correspondence and reports” and “[a] record that, if disclosed, would ... [r]eveal the institution, progress or result of an agency investigation.” 65 P.S. § 67.708(b)(17)(ii); 65 P.S. § 67.708(b)(17)(vi)(A). 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 Pa. Dep’t of Health v. Off. 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. *See Pa. Dep't of Pub. Welf. 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 Riba Attestation provides generally that the BCDH has statutory authority to conduct food safety inspections at restaurants and the complaints requested in Item 2 and the internal memoranda, notes, communications, referrals, etc. requested in Item 9 are exempt. Riba Attestation, ¶¶ 8-10. The Attestation further provides that records responsive to Item 9 reflect BCDH’s discussions about what steps to take in a given investigation. *Id.*, ¶¶ 11-12.

While the Riba Attestation is not detailed, the OOR has found that County Boards of Health operate under the guidance and supervision under the Commonwealth’s Department of Health (“Department”) and that reports of diseases and any record related to diseases reported under the Disease Prevention and Control Law of 1955 (“DPCL”), 35 P.S. § 512.15, *et seq.*, are confidential. *See also* 28 Pa. Code § 27.3. Under Section 521.3(a) of the DPCL, local boards and departments of health are primarily responsible for the prevention and control of communicable and non-communicable diseases. *See* 35 P.S. § 521.3(a). The DPCL contains a confidentiality provision which the OOR has previously interpreted broadly. *See, e.g., Ciavaglia v. Bucks Cnty.*, OOR Dkt. AP 2020-0761, 2020 PA O.O.R.D. LEXIS 1528 (finding local health department reports and records that show COVID-19 related deaths confidential under the DPCL); *Pattani v. Pa. Dep't of Health*, OOR Dkt. AP 2020-0995, 2020 PA O.O.R.D. LEXIS 2672 (finding communications that discuss how to coordinate public health activities between the Department and local health authorities were confidential under the DPCL).

Items 2 and 9 are premised on the existence of an investigation. *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).

Further, Item 2 seeks complaints and related records. The Commonwealth Court has held that complaints leading to an investigation are exempt from disclosure. *See Black v. Pa. State Police*, 2016 Pa. Commw. Unpub. LEXIS 809 (Pa. Commw. Ct. 2016) (finding that complaints related to a noncriminal investigation “are exempt from disclosure whether they caused the investigation to commence in whole or in part or not at all”) (quoting *Stein v. Plymouth Twp.*, 994 A.2d 1179, 1182 n.8 (Pa. Commw. Ct. 2010)); *Pa. Liquor Control Bd. v. Perretta*, No. 1470 C.D. 2018, 2019 Pa. Commw. Unpub. LEXIS 628 (Pa. Commw. Ct. 2019); *Brown v. Pa. Off. of Insp. Gen.*, 730 C.D. 2016, 2017 Pa. Commw. Unpub. LEXIS 868, \*13 (Pa. Commw. Ct. 2017) (noting that for the exemption to apply, there must actually be an investigation).

The Requester argues that the County issued a closure order against this facility on September 19, 2024, for operating without a valid food license, and that this and related records fall squarely within the exception to the exemption for records related to a noncriminal investigation. Subsection 708(b)(17)(vi)(A) contains an exception to the exemption, providing that the exemption does not apply to “the imposition of a fine or civil penalty ... or an executed settlement agreement....” 65 P.S. § 67.708(b)(17)(vi)(A); *Heavens v. Pa. Dep't of Env't'l Prot.*, 65 A.3d 1069, 1075 (Pa. Commw. Ct. 2013) (“it [is] incumbent upon [an agency] to determine whether records exist[] that [do] not fall within the exception or whether an exception to the noncriminal investigation [exemption] require[s] that certain documents be disclosed.”).

However, the closure order would be responsive to Item 4 of the Request, which expressly seeks, *inter alia*, closure orders. The County granted all records responsive to Item 4 and the

Requester has not challenged this aspect of the County’s response on appeal. *See Pa. Dep’t of Corr. v. Off. of Open Records*, 18 A.3d 429 (Pa. Commw. Ct. 2011) (finding that a requester waived objections to issues not challenged on appeal).<sup>3</sup> Accordingly, in consideration of the face of the Request and the evidence produced by the County, minimal though it is, the OOR concludes that it is more likely than not that records responsive to Items 2 and 9 are related to noncriminal investigations. *See* 65 P.S. § 67.708(a)(1); *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 the operative standard of proof under the RTKL is a preponderance of the evidence, which is the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry).

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

The County argues that records responsive to Items 3, 8, 10, 11 and 13 do not exist. However, the Requester questions whether the County conducted a good faith search.

In response to a request for records, an agency is required to “make a good faith effort to determine if ... the agency has possession, custody or control of the record.” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort” as used in Section 901 of the RTKL, in *Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections*, 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.

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<sup>3</sup> However, nothing in this Final Determination prevents the Requester from filing a new request, seeking the closure order.

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 Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

“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.*

Here, Attorney Riba attests that she forwarded the BCDH and asked them to search for responsive records. Riba Attestation, ¶ 3. The BCDH searched its digital platform and provided licenses and applications, 87 pages of inspection reports and Certified Food Safety Manager certificates responsive to Items 1, 4-7 and 12. *Id.*, ¶ 4. A search of BCDH's email platform returned no emails responsive to Item 13 because BCDH did not communicate with any other government agency about the facility. *Id.*, ¶ 5. After searching, BCDH determined that no records exist that would be responsive to Items 3, 8, 10, 11 and 13. *Id.*, ¶ 6.

“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 Requester presents no evidence that additional records exist, nor is there any evidence causing the OOR to question the veracity of the Riba Attestation. *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*, 280 A.3d 87. Accordingly, the County has met its burden of proving that records responsive to Items 3, 8, 10, 11 and 13 do not exist in its possession, custody or control. *See Hodges*, 29 A.3d at 1192.

### CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied**, and the County 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 Bucks 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>4</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 17, 2026**

/s/ Blake Eilers  
Blake Eilers, Esq.  
Senior Appeals Officer

Delivered via OOR E-file Appeal Portal to: Sergey Tsvilikhovskiy; Laura Riba

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<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).