



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

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**KIMBERLEE MCCLELLAN,
Requester**

v.

Docket No.: AP 2026-1406

**SCRANTON CITY,
Respondent**

On April 2, 2026, Kimberlee McClellan (“Requester”) submitted a request (“Request”) to Scranton City (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

We are the listing brokerage representing the seller of the property located at 740 ORCHARD ST SCRANTON, PA 18505. Please provide the following:

1. Open or outstanding code violations. If there are, can they be assumed by the new buyer;
2. Utility/tax/municipal liens, assessments, or special charges recorded at the township level;
3. Open building permits. If there are, can they be assumed by the new buyer;
4. Vacant/Abandoned Property registrations ordinance; if there is an ordinance, confirm if there is a current VPR on the property;
5. Delinquent property taxes;
6. Property card (MOD-IV/tax assessment record).

Regarding any required payments for balances due or applications, please provide the corresponding fees, interest rates, due dates, check types, payee names, and mailing addresses.

On that same day, the City partially denied the Request, stating that no records responsive to Items 2, 4, 5, or 6 exist within its possession, custody, or control. Additionally, the City argues that certain records responsive to Items 1 and 3 of the Request contain exempt noncriminal investigative information, 65 P.S. § 67.708(b)(17), and exempt personal identification information, 65 P.S. § 67.708(b)(6)(i)(A).

On April 8, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the partial denial and stating grounds for disclosure.¹ 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 April 29, 2026, the City submitted a position statement, reiterating its grounds for the partial denial. In support of its position, the City submitted the attestation of its Open Records Officer, Grace Shaner (“Shaner Attestation”), which describes the City’s search for records responsive to the Request and affirms that the City does not possess records responsive to Items 2, 4, 5, or 6 of the Request, nor does the City possess additional records responsive to Items 1 or 3 of the Request.

On June 11, 2026, in response to the OOR’s request for additional information, the City submitted the supplemental attestation of Grace Shaner (“Shaner Supplemental Attestation”), which addresses the redactions made pursuant to Section 708(b)(17) of the RTKL.

¹ The Requester granted the OOR a thirty-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).”).

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).

1. Expressly exempt personal identification information was properly redacted from the records responsive to Items 1 and 3 of the Request

The City argues that it properly redacted personal identification information from the records responsive to Items 1 and 3 of the Request under Section 708(b)(6) of the RTKL, which exempts from disclosure “[a] record containing all or part of a person’s Social Security number, driver’s license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number.” 65 P.S. § 67.708(b)(6)(i)(A). In support of the City’s position, the Shaner Supplemental Attestation confirms that the “exempt information appears on pages 3, 6, 7, and 8 of the responsive records” and that the redactions include personally identifying information of individuals who submitted complaints to the City. *See* Shaner Supplemental Attestation, ¶ 5. As such information

is expressly exempt, the City has met its burden of proving that it properly redacted this information. *See* 65 P.S. § 67.706.

2. Complaints were properly redacted from the responsive records under Section 708(b)(17) of the RTKL

The City argues that it properly redacted noncriminal investigative information from records responsive to Items 1 and 3 of the Request.²

Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “[c]omplaints submitted to an agency,” “[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)(i)-(ii), (vi)(A). 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. 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. An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted factfinding and investigative powers. *See 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.

In support of the City’s position, the Shaner Supplemental Attestation confirms that the “exempt information appears on pages 3, 6, 7, and 8 of the responsive records” and that “[t]he redacted information includes the complaints themselves.” *See* Shaner Supplemental Attestation, ¶¶ 4-5. Additionally, the OOR has consistently held that municipalities are statutorily authorized

² *See* 65 P.S. § 67.708(b)(17).

to investigate complaints and violations of their ordinances.³ Moreover, the Commonwealth Court has held that complaints leading to an investigation are exempt from disclosure.⁴ Because complaints are facially exempt from access under Section 708(b)(17) of the RTKL, the redactions made by the City are proper. 65 P.S. §§ 67.708(b)(17)(i)-(ii), (vi)(A); *see also, e.g., Zimmerman v. Pine Grove Twp.*, OOR Dkt. AP 2026-1227, 2026 PA O.O.R.D. LEXIS 1892.

3. The City demonstrated that no records responsive to Items 2, 4, 5, or 6 of the Request and no additional records responsive to Items 1 or 3 of the Request exist within its possession, custody, or control

The City argues that it does not possess records responsive to Items 2, 4, 5, or 6 of the Request, nor does it possess additional records responsive to Items 1 or 3 of the Request. The Requester argues that additional records responsive to the Request should exist and that the City did not provide “plausible justification” as to why it does not possess the requested “property card, liens and delinquent taxes.”

In response to a request for records, “an agency shall 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,” 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

³ *See, e.g., Camburn v. Pottstown Borough*, OOR Dkt AP 2018-0954 (finding that the Borough Code and the agency's ordinance provided legislatively granted authority to conduct noncriminal investigations relating to property maintenance of residential rental units); *City of Erie v. Stelmack*, 780 A.2d 824 (Pa Commw. Ct. 2001) (holding that the City has the authority to enforce its code for property violations).

⁴ *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).

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).

In support of the City's position, the Shaner Attestation, which is written by the City's AORO, states that AORO Shaner conducted a good faith search for records responsive to the Request, and inquired with relevant City personnel. *See Shaner Attestation*, ¶ 4.⁵ The Shaner Attestation confirms that all records were located were identified and provided to the Requester in response to the Request. *Id.* Further, the Shaner Attestation affirms that, based on the search conducted, "there...[are] no responsive records in the possession, custody, or control of the City...that are responsive to [the portions of the Request seeking] 'Utility/tax/municipal liens, assessments, or special charges recorded at the township level,' 'Vacant/Abandoned Property registrations ordinance; if there is an ordinance, confirm if there is a current VPR on the property,' 'Delinquent property taxes,' 'Property card (MOD-IV / tax assessment record),' 'If there are, can they be assumed by the new buyer' or 'Open or outstanding code violations' and 'If there are, can they be assumed by the new buyer' for 'Open building permits.'" *See id.*, ¶ 5.

⁵ *See Hodges*, 29 A.3d at 1192; *see also 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 records exist, averments of nonexistence from the individual who conducted the agency's search should be accepted as true).

Moreover, no evidence has been presented to contradict the Shaner Attestation or to show that additional records responsive to the Request do, in fact, exist. Rather, the Requester's argument is that responsive documents should exist, and the OOR makes no determinations as to whether records should exist, as our inquiry is limited to whether records are "in existence and in possession of the...agency at the time of the right-to-know request." *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705.

Accordingly, based on the evidence presented, the City has demonstrated that no records responsive to Items 2, 4, 5, or 6 of the Request and no additional records responsive to Items 1 or 3 of the Request exist within its possession, custody, or control. *See Hodges*, 29 A.3d at 1192; *see also Mahon*, 283 A.3d at 936; *Campbell v. Pa. Interscholastic Athletic Ass'n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a "more likely than not" inquiry).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the City 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 Lackawanna 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.⁶ All documents or communications

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

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 22, 2026

/s/ Erika Similo

ERIKA SIMILO
APPEALS OFFICER

Sent via portal to: Kimberlee McClellan
Grace Shaner