



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
VINCENT SCIOLI,	:
Requester	:
	:
v.	: Docket No: AP 2026-2102
	:
PENNSYLVANIA DEPARTMENT	:
OF TRANSPORTATION,	:
Respondent	:

FACTUAL BACKGROUND

On April 24, 2026, Vincent Scioli (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Transportation (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. All grant applications submitted by or on behalf of the Montgomery County Police Department (Montgomery County, PA) under the Municipal Police Traffic Services (PTS) Enforcement Program, or any other [Department] Behavioral Highway Safety Grant Program, for Federal Fiscal Years 2019 through 2026.
2. All grant award determinations, award letters, or notices of grant approval or denial issued to the Montgomery Township Police Department under any [Department] grant program for the same period.
3. All grant expenditure reports, activity reports, enforcement activity summaries, or performance reports submitted by the Montgomery Township Police Department to [the Department] under any grant program for the same period.
4. All records reflecting the total dollar amount of grant funding awarded to the Montgomery Township Police Department under any [Department] highway safety program for each federal fiscal year from 2019 through 2026.

5. The allocation formula, methodology or criteria used by [Department] to determine grant funding amounts for individual municipal police departments under the PTS Enforcement Program, including any weighting based on arrest statistics, crash data, or enforcement activity levels.

6. Any records of Montgomery Township Police Department officers receiving “DUI Top Gun Awards” or similar recognition through any [Department] - coordinated program for the same period.

I request that responsive records be provided in electrotonic format (email delivery preferred).

On May 27, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department partially denied Item 1 of the Request and provided responsive records subject to the redaction of the employee numbers and other confidential personal identification numbers, 65 P.S. § 67.708(b)(6)(i)(A). The Department granted Items 2, 3, and 4 of the Request. Item 5 of the Request was denied because the Department argues that Item 5 asks questions which it is not obligated to answer under the RTKL. Regarding Item 6 of the Request, the Department asserts that no responsive records exist.

On May 27, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denials of Items 5 and 6 of the Request and stating grounds for disclosure.

The OOR invited both parties to supplement the record and directed the Department 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 Department submitted a position statement and an attestation made under the penalty of unsworn falsification to authorities¹ by Adam Shanabrook (“Shanabrook Attestation”),² the Department’s Open Records Officer (“AORO”), reiterating its grounds for denial.

¹ 18 Pa.C.S.A. § 4904.

² 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 Department acted in bad

On June 9, 2026, the Requester submitted a position statement asserting that, based on grant agreements, Montgomery Township is required to submit reports, specifically Quarterly and Performance Measurement reports, to the Department and therefore, additional responsive records must exist; and, the Department's evidence of its search for records is deficient to meet its burden.

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. 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 Department 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 factfinder ... 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.

During the appeal, the Department provided the Requester a spreadsheet with the Montgomery Township grant awards that included the calculation that “considers the number of DUI crashes in a particular location and awards grant funding on that basis.” This evidence demonstrates that the Department provided responsive information pertaining to the allocation of funds responsive to the Request to the Requester during the appeal. The Requester acknowledges receipt of the responsive information. Therefore, in as much as the information

faith, “the averments in [the Attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. 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)).

provided is responsive, 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”).

2. Item 5 of the Request seeks information under the RTKL.

The Department claims that Item 5 of the Request seeks answers to questions, soliciting legal advice, and the Department is not required to conduct legal research to respond to questions in the Request. Under the RTKL, a request must seek records, rather than answers to questions. *See* 65 P.S. § 67.703; *Walker v. Pa. Ins. Dep't*, No. 1485 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 425 (Pa. Commw. Ct. 2012); *Gingrich v. Pa. Game Comm'n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 (Pa. Commw. Ct. Jan. 12, 2012) (noting that the portion of a request “set forth as a question” did not “trigger a response”). “The RTKL is not a forum for the public to demand answers to specifically posed questions to either a Commonwealth or local agency. In fact, there is no provision in the RTKL that requires an agency to respond to questions posed in a request.” *Walker*, 1485 C.D. 2011 (Pa. Commw. Ct. 2012); *Olick v. City of Easton*, 208 A.3d 205, 2019 Pa. Commw. Unpub. LEXIS 183 (Pa. Commw. Ct., Apr. 4, 2019) (noting that discovery-style inquiries are not appropriate under the RTKL). Also, the OOR cannot refashion a question into a request for records. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Richardson v. PSP*, OOR Dkt. AP 2024-0105, 2024 PA O.O.R.D. LEXIS 304. Additionally, the Commonwealth Court has found that “[a] request that explicitly or implicitly obliges legal research is not a request for a specific document; rather it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request.” *Askew v. Pa. Off. of the Governor*, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013). A request for an agency to identify the legal authority to take specific actions or to review files and make judgments would oblige legal research. *See Pa. Dep't of Envtl.*

Prot. v. Legere, 50 A.3d 260 (Pa. Commw. Ct. 2012); *Pa. Dep't of Corr. v. St. Hilaire*, 128 A.3d 859 (Pa. Commw. Ct. 2015). An agency cannot be required to perform legal research for a requester. See *Gilmore v. Pa. Bd. of Prob. and Parole*, OOR Dkt. AP 2017-0821, 2017 PA 5 O.O.R.D. LEXIS 778.

However, the RTKL broadly defines a “record” as “[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102. The OOR has consistently held that seeking information is generally a proper request. See *Delp v. Barrett Twp.*, OOR Dkt. AP 2024-2397, 2024 PA O.O.R.D. LEXIS 2841 (finding that a request for the identification of vehicles and maintenance equipment the township owns and the mileage was a proper request); *Ciavaglia v. Pennridge Sch. Dist.*, OOR Dkt. AP 2020-0025, 2020 PA O.O.R.D. LEXIS 2078 (finding that a request for figures sought information and did not impermissibly ask questions); *Rodriguez v. Verona Borough*, OOR Dkt. AP 2025-0132, 2025 PA O.O.R.D. LEXIS 543; *Wright v. Town of McCandless*, OOR Dkt. AP 2025-0248, 2025 PA O.O.R.D. LEXIS 693, *5 (“Demands for ‘discrete pieces of information’ may be implicitly read as seeking documents”) (citing *Gingrich*, 2012 Pa. Commw. Unpub. LEXIS 38).

Notwithstanding the Department’s argument that Item 5 of the Request improperly asks questions, the Department explains the process it has established to award funding received from the National Highway Traffic Safety Administration (“NHTSA”). See 23 USC §§ 402, 405(d)(g). NHTSA provides funding pursuant to the states and only requires that the grant award process be data driven. While the Department asserts that it does not have a particular formula, it does have an allocation method whereby the Department considers the number of DUI crashes in a particular location and awards grant funding on that basis. See *Shanabrook Attestation*, ¶¶ 11-15. After

conducting a search for records, the Department produced a spreadsheet with the Montgomery Township grant award numbers. *See Id.* The Requester argues that the Department's submission confirms that the information sought exists in record form and Department concedes that "considers the number of DUI crashes in a particular location and awards grant funding on that basis" and the Department's own exhibit states the calculation. The Requester concludes that the Department cannot simultaneously assert that there is no particular methodology and then produce records that show the allocation of funds based on that particular methodology.

Based on the parties' arguments and a plain reading of the Request, it shows that the Request does not require the Department to answer questions regarding its "allocation formula, methodology, or criteria" to determine grant funding amounts for police departments under a particular program but seeks responsive information similar to the information provided on appeal. Moreover, the Requester clarifies that the Request seeks "any program guidance, grant-administration materials, scoring or weighting criteria, and the native spreadsheet(s) and underlying formulas from which the [Department's] [] figures were calculated." Requester Position Statement, pg. 3, Requested Relief, ¶ 1. As such, Item 5 of the Request seeks information under the RTKL and the Requester identified types of potentially responsive documents. Accordingly, Item 5 of the Request seeks records under the RTKL.

3. The Department demonstrated that responsive records for Part 6 of the Request do not exist.

The Department also asserts that records responsive sought for Item 6 of the Request do not exist in its possession, custody or control. 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 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 all 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).

Additionally, “[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). 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.*; *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (holding that, when there is evidence that a record does not exist, “[i]t is questionable to what degree additional detail and explanation are necessary”); *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).

On appeal, the Department provided the Shanabrook Attestation, which was authored by the Department's AORO, confirming that it conducted a good faith search and no records responsive to Item 6 of the Request exist in its possession, custody or control. The Department shows that upon receipt of the Request, the Department's AORO assigned the Request to Heather

Quinn, Bureau Administrative Assistant for the Department's Bureau of Operations, to conduct a search for records. *See Shanabrook Attestation*, ¶ 4. The Department explains that Ms. Quinn was the appropriate person to contact as a potential custodian of responsive records because of her position as the Bureau of Operations that administers the Behavioral Highway Safety Grant Program. *See Id.*, ¶ 5. As part of the search, Ms. Quinn contacted her supervisor, Troy Love, Manager of the Behavioral Traffic Safety Unit, to assist in the search for records. *See Id.*, ¶ 6. Both Ms. Quinn and Mr. Love explain that it is the PA DUI Association ("Association") that gives out Top Gun Awards and other recognitions, that the Department does not maintain such records issued by the Association, and confirmed that the Department is not in the possession, custody or control of any records responsive to Item 6 of the Request.³ *See Id.*, ¶¶ 17-18.

While the Requester points out that responsive records should exist pursuant to grant agreements, and that additional responsive documents should exist, specifically Quarterly and Performance Measurement reports, 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 v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). The Department's evidence describes with detail the search it employed to determine whether it possessed responsive records and identified the personnel with which AORO inquired about the Request. Therefore, based on the record, the Department has met its burden of proof that it does not possess records responsive to Item 6 of the Request. *See Hodges*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *Campbell*, 268 A.3d 502 (Pa. Commw. Ct. 2021).

³ The OOR notes that the Department informed that the Requester could contact PA DUI Association for possible responsive records to Item 6 of the Request. *See Shanabrook Attestation*, ¶ 20.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part, and dismissed as moot in part** and the Department is required to provide the requested records, as described above, to the Requester within thirty days, or, in the alternative, a sworn affidavit or a statement made under the penalty of perjury demonstrating that the records do not exist. 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 Commonwealth Court. 65 P.S. § 67.1301(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.⁴ 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 25, 2026

/s/ Damian J. DeStefano

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Vincent Scioli;
Adam Shanabrook, AORO;
Madison Reed, Esq.;
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⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).