



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DONALD FRITZ,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2026-2204
	:	
ALLEGHENY VALLEY REGIONAL	:	
POLICE DEPARTMENT,	:	
Respondent	:	

On June 3, 2026, Donald Fritz (“Requester”) submitted a request (“Request”) to the Allegheny Valley Regional Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. ...[Computer Aided Dispatch (“CAD”)] records, CAD event history, unit history reports, unit status logs, dispatch logs, and time-response logs showing officers or units logged on, available, unavailable, out of service, assigned, dispatched, en route, on scene, cleared, self-initiated, or otherwise tracked by the [D]epartment;
2. Records identifying all...[Department] units active, logged into CAD, dispatched, self-initiated, available, unavailable, out of service, or otherwise operating between 15:11 and 17:11 hours on May 27, 2026;
3. Daily activity logs, officer activity logs, supervisor logs, shift reports, assignment sheets, duty rosters, and any records showing the duties being performed by scheduled personnel during the requested time period;
4. Records sufficient to identify which officers were available to respond to calls for service between 15:11 and 17:11 hours on May 27, 2026;

5. Records sufficient to show whether any scheduled officer was physically present for duty, absent, off-site, at the station, assigned to administrative duties, attending meetings, training, court, meal break, or otherwise unavailable for patrol response during the requested time period;
6. Records sufficient to show the duty status and availability of the Chief and Sergeant during the requested time period, including whether they were physically present, available for field response, logged into CAD, operating as active units, or engaged in administrative or supervisory duties;
7. Timekeeping records, time clock records, payroll records, compensated duty records, or other records sufficient to show whether the officers listed on the May 27, 2026 schedule were actually working and being compensated during the requested time period;
8. Records showing any changes, edits, exceptions, leave entries, overtime entries, call-ins, early departures, late arrivals, or adjustments to the May 27, 2026 schedule for the personnel listed as working during the requested time period;
9. Records sufficient to show whether the Chief, Sergeant, or any other scheduled officer was contacted, called in, requested to respond, or changed duty/availability status during or after the incident reflected in the timestamped radio communications;
10. Any records, notes, logs, or reports explaining why Officer VanWhy requested assistance, why the Chief was requested to be contacted by telephone through dispatch, and why the Sergeant was later reported as en route, if such records exist.

This [R]equest seeks records reflecting actual operational status, availability, CAD/unit status, physical/assignment status, and compensated duty status. This is not a request for the previously provided work schedule alone....

On June 4, 2026, the Department denied the Request, stating that certain requested records are exempt from disclosure as criminal investigative records, 65 P.S. § 67.708(b)(16), and that the Department does not possess certain requested records.

On June 4, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial of records other than “CAD administrative records” 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 15, 2026, the Department submitted the attestation of its Open Records Officer, Secretary/Treasurer and Payroll Clerk, Pamela Manning (“Manning Attestation”), which reiterates the Department’s grounds for denial and affirms that certain requested records do not exist. The Department also provided responsive timesheets, which were not available at the time of the Request, and additional documentation supporting its position, including a media article explaining the incident that occurred on the date referenced in the Request.

On that same day, the Requester provided a submission in support of the appeal.

LEGAL ANALYSIS

The Department 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 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 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. The appeal is moot in part

During the appeal, the Department provided recently “approved timesheets...show[ing] which Officers were on duty on May 27, 2026 as the schedule indicates” and that “reflect the hours that Officer VanWhy and Officer Schaaf worked during their assigned, scheduled shifts and that

the Chief and Sergeant worked additional hours because of this incident.” *See* Manning Attestation, ¶ 4.¹ Additionally, the Department provided a copy of its response to a previous RTKL request submitted by the Requester, which sought the duty roster specifically for the afternoon shift of May 27, 2026. *Id* at ¶ 2. Initially, the Department did not provide the roster in response to the instant Request because the roster was already given to the Requester; however, there is nothing in the RTKL prevents requesters from seeking records which they already possess. *See McHugh v. Lower Merion Twp.*, OOR Dkt. AP 2020-0532, 2020 PA O.O.R.D. LEXIS 2009, *6-7. Accordingly, the appeal is dismissed as moot as to the records provided. *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”); *Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. 2019).

2. Certain requested records may relate to a criminal investigation

The Department asserts that certain responsive records are exempt because they relate to criminal investigations. *See* 65 P.S. § 67.708(b)(16). The Department is a local law enforcement agency, and the OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. *See* 65 P.S. § 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney. *See id.*

Here, Item 10 of the Request seeks “records, notes, logs, or reports explaining why Officer VanWhy requested assistance” during the May 27, 2026 incident which was described by the

¹ 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); *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)).

media article provided by the Department as “fatal shooting.” Thus, the requested documents may fall into the category of “[i]nvestigative materials, notes, correspondence, videos and reports,” which are exempt under Section 708(b)(16)(ii) of the RTKL. *See Pa. Game Comm’n v. Fennell*, 149 A.3d 101, 104-05 (Pa. Commw. Ct. 2016); *Office of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. Ct. 2015) (en banc) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). Additionally, the Manning Attestation states that “[i]t is standard police protocol to ask for the Chief to be notified of a ‘major incident’ such as a shooting that ultimately ended with a death.” *See* Manning Attestation, ¶ 3.

Therefore, based on the plain language of the Request and the evidence provided by the Department, Item 10 of the Request involves records that may relate to a criminal investigation and, as such, the appeal is hereby transferred in part to the Appeals Officer for the Allegheny County District Attorney’s Office (“DA’s Office”).² A copy of this final order and the appeal filed by the Requester will be sent to Appeals Officer for the DA’s Office.

3. The Department demonstrated that it does not possess certain requested records but did not demonstrate that no additional records responsive to the Request exist within its possession, custody or control

The Department argues that it does not possess certain requested records. The Requester argues that the Department’s “submission does not fully resolve all of the non-CAD administrative records at issue in the appeal.” Specifically, the Requester argues that Department’s “attestation does describe the search for responsive records because it does not clearly identify all systems, files, physical locations, electronic locations, databases, payroll records, scheduling records,

² *See Del. County v. Schaefer ex rel. Phila. Inquirer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012) (reiterating that “[a] preponderance of the evidence standard, the lowest evidentiary standard, is tantamount to a more likely than not inquiry”); *see also Corey Hughes v. Cheltenham Twp, Police Dep’t*, OOR Dkt. AP 2023-2521 (the OOR transferred the matter to the respective Appeals Officer of the District Attorney’s Office where the request by its very wording sought records concerning a criminal matter).

supervisor records, officer activity records, shift reports, assignment sheets, or other record locations that were searched” nor does the Department’s attestation address whether the Department “maintains officer activity logs, supervisor logs, shift reports, assignment sheets, schedule-change records, payroll/timekeeping records, overtime/call-in records, leave records, or other duty-status records.” Finally, the Requester argues that the Department’s evidence does not show “[w]hether any records exist showing actual availability for patrol response during 15:11 to 17:11 on May 27, 2026” or “[w]hether any additional responsive non-CAD administrative records exist.”

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 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 Department's position, the Manning Attestation states that there "are no records for May 27, 2026 that show breaks, training, in court, on leave, called in, sent home early." *See* Manning Attestation, ¶ 5. Therefore, based on the evidence presented, the Department has demonstrated that it does not possess records responsive to Items 5, 7 and 8 of the Request. *See Hodges* 29 A.3d at 1192. However, the Manning Attestation does not describe the Department's search nor does it affirm that all responsive records within the Department's possession have been provided to the Requester. *See id*; *Uniontown Newspapers, supra*. Absent the Department providing a sufficient evidentiary basis that no additional records responsive to the Request exist, the OOR will order disclosure of responsive public records. *See Crist v. Derry Township*, OOR Dkt. AP 2022-2064, 2022 PA O.O.R.D. LEXIS 2386. The OOR is mindful that an agency "shall not be required to create a record which does not currently exist...." 65 P.S. § 67.705. Thus, the Department is directed to conduct a good faith search for additional responsive records and provide such records to the Requester. To the extent responsive records do not exist, the Department is required to provide a sworn affidavit, or a statement made under the penalty of perjury documenting its search for responsive records and affirming the non-existence of the records. *See Hodges, supra*; *see also 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 **granted in part, denied in part, transferred in part and dismissed as moot in part**, and, within thirty days, the Department is required to search for additional records responsive to the Request and provide all records located to the Requester

or, alternative, to provide an attestation that no additional responsive records 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 Allegheny 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.³ 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: July 8, 2026

/s/ Erika Similo

ERIKA SIMILO
APPEALS OFFICER

Sent via portal to: Donald Fritz
Pamela J. Manning

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