



FINAL DETERMINATION

IN THE MATTER OF	:
	:
RYAN BAUGHER,	:
Requester	:
	:
v.	: Docket No: AP 2026-1986
	:
LOWER SAUCON TOWNSHIP,	:
Respondent	:

FACTUAL BACKGROUND

On April 16, 2026, Ryan Baugher (“Requester”) submitted a request (“Request”) to Lower Saucon Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[1.] Towing Vendor Contracts and Arrangements. All contracts, agreements, memoranda of understanding, vendor rotation lists, preferred provider designations, fee schedules, or other written arrangements between the [Township] Police Department and Saucon Collision (owner: Christopher Shelbo, [address omitted], Bethlehem, PA 18015), from January 1, 2015 to present.

[2.] Communications Referencing [the Requester]. All dispatch records, radio logs, CAD records, call logs, emails, text messages, and any other written or electronic communications between [Township] Police Department personnel and Christopher Shelbo or any employee or representative of Saucon Collision that reference, discuss, or pertain to [the Requester], from January 1, 2015 to present, including any references to Incident #20240416M2489, the related civil dispute, insurance claims, or court proceedings.

[3.] Tow Volume Records. All records documenting the total number of police-dispatched tows, accident-scene tows, and impound tows directed to Saucon

Collision by [the Township] Police Department, broken down by year, from January 1, 2015 to present.

[4.] Information Sharing Policies. Any and all internal policies, procedures, general orders, directives, or guidelines governing: (a) the sharing of case information, incident reports, or personal information of individuals with third-party towing, collision repair, or other civilian vendors; (b) the selection, rotation, and oversight of contracted towing vendors; and (c) restrictions on the disclosure of information related to pending civil disputes or active investigations to civilian third parties.

[5.] Disclosure Complaints and Disciplinary Records. All records related to any complaints, investigations, or disciplinary actions involving the unauthorized disclosure of case information, personal information, or records to civilian third parties by any member of the [Township] Police Department, from January 1, 2015 to present.

[6.] Solicitor Correspondence Regarding [the Requester]. All records, correspondence, or communications between the [Township] Police Department and the office of Township Solicitor Steven Goudsouzian (Goudsouzian & Associates) regarding [the Requester], including[,] but not limited to[,] any directives restricting my ability to communicate with [T]ownship personnel, any discussion of Incident #20240416M2489, and any communications related to the pending Court of Common Pleas case (No. C-48 CV-2025-1278).

[7.] Access Logs for Body Camera Footage. All access logs, sign-in sheets, chain-of-custody records, or other written documentation reflecting who has accessed, viewed, copied, or been provided access to body camera footage from Incident #20240416M2489 (April 16, 2024, Officer Tyler Seeley), including the date, time, and identity of each individual who accessed the footage. This [Item] is for written access records only, not the footage itself, and therefore falls within the jurisdiction of the [RTKL].

On May 4, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b),¹ the Township partially granted the Request and provided records responsive to Item 1, 4 and 5. The Township denied the remainder of the Request, claiming responsive records are exempt criminal and noncriminal investigative materials, 65 P.S. §§ 67.708(b)(16), (17), and

¹ At the request of the OOR, on May 29, 2026, the Requester provided a copy of the Township's thirty-day extension letter.

records relating to a Township employee, 65 P.S. § 67.708(b)(7).² Additionally, the Township asserts that some records responsive to the Request do not exist in the Township’s possession, custody or control and some records are not subject to disclosure pursuant to attorney-client privilege, 65 P.S. §§ 67.102 (definition of privilege), 67.305(a)(2), the Health Information Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C.S. §§ 1320(d) *et seq.*, and Pennsylvania’s Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101-9183.³

On May 19, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.⁴ Specifically, the Requester claims additional responsive records exist in response to Items 1, 3, 4 and 7.⁵ Additionally, the Requester asserts records responsive to Items 5 and 6 should be released in redacted format.⁶ Lastly, the Requester seeks *in camera* review of any withheld records.⁷ The OOR invited both parties to

² The Township clarifies on appeal that records were not withheld pursuant to 65 P.S. § 67.708(b)(6). *See* Township position statement p. 8.

³ As the Township does not assert during the appeal that responsive records were withheld pursuant to the criminal investigative records exemption, HIPAA or CHRIA, said arguments are deemed abandoned on appeal and will not be further addressed herein.

⁴ On June 11, 2026, the Requester granted the OOR a three-week 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).”).

⁵ As the Requester does not appeal Item 2 and the Township’s response thereto, Item 2 will not be further addressed in this Final Determination.

⁶ The Requester indicates that he is not appealing access to body-worn camera records or criminal investigative records, as those records are being sought via an appeal filed with the Northampton County District Attorney’s RTKL appeals officer. *See* Requester appeal pp. 2, 4, 6.

⁷ On appeal, the Requester seeks records not contained within the original Request, which include: for Item 3, CAD entries, tow logs, impound forms, duty-tow notifications, impound/tow notification forms, existing reports, invoices, payment records, or other existing documents; for Item 4, standard operating procedures, body-worn camera policies, vendor-communication policies, subpoena-compliance policies, records production policies, or information-sharing rules; and for Item 5, final agency action, non-identifying complaint tracking records, policy-level records, or redacted records showing whether complaints concerning unauthorized disclosure of information to civilian third parties were received, investigated, sustained, or closed. The OOR has repeatedly held that a requester may not modify, explain or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Dep’t of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a requestor requests a specific type of record ... the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request”).

supplement the record and directed the Township to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On May 29, 2026, the Township submitted a position statement authored by its Solicitor, Steven N. Goudsouzian, Esq. (“Goudsouzian Statement”),⁸ reiterating its basis for partial denial of the Request. In support of its argument, the Township submitted an attestation made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, authored by John J. Finnigan, Jr. (“Finnigan Attestation”), the Township’s Agency Open Records Officer (“AORO”).

On May 29, 2026, the Requester submitted a position statement, arguing that the Township is required to inquire with Saucon Collision for responsive records and reiterating the arguments made at the time of the appeal.

On June 11, 2026, the Requester submitted a second position statement, reiterating the arguments made at the time of and during the pendency of the appeal.

On June 17, 2026, the Township submitted a third Attestation made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, authored by John J. Finnigan, Jr. (“Finnigan Third Attestation”), providing additional details regarding the Township’s search for responsive records and records withheld that are responsive to Item 5 of the Request. Additionally, the Township submitted an exemption log (“Log”),⁹ detailing the withheld records and the Township’s basis for nondisclosure. Lastly, the Township provided additional records responsive to Item 5 of the Request, which include emails to and from the Requester.

⁸ The factual assertions within of the Township’s position statement were verified to be true and correct. *See* Finnigan Second Attestation, dated June 9, 2026.

⁹ The contents of the Log are verified to be true and correct. *See* Finnigan Third Attestation ¶ 9.

On June 18, 2026, the Requester submitted a third position statement, claiming the Log is inaccurate and incomplete, as well as reiterating the prior arguments made at the time of and during the pendency of the appeal.¹⁰

LEGAL ANALYSIS

The Township 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 Township 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). While the Requester sought an *in camera* review of the withheld records, the OOR has the information and evidence before it to properly adjudicate the matter. Therefore, the request for *in camera* review is denied.

1. The appeal as it relates to the records provided during the appeal is moot

During the pendency of the appeal, the Township provided approximately 7 pages of responsive emails and correspondence to the Requester via the OOR’s submission portal. *See*

¹⁰ The evidentiary submission record in this matter originally closed on June 2, 2026; however, multiple evidentiary submission extensions were provided to both parties during the pendency of the appeal. *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”).

Finnigan Third Attestation, Exhibit B. As such, the appeal as to the records provided to the Requester during the pendency of the appeal is dismissed as moot. *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. The Township demonstrated the report responsive to Item 5 is an exempt noncriminal investigative record

The Township asserts that records related to an internal investigation regarding employee misconduct, complaints and/or internal affairs investigation are exempt from access because the records are noncriminal investigative materials. 65 P.S. § 67.708(b)(17). Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “complaints,” “[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); 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. 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; *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. *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 Township's position, the Finnigan Third Attestation indicates, in relevant part, the following:

8. As a result of this good-faith search, the only documents that were yielded were the January 8, 2025 written Internal Affairs complaint submitted by [the Requester], and the [] Township Police Department's January 17, 2025 response thereto. The Township maintains a police force pursuant to the Second Class Township Code, including 53 P.S. § 66901, and administers police personnel and discipline consistent with applicable law, including 53 P.S. § 66912. The complaint was reviewed through the Township's police complaint/internal affairs process, which is used to determine whether alleged conduct occurred, whether any Township or police department policy was violated, and whether corrective or disciplinary action was warranted. Upon receipt of the complaint, the [Township Police] Department conducted an investigation pursuant to department procedure and in accordance with 44 Pa. C.S. § 7301 *et seq.* relating to law enforcement employment information. The investigation included a thorough review of all actions taken relative to the subject matter of the complaint, and confirmation that all such actions were taken in compliance with 42 Pa. C.S. § 67A01 *et seq.*, and the investigation was closed. The records withheld under Section 708(b)(17) consist of a report produced relative to the investigation. For the period from January 1, 2015 to the present, this was the sole incident of any allegedly unauthorized disclosure of case information, personal information, or records to civilian third parties by any member of the [] Township Police Department.¹¹

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 Township has acted in bad faith, "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)).

¹¹ While the date of the withheld report is noted to be January 13, 2025 on the Log, the OOR does not find this discrepancy to be detrimental to the finding the report is not subject to disclosure. The record is clearly noted to be "[Township] Police Department Citizen Internal Investigation & Complaint form" and notes that it includes a complaint summary, synopsis of investigation and action taken. *See Log p. 2.*

Here, the Finnigan Third Attestation affirms that the Township Police Department is responsible for investigating any allegations of law enforcement officer misconduct. Finnigan Attestation ¶ 8. The authority for maintaining, supervising, and disciplining the Township's Police Department Officers is found in 44 Pa. C.S. § 7301 *et seq.* Accordingly, the Township has demonstrated that its police department has, as part of its official duties to supervise and discipline its employees, the authority to conduct investigations of alleged police officer misconduct.

Further, the Finnigan Third Attestation explains in detail the process of conducting a complete investigation, which in this instance included through review of the complaint, a review of the subject matter contained in the complaint and the determination of whether corrective or disciplinary action was warranted. Finnigan Third Attestation ¶ 8.

The OOR has previously found that police misconduct complaints and related records, similar to those requested in this appeal, are exempt from public access under the RTKL. *See Green v. Phila. Police Dep't*, OOR Dkt. AP 2023-1061, 2023 PA O.O.R.D. LEXIS 1250 (finding the portion of the request seeking misconduct allegations pertaining to six detectives sought records that were facially exempt noncriminal investigative records); *Byrd v. Phila. Police Dep't*, OOR Dkt. AP 2019-2529, 2020 PA O.O.R.D. LEXIS 86 (finding Internal Affairs Division officer complaint records exempt under Section 708(b)(17) of the RTKL).

Here, the Request, on its face, seeks information regarding complaints or discipline for unauthorized disclosure to civilians and Township police department internal investigation records that would, by nature, document “a systematic or searching inquiry, a detailed examination, or an official probe” conducted by the Township's police department, and can be also classified as “[c]omplaints submitted to an agency,” which are explicitly exempt under Section 708(b)(17) when related to a noncriminal investigation. *See Moran v. Hampton Twp.*, OOR Dkt. AP 2023-

0648, 2023 PA O.O.R.D. LEXIS 1120 (the OOR found that the township provided evidence that it investigates all zoning violation complaints, demonstrating that it conducted noncriminal investigations); *Anand and Institute of Advanced Medicine and Surgery v. Pa. Dep't of Insurance*, OOR Dkt. AP 2022-0319, 2022 PA O.O.R.D. LEXIS 821; *see also Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal materials when determining whether an exemption applies). Accordingly, the Township has demonstrated that the report responsive to Item 5 of the Request is exempt under Section 708(b)(17)¹² of the RTKL.¹³

3. The remaining responsive records are not subject to disclosure pursuant to the attorney-client privilege

The Township asserts that the remaining withheld responsive records listed within the Log encompass privileged communications between the Township, Township staff and the Township's Solicitor and for the purpose of securing legal assistance, services or opinions. *See Goudsouzian Statement pp. 13-15; see also Log p. 2.*

The RTKL excludes records subject to a privilege from the definition of "public record." *See* 65 P.S. § 67.102. The RTKL defines "privilege" as "[t]he attorney-work-product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth." *Id.* The attorney-client privilege protects only those disclosures necessary to obtain informed legal advice, where the disclosure might not have occurred absent the privilege, and where the client's goal is to obtain

¹² While the Requester asserts the responsive report should be released in redacted format, "where a record falls within an exemption under Section 708(b), it is not a public record as defined by the RTKL and an agency is not required to redact the record...." *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 481 (Pa. Commw. Ct. 2010). As the responsive report is a noncriminal investigative record, the Township does not need to provide the record to the Requester in redacted format.

¹³ Because the Township has demonstrated that the responsive report is an exempt noncriminal investigative record, the OOR need not reach the Township's alternative grounds for denying access. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

legal advice. *Joe v. Prison Health Services, Inc.*, 782 A.2d 24 (Pa. Commw. Ct. 2001). In order for the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. *See Bousamra v. Excelsa Health*, 210 A.3d 967, 976 (Pa. 2019). “[A]fter an agency establishes the privilege was properly invoked under the first three prongs, the party challenging invocation of the privilege must prove waiver under the fourth prong.” *Office of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2014) (citing *id.*). An agency may not rely on a bald assertion that the attorney-client privilege applies. *See Clement v. Berks County*, OOR Dkt. AP 2011-0110, 2011 PA O.O.R.D. LEXIS 139 (“Simply invoking the phrase ‘attorney-client privilege’ or ‘legal advice’ does not excuse the agency from the burden it must meet to withhold records”).

The Log and the Goudsouzian Statement indicate that the records withheld pursuant to Item 5 and 6 include communications between Township personnel and the Township’s solicitor. *See Log; see also Goudsouzian Statement pp. 12-14; Finnigan Third Attestation ¶¶ 8, 9.* The communications include the forwarding of a complaint and legal advice related thereto. *Id.*

Based upon the review of the descriptions in the Log and Goudsouzian Statement, the Township has demonstrated that the records outlined in the Log are protected under the attorney-client privilege.

The above records are subject to privilege because they include discussions between Township officials, employees and legal counsel. The withheld records include emails containing Township officials and staff seeking and receiving legal advice, or the Township's attorney offering thoughts and mental impressions on the response letter. As such, the above-described records were properly withheld and are not subject to public access.¹⁴

4. The Township has demonstrated that no additional responsive records exist

The Township asserts that additional records responsive to the Request do not exist in the Township's 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 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).

¹⁴ As previously noted, an agency is not required to release records in redacted format that are not subject to public access.

Here, the Request seeks records related to towing contracts, communications related to the Requester, information sharing policies, complaints, solicitor correspondence and access logs for body camera footage. In support of the Township's argument that it does not possess additional responsive records, the Finnigan Attestation indicates, in relevant part, as follows:

5. Upon receipt and review of the [R]equest, I reviewed the [R]equest and identified the Township offices, personnel, files, and record systems reasonably likely to contain responsive records.

6. I conducted good-faith search for records responsive to the request, consulting with appropriate Township personnel, including personnel associated with the [the Township] Police Department and Township administration, regarding the existence, location, and maintenance of potentially responsive records.¹⁵

...

8. After a good-faith search and consultation with appropriate Township personnel, I determined that the Township does not possess contracts, agreements, memoranda of understanding, vendor rotation lists, preferred-provider designations, fee schedules, or other written arrangements between the [] Township Police Department and Saucon Collision responsive to [Item] 1.

...

10. The Township did identify and provide a Township Police Department policy relating to motor vehicle towing and impoundment, identified in the Township's response as Policy 6-3-1 and/or § 6-3-3, to the extent that policy was responsive to the subject matter of the [R]equest.

11. After a good-faith search and consultation with appropriate Township personnel, I determined that the Township does not maintain records compiling, tabulating, or organizing the total number of police-dispatched tows, accident-scene tows, and impound tows directed to Saucon Collision broken down by year for the period requested.

12. The Township does not currently compile, maintain, format, or organize such towing information in the annual breakdown requested by [the Requester].

...

14. After a good-faith search and consultation with appropriate Township personnel, the Township identified and produced responsive written policies,

¹⁵ See also Finnigan Third Attestation ¶ 7.

including policies relating to departmental reports and dissemination of information, identified in the Township's response and brief as Policies 1-6-6 and 1-6-12.

15. The Township also provided the towing/impoundment policy referenced in connection with [Item 1] to the extent responsive.

16. I am not aware of any additional nonexempt Township policy, procedure, order, directive, or guideline responsive to [Item] 4 that was withheld from production.

...

18. Based on the Township's search, it did not identify any final agency action resulting in demotion or discharge of a Township employee that was responsive to [Item] 5... .

The Township's attestation is authored by the Township's AORO, an individual with knowledge of the Township's records. The Township has demonstrated that its AORO conducted a good faith search, which included a search of Township files and record systems, as well as inquiries with the Township police department and administration. Finnigan Attestation ¶¶ 3. Thus, based on the evidence provided, the Township has demonstrated that it does not possess additional records responsive to the Request. There has been no sufficient evidence provided that otherwise contradicts the statements offered by the Township in the attestation submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the Township has met its burden of proof that additional records responsive to the Request do not exist.¹⁶ *Hodges*, 29 A.3d at 1192.

While the Requester does not provide evidence regarding the Township's relationship with Saucon Collision, the Requester claims that the Township is required to obtain responsive records from Saucon Collision in response to the Request.

¹⁶ While the OOR understands that the Requester feels additional responsive records should exist, the OOR makes no determination as to whether records *should* exist, as our inquiry is limited to only whether or not 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.

Under the RTKL, two groups of records are accessible to requesters: records in an agency's actual or constructive possession reached directly under Section 901 of the RTKL, and records in the possession of third parties that are indirectly accessible through Section 506(d) of the RTKL. 65 P.S. § 67.506(d); *see also Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014), *aff'd* 124 A.3d 1214.

Section 506(d)(1) of the RTKL states that:

A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this action, shall be considered a public record of the agency for purposes of this act.

65 P.S. § 67.506(d)(1). In *Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, the Commonwealth Court explained that records “in the possession of a party with whom an agency has contracted to perform a governmental function on behalf of the agency” are presumptively public records subject to public access, “so long as the record (a) directly relates to the governmental function and (b) is not exempt under the RTKL.” 13 A.3d 1025, 1039 (Pa. Commw. Ct. 2011); *see also* 65 P.S. § 67.305(a).

A key requirement of Section 506(d) is that the agency contracts with the third party from whom records are sought. *Dental Benefit Providers, Inc. v. Eiseman*, 124 A.3d 1214, 1223 (Pa. 2015) (stating that Section 506(d)(1) requires an actual contract with a third party in possession of the records). The RTKL requires a written contract to exist before Section 506(d) can apply; an implied contract or a relationship wherein a third party performs some traditional governmental function without inducement is not sufficient. *See Appeal of Hadley*, 83 A.3d 1101, 1110 (Pa. Commw. Ct. 2014) (“[the r]equester represents that the [agency] delegated certain economic

development functions to the [third party], including tourism and industrial recruitment. However, [the r]equester points to no contractual relationship”).

In this matter, the Township has demonstrated that no written contract exists between it and Saucon Collision. Finnigan Attestation ¶ 8. The Requester has not provided evidence of the existence of a contract. Therefore, the first element of Section 506(d) has not been proven and the Township is not required to obtain records from Saucon Collision.

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Township 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 Northampton 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; however, 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.¹⁷ 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 9, 2026

/s/ Bandy L. Jarosz, Esq.

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Ryan Baugher (via portal only)
Steven Goudsouzian, Esq. (via portal only)
John Finnigan (via portal only)

¹⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).