pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
BRIAN CONWAY AND PITTSBURGH MANIFOLD,	:	
Requester	:	
	:	**Docket No: AP 2026-2365**
v.	:	
	:	
CITY OF PITTSBURGH,	:	
Respondent	:	

FACTUAL BACKGROUND

On April 7, 2026, Brian Conway, on behalf of Pittsburgh Manifold, (collectively "Requester") submitted a request ("Request") to the City of Pittsburgh ("City") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> Records referencing City Controller Rachael Heisler's summer 2024 trip to Israel, and response to the "No War Crimes on Our Dime" / "Not On Our Dime" divestment campaign, which spanned summer 2024 to summer 2025. Responsive records may include:
>
> - Briefings, itineraries, receipts, and communications with AIEF (the American Israel Education Foundation); AIPAC (the American Israel Political Action Committee); and their affiliates or intermediaries. Keywords may include "divest," "divestment," "Israel," "petition," "BDS," and "referendum."

On May 4, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the City denied the Request, arguing that based on a good faith search for records, a

determination was made that no responsive records exist within the City's possession, custody or control.

On May 22, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.[1] The Requester asserts that publicly available information and records suggest that responsive records should exist. 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 June 18, 2026, the City submitted a position statement reiterating that a search was conducted but no responsive records exist, while also claiming that "the City performed a good faith search for records and determined that the … [R]equest was not specific." 65 P.S. § 67.703. In support of its position, the City submitted the attestation authored by Cade Richmond, Esq., the City's Open Records Officer and Assistant Solicitor ("Richmond Attestation").

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,

[1] The Requester granted the OOR a 30-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).").

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 City did not conduct a good faith search

The City denied the Request in a final response signed by Attorney Richmond, stating that "[a]fter performing a good-faith search for responsive records, I have determined that the City does not possess the requested records."

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).

The Richmond Attestation provides:

> 2. On April 9, 2026, the City sent a memorandum to the Office of Pittsburgh City Controller Rachael Heisler, which requested a search for records responsive to the subject request.

3. Upon investigation, I determined that that the subject request was not sufficiently specific to enable a records search.

In *Pennsylvania Department of Health v. Mahon*, the Commonwealth Court discussed the evidence required to establish the absence of records, quoting its previous decision in *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011), which held that an agency "may satisfy its burden of proof...with either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record." *Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) quoting 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *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).

In this matter, the City's Open Records Officer attests that the Request was forwarded to the Controller's Officer for the purpose of searching for responsive records, but there is no detail as to what steps were taken in the search, what records were searched and who was contacted regarding the Request. Recognizing that the City now claims the Request is insufficiently specific, the fact remains that the Request was expressly denied on the grounds that a search was conducted and no records were identified. Therefore, we conclude that the City has not proven that a good faith search was conducted to enable the City to claim that no records exist. *See Uniontown Newspapers, Inc.*, 185 A.3d at 1171-72.

2. The City has not proven that the portion of the Request seeking records related to Controller Heisler's trip to Israel does not seek agency records

The City claims that records related to Controller Heisler's 2024 trip to Israel are not subject to the RTKL because "Rachael Heisler traveled to Israel in her individual capacity" and records are only subject to the RTKL when they relate to an employee's conduct in an "official

capacity." The City relies on *Wyoming Borough v. Boyer*, 299 A.3d 1079, 1085 (Pa. Commw. Ct. 2023) and *Penncrest School District v. Cagle*, 293 A.3d 783, 802 (Pa. Commw. 2023) *aff'd Penncrest Sch. Dist. v. Cagle*, 341 A.3d 720 (Pa. 2025) (affirmed and remanded to the Crawford County Court of Common Pleas for further fact finding) in support of its argument. These cases set forth a framework of factors to be analyzed when determining if a government official's actions and related records are records of the agency. However, in this matter the City has failed to present any evidence to prove that Controller Heisler's trip was taken in her private capacity. Statements contained in a submission that are not supported by an attestation made pursuant to 18 Pa.C.S. § 4904(b) or a sworn affidavit, are not competent evidence under the RTKL. *See Off. of the Governor v. Davis*, 122 A.3d 1185, 1193-94 (Pa. Commw. 2015) (*en banc*) (holding that an unsworn position statement does not constitute evidence and unsworn position statements while part of the record, are distinguishable from the evidentiary record.); *Hous. Auth. of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209, 216 (Pa. Commw. Ct. 2012) (holding that unsworn statements of counsel are not competent evidence). Therefore, the City has not proven that the records sought are not records of the agency.

3. The Request insufficiently specific in part

The City states that the Request was seeking both "City Controller Rachael Heisler's summer 2024 trip to Israel, **and** response to the 'No War Crimes on Our Dime' / 'Not On Our Dime' divestment campaign, which spanned summer 2024 to summer 2025", conjunctively." (Emphasis added by City). The City asserts that both parts of the Request have vague subject matters. More particularly, the City claims that the portion of the Request seeking records related to Controller Heisler's trip to Israel uses the term "referencing" and does not identify a transaction or activity of the City. Regarding the portion of the Request seeking record related to the identified

"divestment campaign", the City asserts that the subject matter "response to" is undefined and may refer to written or oral responses and implicates all potential records of the Controller's Officer that concern the identified divestment campaigns. The City also argues that the subject matter does not identify specific recipients and the Request does not contain a limiting timeframe, despite indicating that Controller Heisler traveled to Israel in 2024 and the divestment campaign spanned 2024 – 2025. The City states that "[the Request] facially requests all records over all time … that may relate to Controller Heisler's travel to Israel in 2024 and the two divestment campaigns. The lack of a timeframe, coupled with a lack of specific subject matter and scope of request, prevents a records search."

As set forth above, the City interpreted the Request as consisting of two parts – Controller Heisler's trip to Israel *and* the identified divestment campaigns. The OOR has consistently held that an agency may interpret the meaning of a request for records, but that interpretation must be reasonable. *See Spatz v. City of Reading*, OOR Dkt. AP 2013-0867, 2013 PA O.O.R.D. LEXIS 513; *Mezzacappa v. Northampton Cnty. Dist. Atty's Off.*, OOR Dkt. AP 2022-2584, 2023 PA O.O.R.D. LEXIS 80. The OOR determines the reasonableness of the agency's interpretation from the text and context of the request alone, as neither the OOR nor the Requester are permitted to alter the request on appeal. *See McKelvey v. Office of Attorney General*, 172 A.3d 122 (Pa. Commw. Ct. 2017) ("Once a RTKL request is submitted, a requester is not permitted to expand or modify the request on appeal.") Here, the Requester does not dispute the interpretation and based on a plain reading, the Request seeks records related to two distinct events. However, both distinct events relate back to Rachael Heisler, as evidenced by the fact that the City forwarded the Request to Controller Heisler's Office for response. Therefore, we conclude that the City's interpretation was reasonable and, as such, we will analyze the specificity of each part individually.

Section 703 of the RTKL states that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." 65 P.S. § 67.703. When determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015). *See Pa. Off. of the Governor v. Brelje*, 312 A.3d 928 (Pa. Commw. Ct. 2024).

First, "[t]he subject matter of the request must identify the 'transaction or activity' of the agency for which the record is sought." *Id.* at 1125 (quoting 65 P.S. § 67.102; *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012)). Second, "[t]he scope of the request must identify 'a discrete group of documents, either by type … or by recipient.'" *Id.* (quoting *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). Finally, "[t]he timeframe of the request should identify a finite period of time for which records are sought." *Id*. at 1126 (citing *Carey*, *supra*). "The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request's timeframe is narrow enough is generally dependent upon the specificity of the request's subject matter and scope." *Id.*

a. Controller Heisler's trip to Israel

The first part of the Request seeks "Records referencing City Controller Rachael Heisler's summer 2024 trip to Israel" and the Request language includes suggested categories of records that apply to both parts of the Request. This part of the Request states as clear subject matter – Heisler's trip to Israel – and a defined timeframe – 2024 travel. The City asserts that "records" does not define what kind of records, but also concedes that the Request further defines records to include such documents as "itineraries", "recipients", and "communications." However, the City also argues that "briefing" "is an action not a type of record." Additionally, the City asserts that

the 2024 travel date does not narrow the Request, as it could relate to "all records over all time" that may pertain to the travel. We disagree.

It is reasonable to infer that Controller Heisler or her office can identify records associated with the subject matter, especially by using the identified record types as a starting point.[2] In addition, the Request identifies potential senders or recipients – the American Israel Education Foundation and the American Israel Political Action Committee. In *Greim v. Pennsylvania State Police*, 329 A.3d 873 (Pa. Commw. Ct. 2025), the Commonwealth Court recently reiterated that "[a] request need only provide enough information to inform 'an agency of the records requested.'" *Id*. at 882 (quoting *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 n.4). In *Greim*, the Commonwealth Court reviewed the extensive precedent on specificity and affirmed that specificity claims should be evaluated using the *Pittsburgh Post-Gazette* test. 329 A.3d at 880. We conclude that the first part of the Request provides enough information to inform the City as to what records are being sought. However, records of their "affiliates or intermediaries" are too vague to inform the City of what record to search for. Additionally, reading the Request as a whole and in context, we deem the keywords to pertain to part two of the Request that seeks records related to the divestment campaign. *See* 65 P.S. § 67.703; *see also Pittsburgh Post-Gazette*, 119 A.3d at 1125; ; *Greim*, 329 A.3d at 882.

b. "No War Crimes on Our Dime"/"Not On Our Dime" divestment campaign, which spanned summer 2024 to summer 2025

Similar to part one of the Request, part two states a subject matter – Controller Weisler's response to the identified divestment campaigns – and a one year defined timeframe. While it does not include a specific month and day, it would be reasonable for the City to interpret the

[2] We do not agree that the word "briefing" is vague or does not identify a record. The Cambridge Dictionary defines briefing as "information that is given to someone just before they do something, or a meeting where this happens." https://dictionary.cambridge.org/us/dictionary/english/briefing (last accessed July 23, 2026).

timeframe as the first day of summer 2024 until the first day of summer 2025. Additionally, communications with identified entities are listed as a category of records and the keywords can be used for a search of Controller Heisler's records. However, we agree that itineraries and receipts would not necessarily identify a transaction or activity of the City in the context of the divestment campaign movements, and therefore, this part of part two of the Request is insufficiently specific. *See* 65 P.S. § 67.102; *Montgomery Cnty. v. Iverson*, 50 A.3d at 284. Therefore, we conclude that part two of the Request is partially specific and provides sufficient information to the City to enable it to search for records. *See* 65 P.S. § 67.703; *see also Pittsburgh Post-Gazette*, 119 A.3d at 1125; *Greim*, 329 A.3d at 882.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the City is required to conduct a good faith search for briefings, itineraries, receipts, and communications with AIEF and AIPAC for part one of the Request and, briefings and communications with AIEF and AIPAC for part two of the Request including the keywords set forth in the Request. All responsive records should be provided to the Requester within thirty days. If no responsive records exist, the City is required to provide the Requester with a detailed affidavit or attestation made under the penalty of perjury describing the search for responsive records, including specific locations searched, and affirming their non-existence. 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 24, 2026

/s/ Kelly C. Isenberg

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KELLY C. ISENBERG, ESQ.
DEPUTY CHIEF COUNSEL

Sent via OOR E-File Portal: Brian Conway; Cade Richmond, Esq., AORO

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