



FINAL DETERMINATION

IN THE MATTER OF	:
	:
ADAM HEIMER and ARCW SYSTEMS,	:
INC.,	:
Requester	:
	:
v.	: Docket No: AP 2026-2547
	:
BERKS-MONTGOMERY MUNICIPAL	:
AUTHORITY,	:
Respondent	:

FACTUAL BACKGROUND

On May 8, 2026, Adam Heimer and ARCW Systems, Inc. (collectively the “Requester”), submitted a request (“Request”) to the Berks-Montgomery Municipal Authority (“Authority” or “BMMA”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...[R]ecords relate[d] to BMMA’s methodology and 10-year record of EDU calculations for Account Z199 at 50 Bartman Ave[nue].

[1.] All documents, policies, worksheets, resolutions, or written guidance describing BMMA’s methodology for calculating annual EDU usage for non-residential commercial accounts, including any formula, conversion factor, rounding rule, or threshold applied, from January 1, 2010 to the date of this [R]equest.

[2.] All EDU calculation worksheets, annual review reports, and billing calculations prepared by BMMA for Account Z199 at 50 Bartman Ave[nue] for each year from 2015 through 2026, including each calculation performed under Section 5.01(b) of the BMMA Rules and Regulations.

[3.] All records showing the EDU allocation assigned to Account Z199 at any time from January 1, 2010 to the date of this [R]equest, including the date of each change, the number of EDUs assigned, and the stated basis for each change.

[4.] All records of communications with or reports from SDE[, Inc.], (Keith R. Showalter, P.E., or any SDE[, Inc.] employee) relating to EDU calculations, allocations, or sewer capacity determinations for Account Z199 or 50 Bartman Ave[nue], from January 1, 2010 to the date of this [R]equest.

[5.] All BMMA resolutions or board minutes setting or changing the tapping fee rate (dollars per EDU) from January 1, 2010 to the date of this [R]equest, including Resolution 2022-9 and any subsequent amendments.

[6.] All monitoring reports, flow monitoring data, or sewer discharge measurement records for Account Z199, from January 1, 2010 to the date of this [R]equest.

[7.] All records reflecting BMMA's policy for calculating EDU usage when fewer than four actual quarterly water meter reads are available in a calendar year, including any policy for using estimated, averaged, or pro-rated readings.¹

On June 15, 2026, following a thirty-day extension during which to respond,² 65 P.S. § 67.902(b), the Authority partially granted the Request and provided records responsive to Items 1, 2 and 5. The Authority denied the remaining Items, claiming responsive records do not exist in the Authority's possession, custody or control.

On June 25, 2026, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.³ Specifically, the Requester claims that additional responsive records exist based upon the Authority's production of records in response to other RTKL requests.⁴ The OOR invited both parties to supplement the record and directed the

¹ The Items in the Request were originally numbered 11 through 17 and have been renumbered herein for purposes of clarity.

² At the request of the OOR, the Authority submitted a copy of the Authority's 30-day extension letter on July 22, 2026.

³ The Requester permitted the OOR a thirty-day extension for issuance of 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).").

⁴ The Requester did not challenge the Authority's response to Items 1, 2 and 5. As such, the Items and the Authority's responses thereto will not be addressed herein. Further, as the Requester did not submit into evidence the records provided by the Authority in response to other RTKL requests that "prove" the existence of additional responsive records, the OOR cannot further evaluate this assertion in this Final Determination.

Authority to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On August 5, 2026, the Authority submitted a position statement, reiterating its basis for partial denial of the Request. Additionally, the Authority produced a two-page “Customer Comments Report,” claiming that said report is responsive to Item 3 of the Request. In support of the Authority’s position, the Authority submitted an affidavit, duly sworn, authored by Keith L. Corson (“Corson Affidavit”), the Authority’s Manager and Agency Open Records Officer (“AORO”).

On August 5, 2026, the Requester submitted a position statement, claiming that “invoices” produced in response to other RTKL requests confirm that “communications” exist that are responsive to Item 4⁵ and the Authority is required to provide an explanation or indicate whether “monitoring” was performed⁶ in response to Item 6, which would confirm responsive records do not exist.⁷

LEGAL ANALYSIS

The Authority 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 Authority is required to demonstrate, “by a preponderance of the

⁵ The Requester does not seek “invoices” in response to Item 4. 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”).

⁶ An agency is not required to explain the provision or absence of responsive records and the Requester has provided no legal basis for this assertion.

⁷ The OOR extended the evidentiary submission record through August 5, 2026 for both parties. *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”).

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 as it relates to the records provided during the appeal is moot

During the pendency of the appeal, the Authority provided a two-page “Customer Comments Report,” responsive to Item 3. *See* Corson Affidavit ¶ 11.⁸ 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 Authority demonstrated that additional responsive records do not exist

The Authority claims that additional responsive records do not 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

⁸ Under the RTKL, a statement made under 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 Authority acted in bad faith, “the averments in [the affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2013)).

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 Authority's position, the Corson Affidavit provides, in relevant part, the following:

6. With regard to [Item 3], I understood this [Item] to be seeking a record(s) of EDUs allocated to Account Z199 during the dates requested.

7. I reviewed Authority records, including billing records and the connection permit files, to determine if the Authority had any records responsive to [Item 3].

8. I located a Customer Comments Report for 50 Bartman Avenue that includes payments received for EDUs.

9. I initially determined that this report was not responsive to [Item 3] as the purpose of the report was to record comments regarding the account and was not a record created for the purpose of showing the EDU allocation assigned to Account Z199.

10. I did not locate any other records potentially responsive to [Item 3]...

11. Upon further review of this report and based on statements made by Requester in this appeal, it is my determination that the report is resolve [sic] and should have been provided in response to [Item 3] as it contains comments regarding payments made with information on the EDUs purchased, and therefore allocated, for the [p]roperty.

12. With regard to [Item 4], I reviewed Authority records, including permit files, billing files, and my emails and the emails of the prior Authority Manager to and

from SDE[,] Inc., to determine if the Authority had any records responsive to [Item 4].

13. I did not locate records responsive to [Item 4].

...

16. With regard to [Item 6], I reviewed Authority records, including records of discharge and flow monitoring data, to determine if the Authority had any records responsive to [Item 6].

17. I did not locate records responsive to [Item 6].

18. The monitoring of Account Z199 can be done using readily available data and does not require the creation of monitoring reports, flow monitoring data, or sewer discharge measurement records.

...

21. With regard to request [Item 7], I have never heard of or utilized a policy for calculating EDU usage when fewer than four actual quarterly water meter reads are available despite my position as Authority Manager.

22. I searched Authority records, including its rules and regulations, to determine whether the Authority had any records responsive to [Item 7].

23. I did not locate records responsive to [Item 7].

24. The EDU evaluation worksheets for 2025 raised by Requester are each records which were used for the final EDU calculation assessment; they are not alternative EDU assessment calculations, and did not necessitate the selection of an EDU assessment.

The Authority has demonstrated that a good faith search of the Authority's records was performed, which included a search within billing records, connection permit files, Authority emails, records of discharge and flow monitoring data and the Authority's rules and regulations. Corson Affidavit ¶¶ 7, 12, 16, 21, 22. There has been no sufficient evidence provided that otherwise contradicts the statements offered by the Authority in the affidavit submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Thus, the Authority's affidavit has established, by a preponderance of the evidence, that no additional responsive records exist in

the Authority's possession, custody or control. *Id.* at 936 (explaining that "[i]t is questionable to what degree additional detail and explanation are necessary to establish the nonexistence of a record rather than its exemption from disclosure") (quoting *Hodges*, 29 A.3d at 1192); *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).⁹

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Authority 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 Montgomery 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; 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.¹⁰ 65 P.S. § 67.1303. 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: August 28, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

⁹ 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.

¹⁰ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Sent via portal only to: Adam Heimer; Matthew R. Fessler, Esq.; Keith L. Corson