



**pennsylvania**  
OFFICE OF OPEN RECORDS  
**FINAL DETERMINATION**

**IN THE MATTER OF** :  
 :  
**CHARLES PALAIA,** :  
**Requester** :  
 :  
**v.** : **Docket No: AP 2026-3118**  
 :  
**LOWER MAKEFIELD TOWNSHIP,** :  
**Respondent** :

**FACTUAL BACKGROUND**

On June 19, 2026, Charles Palaia (“Requester”) submitted a request (“Request”) to Lower Makefield Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. ... [T]he scope of work for NearMap associated with their 2025 New Subscription Quote. Note, the Master Subscription Agreement included in the New Subscription Quote is not a scope of work and is not an acceptable response to this request.
2. ... ALL “customer data” provided by the Township to NearMap to conduct the imperious area analysis on [omitted] Drive.
3. ... ALL correspondence between the Township and NearMap.
4. ... ALL meeting minutes for any meetings conducted with or about NearMap.
5. ... ALL plot plans on file for [omitted] Drive.

On July 21, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Township partially denied the Request, by providing records and arguing that the

Township is not required to create a record that does not exist in order to respond to the Request, 65 P.S. § 67.705.

On July 30, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The Requester argues that the Township’s final response letter is not in compliance with Section 903 of the RTKL because it did not identify what records were denied, that the Township did not explain the grounds for redactions made to the AI Offline Delivery Order Summary – Specification, and that the Township did not provide records responsive to Items 2 and 3 of the Request. The OOR invited both parties to supplement the record and directed the Township to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On August 18, 2026, the Township submitted a position statement reiterating its grounds for denial. The Township claims that a good faith search was conducted and all responsive records in the Township’s possession, custody or control were provided. The Township further argues that Item 3 of the Request is insufficiently specific, 65 P.S. § 67.703, that the Township’s final response letter complied with the requirements of Section 903 of the RTKL, 65 P.S. § 67.903, and that the Township is not required to create a record that does not exist, 65 P.S. § 67.705. Additionally, the Township provided additional records with the appeal submission. In support of its position, the Township submitted the duly sworn affidavit of Daniel McGloone, the Township’s Planner.

### **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)). Additionally, on appeal before the OOR, the burden of proving that records, or additional records, do not or no longer exist is placed on the agency. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (citing 65 P.S. § 67.708).

### **1. The Township provided additional records on appeal**

With its appeal submission, the Township provided the Requester with additional potentially responsive records in response to claims made in the appeal. The records consist of: a retainer agreement between the Township and Herbert, Rowland & Grubic, Inc. (“HRG”), the Township’s engineer; a Stormwater Utility Fee Implementation Letter and Agreement between the Township and HRG Engineering; an Informational Needs for Stormwater Utility Implementation (Stormwater Management Program Review) Letter provided to the Township by HRG Engineering; a Draft Renewal Quote sent to the Township from NearMap; an Excel spreadsheet of parcels situated in the Township and the impervious area (in square feet) associated with the parcel; a Stormwater Utility Program explanation sheet, provided by the Township to its constituents; and, the Lower Makefield Township Stormwater Utility Implementation – Draft Schedule. *See McGloone Affidavit*, ¶¶ 35-45.

Additionally, in response to the Requester’s claim that the Township did not explain the grounds for the redactions contained in the AI Offline Delivery Order Summary – Specification,

the Township explained that it does not possess an unredacted copy of this record. However, in an effort to be responsive, the Township provided a copy of “an unredacted version of an updated ‘New Subscription Quote’ document” and “the redacted portion and unredacted portions of the two documents are identical.”

Based on the provision of these additional records, the appeal is partially 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’s final response letter complied with Section 903 of the RTKL**

Section 903 of the RTKL requires that an agency’s response denying access should be in writing and include:

1. A description of the record requested.
2. The specific reasons for the denial, including a citation of supporting legal authority.
3. The typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued.
4. Date of the response.
5. The procedure to appeal the denial of access under this act.

65 P.S. § 67.903. The Requester claims that the Township’s response letter does not satisfy the Section 903 requirements because it “failed to identify the records withheld, failed to identify applicable exemptions, and failed to provide legally sufficient reasons for denying access to requested records.” However, based on a review of the response letter, all of the Section 903 elements were present as it informed the Requester that records would be provided and indicated that it was not required to create any non-existent records. Furthermore, based on the submissions, no records were withheld and no exemptions have been claimed. Regarding the redactions contained in one record, the Township has satisfactorily explained that it did not possess an

unredacted version and it took steps to obtain a record that contained an unredacted version of the redacted language. A requester may prefer that a denial letter or response letter “adequately describe the responsive records to which the alleged exemptions apply” or “correlate exemptions with records[,]” but that is not the standard the RTKL imposes. *Bagwell v. Pa. Dep’t of Educ.*, 76 A.3d 81, 85 (Pa. Commw. Ct. 2013).

### **3. Item 3 of the Request is insufficiently specific**

The Requester states on appeal that the Township failed to provide all records responsive to Item 3 of the Request because only certain emails were provided. While not raised in the partial denial letter, on appeal the Township asserts that to the extent that it seeks records other than those provided, Item 3 is insufficiently specific because it lacks a narrow subject matter, lacks a defined scope and fails to state a finite timeframe.<sup>1</sup>

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 multifactor test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

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). 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

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<sup>1</sup> The Township correctly notes that an agency may raise additional agencies are permitted to raise new grounds on appeal to the OOR, regardless of whether they were raised in the agency’s response. See *Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013); *McClintock v. Coatesville Area Sch. Dist.*, 74 A.3d 378 (Pa. Commw. Ct. 2012). reasons for non-disclosure on appeal.

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.*

The above factors are intended “to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested.... The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements.” *Pa. Dep’t of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 \*6-7 (Pa. Commw. Ct. 2022), appeal denied, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting “the valid part of the request was included in a laundry list of requested materials”).

Item 3 seeks “ ... ALL correspondence between the Township and NearMap.” Firstly, Item 3 does not provide a finite timeframe and nothing in the context of the Request as a whole suggests an implied timeframe such as the length of a construction project, for example. Further, “all correspondence” fails to provide a defined scope, as “correspondence” could implicate letters, emails, texts messages, written notes, or voicemail messages, among other things. The language does not state a subject matter and, while a search term could be “NearMap”, the Township would be required to search for “all correspondence” without the limitation of which Township employees, officials, or departments would be a sender, recipient or custodian of “correspondence” or, even more broadly, Item 3 likely implicates all Township employees, officials, or departments. Mr. McGloone affirms that, despite his extensive knowledge and experience with the Township’s operations and records gained in his position as the Township’s Planner for the past four years, he

was unable to understand or identify what Township’s records were being sought in Item 3, what Township activity it pertained to, or with whom he should inquire or consult within the Township to ascertain if responsive records existed. *See* McGloone Affidavit, ¶¶ 52-65.

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. Taken as a whole, the Request fails provide sufficient information for the Township to determine what the potential universe of records is and what officials or departments would be the likely records custodians. *See* 65 P.S. § 67.703; *see also Pittsburgh Post-Gazette*, 119 A.3d at 1125; *Greim*, 329 A.3d at 882. Therefore, we conclude that Item 3 of the Request is insufficiently specific.<sup>2</sup>

#### **4. The Township has proven that no additional records exist**

The Requester claims that the Township did not provide records responsive to Item 2 of the Request and further, the explanation that the Township is not required to create a record is not a sufficient response. The Township argues that a good faith search was conducted in response to the Request and that all responsive records within its possession, custody or control have been provided to the Requester.

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.

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<sup>2</sup> The Requester is not prohibited from submitting a new RTKL request to the Township that provides additional detail as to what records are being sought.

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 McGloone Affidavit details the steps taken to search for records responsive to the Request that led to the conclusion that any potentially responsive records would be maintained by the Township’s Community Development Department. *See* McGloone Affidavit, ¶ 14. McGloone affirms that the search included verifying that there were no responsive physical files, searching Township electronic files, consulting with HRG, Inc, the Township’s Engineer and NearMap and, ultimately, fifty-nine (59) pages of records were identified and provided to the Requester. *Id.*, ¶¶ 14-29. McGloone affirms that HRG and NearMap confirmed that any responsive records identified by those entities were already in the Township’s possession in the Community Development Department. *Id.*, ¶¶ 22-27. Finally, McGloone affirms “the Township cannot



identify records if they do not exist” and “... it does not matter if a record used to exist or once existed.” *Id.*, ¶¶ 48-50.<sup>3</sup>

The Township’s evidence demonstrates that an extensive good faith search was conducted with the likely records custodians – the Community Development Department, HRG and NearMap. The Requester has not presented evidence that additional records do in fact exist and further the Township is not required to create a record that does not exist or no longer exists. The OOR makes no determinations 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. Furthermore, Section 705 of the RTKL provides that “an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705; *McKelvey v. Pa. Off. of the Att’y Gen.*, 172 A.3d 122, 125 (Pa. Commw. Ct. 2017) (internal citation omitted) (holding that a request can only seek records in existence at the time of the request). Based on the evidence provided, the Township has met its burden of proof by a preponderance of the evidence that no additional records exist. *Hodges*, 29 A.3d at 1192.

## 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

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<sup>3</sup> 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 or that additional responsive records exist, “the averments in [the McGloone Affidavit] 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)).

appeal to the Bucks 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.<sup>4</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto: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/ Kelly C. Isenberg*

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KELLY C. ISENBERG, ESQ.  
DEPUTY CHIEF COUNSEL

Sent via OOR E-file Portal to: Charles Palaia; Sarah Steers, Esq.; Daniel McGloone

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<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).