

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF :
 :
MATTHEW TIGHE and TIGHE’S EARTH :
MOVING, INC., :
Requester :
 : **Docket No: AP 2026-3221**
v. :
 :
PENNSYLVANIA DEPARTMENT OF :
TRANSPORTATION, :
Respondent :

FACTUAL BACKGROUND

On June 23, 2026, Matthew Tighe and Tighe’s Earth Moving, Inc. (collectively the “Requester”) submitted a request (“Request”) to the Pennsylvania Department of Transportation (“Department” or “PennDOT”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

[1]¹ Please provide (10) 6-month and (10) 3-month advance random notices sent to license holders who were discovered on the Problem Driver Point System [(“PDPS”)], prior to license renewals.

[2] If records (statistics) are available, how many of these notices have been sent out since 2020? Last Thursday, the Director of the Bureau of Licensing from PennD[OT] testified under oath at an evidentiary hearing that his department checks for license holders who are entered into the PDPS and send advance notices before license holders renewal date becomes effective.

¹ Portions of the Request are numbered and separated for ease of reference.

On July 16, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department denied the Request, arguing that driver records responsive to Item 1 of the Request are only available through the procedure outlined in the Motor Vehicle Code (“MVC”). 75 Pa. C.S. § 6114; 67 Pa. Code § 95.2(c).² The Department also claims that the records contain personal identification information and are exempt under the Federal Driver’s Privacy Protection Act (“Privacy Act”). 65 P.S. § 67.708(b)(6); 18 U.S.C. §§ 2721-2725. Further, the Department argues that Item 2 of the Request seeks an answer to a question which the Department is not required to answer pursuant to 65 P.S. § 67.703; however, despite not being required to treat a question as a RTKL request, the Department indicates records reflect the information requested does not exist. 65 P.S. § 67.705.

On August 6, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial 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 August 19, 2026, the Department submitted a position statement reiterating its grounds for denial. In support of its position, the Department submitted attestations made under penalty of perjury³ authored by Sombrata Bandyopadhyay (“Bandyopadhyay Attestation”), the Department’s Director of the Bureau of Driver and Vehicle Services Program Management Office, and Diosdado Arroyo (“Arroyo Attestation”), the Department’s Director of the Bureau of Driver Licensing for the Driver and Vehicle Services Program. On August 19, 2026, the Requester also submitted a response to the Department’s position statement, refuting the arguments set forth therein.

² The Department provided a website link to obtain the Request for Driver Information, form DL-503, <https://www.pa.gov/agencies/dmv.html> (last accessed by the OOR on August 28, 2026).

³ 18 Pa. C.S. § 4904.

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 factfinder ... 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)).

1. The Department has proved responsive records to Item 1 of the Request are confidential

The Department asserts that records responsive to Item 1 are not subject to public disclosure under the RTKL because the records are confidential pursuant to the MVC. *See* 75 Pa.C.S. §§ 101 *et seq.* The Department further argues that federal and state regulations prevent public disclosure of the responsive records and also provide a separate process for obtaining basic vehicle records. *See* 67 Pa. Code § 95.2(c). The Privacy Act provides:

- (a) In general. A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:
 - (1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record ...
 - (2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, [...].

18 U.S.C. § 2721 (1), (2). Section 2725 states:

(1) “motor vehicle record” means any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

(2) “person” means an individual, organization or entity, but does not include a State or agency thereof;

(3) “personal information” means information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.[:]

(4) “highly restricted personal information” means an individual’s photograph or image, social security number, medical or disability information; and

...

18 U.S.C. §§ 2725 (1)-(4).

Additionally, Section 6114 of the MVC makes it unlawful for “[a]ny ... employee or agent of any Commonwealth agency or local authority which makes or receives records or reports required to be filed under [the MVC] to sell, publish or disclose or offer to sell, publish or disclose records or reports which relate to the driving record of any person.” 75 Pa. C.S. § 6114. The MVC does not define “driving record,” however, the OOR has previously interpreted “driving record” under Section 6114 to mean “a record relating to an individual’s driving.” *See Lloyd v. Pa. Dep’t of Trans.*, OOR Dkt. AP 2022-2577, 2022 PA O.O.R.D. LEXIS 2725; *Miller v. Pa. Dep’t of Trans.*, OOR Dkt. AP 2020-0649, 2020 PA O.O.R.D. LEXIS 2280. The Commonwealth Court notes that “[t]he legislature intended to grant a broad exemption in Section 6114 of the Vehicle Code.” *Advancement Project v. Pa. Dep’t of Transp.*, 60 A.3d 891, 897 (Pa. Commw. Ct. 2013) (information obtained from driver’s licenses have been found to relate to the driving record of an individual).

The Department asserts that under Privacy Act and the MVC, an individual can submit requests for vehicle registration and title information for a fee. *See* 18 U.S.C. §§ 2721-2725; 75 Pa.C.S. § 1955; 67 Pa. Code § 95.2. The Department asserts that the Requester can submit a request

for records through the MVC procedures. *Pa. Dep't of Labor & Indus. v. Heltzel*, 90 A.3d 823, 832 (Pa. Commw. Ct. 2014) (where the RTKL and another statute conflict regarding the method of accessing records, the RTKL yields).

In support of the Department's arguments, the Arroyo Attestation indicates that the responsive records are exempt driver records pursuant to the Privacy Act, and the process for accessing driver records is outlined in the MVC, which requires the completion of Department form DL-503 and the payment of a fee. Arroyo Attestation ¶¶ 5-7. The DL-503 form requests relevant information about the requesting party, information about the intended use of the driver records being sought, and a verification subject to penalty of perjury of the intended use, in order for the Department to determine whether the requesting party meets an exemption under the Privacy Act. *Id.* at ¶ 8. Director Arroyo indicates that access to driver records under the RTKL would hinder the Department's ability to ensure legal compliance with the Privacy Act because the Department cannot determine or vet the use of the record and would run afoul the policy behind the Privacy Act, which is to protect personal information in the possession of a state department of motor vehicles. *Id.* at ¶¶ 9-11.

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 Department 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)).

The Requester, in turn, argues that he is not seeking any personal information and is more concerned with the contents of the notices and whether the notices comply with the law. The Requester suggests that the records should be available in redacted form under the RTKL, and that public interest favoring access outweighs any interest that may favor restriction of access.

In this instance, because the information sought in the Request is contained within the Department's motor vehicle records, it cannot be disclosed under the RTKL pursuant to the MVC, 75 Pa. C.S. § 1955, 67 Pa. Code § 95.2(c), and the Privacy Act. *See* 18 U.S.C. § 2721; 65 P.S. § 67.3101.1; *see also Maxfield v. Pa. Dep't of Transp.*, OOR Dkt. AP 2025-0331, 2025 PA O.O.R.D. LEXIS 878 (concluding that records related to PA VIN and personal information of registered vehicle owners are exempt from public access); *Lloyd v. Pa. Dep't of Transp.*, OOR Dkt. AP 2022-2577, 2022 PA O.O.R.D. LEXIS 2725 (finding that a request for all documents related to two vehicles implicated the MVC and the Privacy Act); *cf. Stanoch v. Pa. Dep't of Transp.*, OOR Dkt. AP 2024-2692, 2025 PA O.O.R.D. LEXIS 3 (finding that records of salvors of abandoned vehicles did not facially implicate either law). Redaction of the requested notices is also not an available remedy. "[W]here 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). Likewise, records that are "exempt from being disclosed under any Federal or State law or regulation or judicial order or decree" are not public records under the RTKL. *See* 65 P.S. § 67.102.

The Requester is not prohibited from using the process set forth by the Department above to seek the records in question through the completion of the DL-503 form. However, these records are outside the RTKL. *See* 75 Pa.C.S. § 1955. Therefore, this Final Determination does not reach what may be excluded from the requested notices.

2. The Department proved responsive records to Item 2 of the Request are not within the possession, custody or control of the Department

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).

In support of the Department’s argument, the Bandyopadhyay Attestation indicates that the requested information exists within the Department’s data system called Driver’s License and Control but cannot be accessed by year as the Requester seeks in the Request. Bandyopadhyay Attestation ¶¶ 6-8. The database where notice records are held makes the data requested not readily accessible for the compilation of data and statistical information in the form of a report to satisfy the Request. *Id.* at ¶ 8. Director Bandyopadhyay indicates that the Department does not have a plausible or valid business reason to create and possess a record or format its data in such a way to determine the total number of notices sent since 2020. *Id.* at ¶ 10. Director Bandyopadhyay

confirms that in order to produce a report reflecting the data requested in Item 2 of the Request, the Department would need to develop original computer programming to compile the data. *Id.* at ¶¶ 11-12. The Department offered to go to these lengths to compile the requested data in Item 2 of the Request, at a cost to the Requester of approximately \$8,500.00. *Id.* at ¶¶ 14-15.

This set of facts is analogous to *Center for Investigative Reporting v. Pennsylvania Department of Health*, 227 C.D. 2023, 2024 Pa. Commw. Unpub. LEXIS 298, where the evidence established that responding to the request would require the Department of Health to input a custom query into its database, extract the requested data from individual patient records and compile a new record with the aggregate data requested. *Id.* at * 27. On these facts, the Court held that complying with the Request would be “tantamount to the creation of a new record under Section 705 of the RTKL...”. *Id.* at * 28.

Based upon the evidence presented, the Department has proven by a preponderance of the evidence that records responsive to Item 2 of the Request are not within the Department’s possession, custody or control. *See* 65 P.S. § 67.708(a). Furthermore, under Section 705 of the RTKL, “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.

To the extent that the Requester asserts additional records *should* exist, there has been no evidence presented that additional records do, in fact, exist. The OOR makes no determinations as to whether additional records should exist, as our inquiry is limited to only whether records are “in existence and in possession of the ... agency at the time of the right-to-know request.” *Moore v. Off. of Open Records*, 992 A.3d 907, 909 (Pa. Commw. Ct. 2010); *see also* 65 P.S. § 67.705.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Department 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 Commonwealth Court. 65 P.S. § 67.1301(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.⁴ 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: September 1, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Matthew Tighe
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⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).