

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
SANDRA MILLER,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-3054
	:	
BRIDGETON TOWNSHIP,	:	
Respondent	:	

FACTUAL BACKGROUND

On July 20, 2026, Sandra Miller (“Requester”) submitted a request (“Request”) to Bridgeton Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[a]ll replies, forwards, follow-up emails, attachments, text messages and any and all related communications to or from Gard Holby, James Kopchak, Sheryl Patterson, the Township Solicitor, or any other Township official concerning the June 11, 2026 email entitled “Miller RTK Requests.”¹

On July 25, 2026, the Township denied the Request, arguing that “[t]here have been no replies, forwards, follow-up emails, attachments, text messages or any related communications between James Kopchak and/or the zoning department and any Township officials or employees

¹ The Requester also “attached a copy of the June 11, 2026 email referenced above for [the Township’s] convenience.”

regarding the June 11, 2026 email referenced in [the R]equest” and that a responsive email and texts, dated June 12, 2026, are protected by the attorney-client privilege.

On July 27, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.² Specifically, the Requester argues that the Township’s “response is internally inconsistent and fails to satisfy the Township’s burden of proving that the requested records are exempt from disclosure under [the RTKL].” 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).

Between July 30, 2026 through August 10, 2026, the Requester made 32 submissions.³

On August 11, 2026, the Township submitted an unverified position statement, arguing that it “has provided [the Requester] copies of all materials requested [and that it has] refrained from providing copies of any documents otherwise protected by attorney[-]client privilege.” The Township further argues that the Requester “has a court order prohibiting complaints to any governmental authorities regarding her neighbor’s property [...]” and raises this issue “because it seems that [the Requester] is abusing the [RTKL] system for purposes other than what the law was created for, and regardless of the answers or responses provided, the frivolous requests and demands will continue.” In addition, the Township submitted an “ORDER” issued on March 17, 2026 in the Bucks County Court of Common Pleas, stating that “[n]either party shall make any complaints to any governmental authorities regarding each other’s property unless there is a significant risk to health, safety or welfare of any person or property.”

² 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).”).

³ The submissions reflect various issues raised by the Requester including, but not limited to, separate requests with the Township and an underlying civil litigation. The OOR will not address those issues in this Final Determination.

On August 11, 2026, the Requester submitted a position statement, asking that the Township's "submission be removed from consideration." On August 12, 2026, the Requester submitted a responsive position statement, arguing, in summation, that "[t]he Township's submission does not establish that all responsive records were provided, nor does it establish that any withheld records are protected by attorney-client privilege."

On August 12, 2026, the OOR issued correspondence setting forth the issues on appeal (i.e. that additional records do not exist and that the responsive records are protected by privilege) and stated that the submission period "closes on August 18, 2026 [and that] either party may submit additional argument/evidence (i.e. an attestation/privilege log/etc.) addressing those issues." On August 17, 2026, the Requester submitted an additional position statement, reiterating her prior arguments and asking the OOR to make a finding of bad faith. To date, the Township made no further submissions.

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)).

1. Any underlying litigation is irrelevant to the appeal

The Township argues that the Requester “is apparently in a property dispute with her neighbor and seems to be using [the] Township as a resource to litigate her claim, rather than using the court system” and that there is a “court order prohibiting complaints to any governmental authorities regarding her neighbor’s property unless there is a significant risk to health, safety or welfare of any person or property.” The order in question provides, in relevant part, that:

- f. Neither party shall make any complaints to any governmental authorities regarding each other’s property unless there is a significant risk to health, safety or welfare of any person or property.

Both the Commonwealth Court and the OOR have narrowly interpreted judicial orders to avoid implicating the rights of requesters under the RTKL. *See Chester Community Charter School v. Hardy*, 38 A.3d 1079, 1089 (Pa. Commw. Ct. 2012); *see also City of Allentown v. Brennan*, 52 A.3d 451 (Pa. Commw. Ct. 2010) (holding that a judicial order denying a motion to compel discovery did not prohibit a RTKL request); *but see Fennick v. Pocono Mountain Sch. Dist.*, OOR Dkt. AP 2009-0684, 2009 PA O.O.R.D. LEXIS 306 (holding that an order stating “[a]ll proceedings relating to Daniel Fennick’s Right-to-Know Requests . . . are hereby stayed until further order of the Court” bars access through RTKL). Where an agency’s protective order prohibits contact, however, an agency need not respond to a RTKL request from a restrained individual. *Furin v. City of Pittsburgh*, OOR Dkt. AP 2010-0181, 2010 PA O.O.R.D. LEXIS 212 (requesting records through a RTKL request is a form of judicially prohibited contact).

Here, the order at issue contains a clause prohibiting the Requester from submitting a complaint to a governmental authority; however, there is no language that precludes the Requester from submitting a request to the Township. Nor does the order preclude the Requester from seeking records related to the dispute. Therefore, the existence of any litigation is irrelevant to the matters at issue here.

2. The Township has not proven that certain records are privileged

The Township “specifically refrained from providing copies of any documents otherwise protected by attorney[-]client privilege.” 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. *BouSamra v. Excelsa Health*, 210 A.3d 967, 982-83 (Pa. 2019) (citing *Nationwide Mut. Ins. Co. v. Fleming*, 924 A.2d 1259, 1263-64 (Pa. Super. Ct. 2007), *aff’d* 992 A.2d 65 (2010)). “[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). An agency may not, however, 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”).

While a statement made under the penalty of perjury is competent evidence to sustain an agency’s burden of proof, *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), “a generic determination or conclusory statements are not sufficient to justify the exemption of public records.” *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (en banc); *see also Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (Pa. Commw. Ct. 2017) (“Relevant and credible testimonial affidavits may provide sufficient evidence in support

of a claimed exemption; however, conclusory affidavits, standing alone, will not satisfy the burden of proof an agency must sustain to show that a requester may be denied access to records under the RTKL”) (citations omitted); *Pa. Dep’t of Educ. v. Bagwell*, 131 A.3d 638, 659 (Pa. Commw. Ct. 2016) (“Affidavits that are conclusory or merely parrot the exemption do not suffice”) (citing *Scolforo*); *West Chester Univ. of Pa. v. Schackner et al.*, 124 A.3d 382, 393 (Pa. Commw. Ct. 2015) (“The evidence must be specific enough to permit this Court to ascertain how disclosure of the entries would reflect that the records sought fall within the proffered exemptions”) (citing *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 375-79 (Pa. Commw. Ct. 2013)).

In this instance, the Township identified an email communication and text messages that it argues are protected by privilege; however, the Township does not submit any evidence *proving* that those records are privileged. As noted above, the OOR identified the issues (i.e. that records are protected by privilege) on appeal and reminded the Township that it may submit evidence (i.e. an attestation or privilege log) addressing those issues. To date, the Township’s only submission is an unverified position statement. Accordingly, the Township has not met its burden of proof under the RTKL, and we are constrained to find that any records claimed to be privileged are subject to disclosure. *See Mission Pa., LLC v. McKelvey*, 212 A.3d 119, 129 (Pa. Commw. Ct. 2019), *appeal denied by* 223 A3d 675 (Pa. 2020) (“A preponderance of the evidence may be the lowest burden of proof, but it still requires evidence unless the facts are uncontested or clear from the face of the RTKL request or the exemption”).

3. The Township has not demonstrated that records responsive to the Request do not exist in its 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 identified record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections*, 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).

Despite being provided the opportunity to do so, the Township failed to submit evidence on appeal or an explanation on the search it conducted.⁴ The Township bears the burden of proof to show that it complied with its statutory duties under the RTKL and must demonstrate that it conducted a good faith search for all records responsive to the Request. Because the Township failed to submit detailed evidence as to the search conducted for responsive records, and seems to have records responsive to the Request in its possession that it has not yet provided to the Requester, the Township has failed to meet its burden of proof. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

4. The OOR declines to make a finding of bad faith

The Requester argues that the Township has acted in bad faith. While the OOR may make findings of bad faith, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a). Under the RTKL, a finding of bad faith is appropriate where an

⁴ The OOR further notes the contradictory position between the Township's final position (i.e. that no responsive records were provided to the Requester), compared to the Township's position statement (i.e. that the Township "has provided [the Requester] copies of all materials requested").

agency refuses to comply with its statutory duties under the RTKL. *Uniontown Newspapers*, 243 A.3d at 28-29; *California Univ. of Pa. v. Bradshaw*, 210 A.3d 1134 (Pa. Commw. Unpub. 2021), *appeal denied*, 2019 PA LEXIS (Pa. 2019); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017). In the instant matter, the OOR declines to make a finding of bad faith. The Township responded to the Request, and has participated on appeal, and the OOR has no reason to make such a finding.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Township is required to provide all responsive records within thirty days, withheld as protected under the attorney-client privilege, and to conduct a good faith search for all records responsive to the Request and provide all responsive records, or in the alternative, a detailed sworn affidavit or a statement made under the penalties of unsworn falsification to authorities demonstrating the search conducted and that the records do not exist. 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 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.⁵ 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>.

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

FINAL DETERMINATION ISSUED AND MAILED: September 2, 2026

/s/ Lyle Hartranft

LYLE HARTRANFT, ESQ.
APPEALS OFFICER

Sent via e-file portal to: Sandra Miller; Sheryl Patterson, AORO;