



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ADAM HEIMER and ARCW SYSTEMS,	:	
INC.,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-2549
	:	
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.*, stating “Section 5.01(a)(4) of the BMMA Rules and Regulations authorizes credit or deduction meters for water not discharged to the sanitary sewer. These records relate to how BMMA has applied this provision to other customers.” The Request seeks:

1. All applications, approvals, agreements, permits, or authorizations relating to credit meters, deduction meters, or any billing adjustment for water not discharged into the BMMA sanitary sewer system, from January 1, 2000 to the date of this [R]equest.
2. All BMMA rules, policies, resolutions, or written guidance governing the criteria for approving or denying a credit or deduction meter under Section 5.01(a)(4) of the BMMA Rules and Regulations, from January 1, 2000 to the date of this [R]equest.

3. All records identifying each BMMA customer account (by account number only; personal names may be redacted) that currently holds or has held a credit or deduction meter, the approved purpose, and the effective dates, from January 1, 2000 to the date of this [R]equest.
4. All records showing how each approved credit or deduction meter has been monitored, audited, or verified on an ongoing basis, including meter read histories, inspection records, or compliance reports, from January 1, 2000 to the date of this [R]equest.
5. All records of communications, board minutes, or written determinations addressing credit or deduction meter requests that were denied, and the stated reasons for each denial, from January 1, 2000 to the date of this [R]equest.
6. All records, policies, or written guidance addressing whether water used for outdoor lawn irrigation, misting systems, sprinkler systems, evaporative cooling, or similar outdoor uses that do not discharge to the sanitary sewer qualifies for credit meter treatment under Section 5.01(a)(4) or any other BMMA provision, from January 1, 2000 to the date of this [R]equest.

On June 15, 2026, following a thirty-day extension during which to respond,¹ 65 P.S. § 67.902(b), the Authority partially granted the Request and provided records responsive to Items 2, 3 and 6. The Authority denied Item 1 of the Request, claiming Item 1 is insufficiently specific, 65 P.S. § 67.703. The Authority denied Item 4, claiming that the responsive records are exempt noncriminal investigative materials, 65 P.S. 67.708(b)(17). Lastly, the Authority denied a portion of Item 3 and Item 5 in its entirety, asserting responsive records do not exist in the Authority's possession, custody or control.²

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 asserts Item

¹ At the request of the OOR, the Authority submitted a copy of the Authority's 30-day extension letter on July 22, 2026.

² As the Requester does not challenge the Authority's response to Items 2, 3 and 6, these Items and the Authority's response thereto will not be further addressed in this Final Determination.

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).").

1 is sufficiently specific, the Authority must produce records responsive to Item 4 since those records are a result of completed enforcement actions and additional records responsive to Item 5 exist. The OOR invited both parties to supplement the record and directed the 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 denial of Items 1, 4 and 5 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, reiterating the arguments made at the time of the appeal. Additionally, the Requester claims that the Authority's evidence is silent as to the noncriminal investigation performed and that the exception to Section 708(b)(17)(vi)(A) applies to the withheld records. Lastly, the Requester requests that the OOR "memorialize" the lack of records responsive to Item 5.⁴

On August 14, 2026, at the request of the OOR, the Authority provided a second position statement, providing additional details regarding the Authority's legislatively granted authority to perform the process that results in the issuance of "Notices of Violations" and the process involved in the issuance of said notices. In support of the Authority's position, the Authority submitted a second affidavit, duly sworn, authored by Keith L. Corson ("Corson Second Affidavit").

On August 14, 2026, the Requester submitted a second position statement, arguing the process described by the Authority is an administrative process, and not a noncriminal

⁴ The OOR finds herein that records responsive to Item 5 do not exist. Any further "memorialization" is not within the jurisdiction of the OOR.

investigation.⁵ Additionally, the Requester seeks *in camera* review of the withheld records.

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 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).

While the Requester sought an *in camera* review, the OOR has the information and evidence before it to properly adjudicate the matter. Therefore, the request for *in camera* review is denied.

1. Item 1 is insufficiently specific

The Authority argues that Item 1 of the Request is insufficiently specific. 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

⁵ The OOR extended the evidentiary submission record through August 14, 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”).

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).

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 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”).

The Requester asserts that Item 1 contains a specific subject matter of “the deduction meter program,” a defined scope of “[a]pplications, approvals, agreements, permits and authorizations for credit or deduction meters” found in account and connection files, and, as a result, Item 1 is sufficiently specific; however, the OOR disagrees. A review of Item 1 does not reveal a narrow

subject matter, but rather a broad subject matter consisting of records “relating” to “credit meters, deduction meters, or any billing adjustment” for water not discharged into the Authority’s sewer system. Further, the scope of Item 1 is broad, and cannot be defined as narrowed when seeking “all applications, approvals, agreements, permits, or authorizations.” Lastly, while the timeframe is defined, it is lengthy—over 26 years. Notably, the Request does not identify any custodians of the requested records within the Authority that would aid in limiting the universe of potentially responsive records, but instead on appeal, claims that responsive records can be found in “account and connection files.”⁶ *See Pa. Dep’t of Educ.*, 199 A.3d at 1124-1126 (“A request for a broad category of documents, such as all records, may be sufficiently specific if confined to a particular recipient or recipients”); *see also Carey*, 61 A.3d at 372 (concluding that the scope of the request must identify “a discrete group of documents, either by type ... or by recipient”). The OOR has also held that requests are insufficiently specific because they provide no context to guide a search for responsive records when the scope is very broad and the timeframe is lengthy. *See Vedilago v. N. Lebanon Sch. Dist.*, OOR Dkt. AP 2021-2496, 2022 PA O.O.R.D. LEXIS 170 (finding that requests seeking all electronic communication between the Governor, the Pennsylvania Department of Health and Education, the County Department of Health and certain agency officials and communication among agency officials for a period of almost 21 months was insufficiently specific); *see also Winklosky v. Pa. Office of Admin.*, OOR Dkt. AP 2018-1438, 2018 PA O.O.R.D. LEXIS 1391 (“[s]eeking all records related to a topic or topics does not necessarily make a request insufficiently specific; however, a request must provide enough specificity in its

⁶ 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”). However, the OOR does not agree that searching every account or connection file over 26 years for records that “relate” to deduction-meter authorization actually narrows the Request.

scope and timeframe to help guide the agency in its search for records”).

Here, Item 1 of the Request does not set forth a narrowed subject matter or a discernible scope and provides a lengthy timeframe. Accordingly, based on the language of Item 1 of the Request, Item 1 is insufficiently specific; however, nothing in this Final Determination prevents the Requester from filing a more specific RTKL request for the same information, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

2. Records responsive to Item 4 are exempt noncriminal investigative materials

The Authority asserts that records responsive to Item 4 are exempt because they relate to noncriminal investigations, which consist of the Authority’s investigation into water meter readings of “0” or when the readings do not align with prior readings. *See* Authority position statement pp. 2-3. Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “[i]nvestigative materials, notes, correspondence and reports” and “[a] record that, if disclosed, would ... [r]eveal the institution, progress or result of an agency investigation.” 65 P.S. §§ 67.708(b)(17)(ii); 65 P.S. § 67.708(b)(17)(vi)(A). In order for this exemption to apply, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *See Pa. Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be “conducted as part of an agency’s official duties.” *Id.* at 814; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Pa. Dep’t of Pub. Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). The OOR

must also consider uncontradicted statements in the appeal filing when construing exemptions. *See Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016).

The Authority indicates that it is governed and created by the Municipality Authorities Act, 53 Pa.C.S. § 5601 *et seq.* Specifically, the Authority cites to Section 5607(d)(17), which provides the Authority with the power to:

...[D]o all acts and things necessary or convenient for the promotion of its business and the general welfare of the authority to carry out the powers granted to it by this chapter or other law, including, but not limited to, the adoption of reasonable rules and regulations that apply to water and sewer lines located on a property owned or leased by a customer and to refer for prosecution as a summary offense any violation dealing with rules and regulations relating to water and sewer lines located on a property owned or leased by a customer.

53 Pa.C.S. § 5607(d)(17). As a result, the Authority has promulgated rules and regulations related to sewer service to commercial and industrial users.⁷ The Authority's rules and regulations require the meter readings to be accurate and set forth the procedures the Authority follows if a customer fails to follow through with the repair and or correction of a meter that is inaccurate or ceases to function.⁸ A Superintendent, or Manager, makes the determination if the rules and regulations have been violated and serves a notice of violation upon the customer.⁹ Further, the regulations provide that the Authority may impose penalties and liens for these violations.¹⁰

As explained by the Authority, the only records located that were responsive to Item 4 were "Notices of Violation" issued to customers for meters that stopped showing usage. Corson Affidavit ¶ 7. In support of the Authority's position that the responsive records are noncriminal investigative records, the Corson Second Affidavit further indicates the following:

⁷ The Authority submitted a copy of these rules and regulations on August 14, 2026, which are entitled "Berks-Montgomery Municipal Authority Regulations," last updated June 22, 2009.

⁸ *See* Berks Montgomery Municipal Authority Regulations §§ 3.10.09, 7.04, 9.01.

⁹ *Id.*

¹⁰ *Id.*

2. In my role as Manager, I am responsible for overseeing the Notice of Violation letters to commercial customers that have a broken water meter or exterior remote reader.
3. These letters inform the customer that, after reviewing the meter readings for their property, it is evident that the water meter or exterior remote reader is broken and must be repaired or replaced.
4. The letter provides that they have thirty days from the date of this notice to correct the problem.
5. If a customer does not correct the problem within the deadline, a second Notice of Violation letter is sent to the customer advising them of the broken water meter and informing the customer that the Authority will impose penalties for violation if not corrected within thirty days.
6. If a customer does not correct the problem within the second deadline, a third and final Notice of Violation letter is sent to the customer advising them of the broken water meter and informing the customer that the Authority will impose penalties for violation if not corrected within thirty days.¹¹

Additionally, in further support of the Authority's position, the Authority's second position statement explains:

...[T]he Authority generally reviews the water meter readings of commercial users not using public water to determine the accuracy of these readings. If the water meter reading reads "0", is significantly less than amounts previously read, or if the reading is different from the reading of the inside meter (when applicable), the Authority issues a notice of violation via a letter informing the customer of the broken meter or exterior remote reader, setting forth the steps the customer must take to correct this issue, and providing a timeframe for correction of the meter. If the problem remains unsolved after the deadline provided in the initial letter, a subsequent letter is sent to the owner. This letter also informs them of the violation, informs the owner that this letter is their second notification of the violation, provides a timeframe to correct the problem, and threatens to impose penalties if the violations remain unresolved.

Authority second position statement pp. 2-3.

¹¹ Under the RTKL, a sworn affidavit or statement 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 has acted in bad faith, "the averments in the [affidavits] 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)).

An Authority's Manager is authorized to administer and enforce the Authority's rules and regulations. In accordance with the Authority's rules and regulations, the Authority's Manager ensures water meter readings are correct and investigates violations associated with inaccurate meter readings. Thus, the noncriminal investigations of inaccurate water meter readings are conducted pursuant to the Authority's legislatively-granted powers. Additionally, the OOR has consistently held that municipalities are statutorily authorized to investigate violations of their ordinances. *See Colella v. Pocopson Twp.*, OOR Dkt. AP 2018-1472, 2018 PA O.O.R.D. LEXIS 1152 (finding that a township has the authority to conduct investigations pursuant to the Municipalities Planning Code); *see also Keating v. Jefferson Twp.*, OOR Dkt. AP 2018-1274, 2018 PA O.O.R.D. LEXIS 1000; *McConathy v. Malvern Borough*, OOR Dkt. AP 2021-1819, 2021 PA O.O.R.D. LEXIS 2189; *Westrich v. Malvern Borough*, OOR Dkt. AP 2022-0605, 2022 PA O.O.R.D. LEXIS 1327. Accordingly, based on the evidence, the Authority demonstrated that it conducts noncriminal investigations when water meter readings are inaccurate, and as a result, violates its rules and regulations. *See* 65 P.S. § 67.708(b)(17); *see also Deeter v. Upper Southampton Twp.*, OOR Dkt. AP 2019-1697, 2019 PA O.O.R.D. LEXIS (finding that records pertaining to investigations into the violation of municipal ordinances are exempt from disclosure under Section 708(b)(17)).

The Requester argues the "Notices of Violation" are administrative and once a matter is concluded, the noncriminal investigative exemption no longer applies. As explained, any notice of violation letters issued by the Authority stem from the Authority determining that a meter reading is no longer complying with the Authority's rules and regulations. The OOR has no jurisdiction to determine whether the Authority's "Notices of Violation" are informal or administrative, as the Authority is legally authorized to investigate any violations related to

inaccurate meter readings. Further, Section 708(b)(17) does not differentiate between records of active or inactive investigations. 65 P.S. § 67.708(b)(17)(vi)(A); *see Mahl v. Springfield Twp. (In re Mahl)*, No. 853 CD 2011, 2012 Pa. Commw. Unpub. LEXIS 36 at *8 (Pa. Commw. Ct. 2012) (“[T]he [RTKL] does not limit the [noncriminal investigation] exemption to active investigations”).

Notwithstanding the above, Section 708(b)(17)(vi)(A) sets forth an exception to the exemption, requiring that records documenting “the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization...or an executed settlement agreement...” be disclosed. *See* 65 P.S. § 67.708(b)(17)(vi)(A). The Authority indicates the search for responsive records located no instances where a customer failed to correct the broken water meter and, as a result, there have been no instances located where a fine or civil penalty was imposed. Corson Second Affidavit ¶¶ 7, 8. As such, any withheld records do not fit within the exception. *See Hess v. Northampton County*, OOR Dkt. AP 2023-2980, 2024 PA O.O.R.D. LEXIS 93 (an agency is required to provide evidence that records do not contain the information listed in Section 708(b)(17)(vi)(A)).

3. The Authority demonstrated records responsive to Item 5 do not exist

The Authority claims that records responsive to Item 5 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 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 that records responsive to Item 5 of the Request do not exist, the Authority relies upon the Corson Affidavits. The Authority's affidavits are authored by its Manager, an individual with knowledge of the Authority's records. The Authority has demonstrated that a good faith search of the Authority's records was performed, which included a search within its records and meeting minutes. Corson Affidavit ¶ 8. There has been no sufficient evidence provided that otherwise contradicts the statements offered by the Authority in the submitted affidavits. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Thus, the Authority's affidavits have established, by a preponderance of the evidence, that additional records responsive to the Request do not 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).¹²

CONCLUSION

For the foregoing reasons, the appeal is **denied**, 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.¹³ 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: September 3, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

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

¹² 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.

¹³ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).