



FINAL DETERMINATION

IN THE MATTER OF

**NOLAN FINNERTY AND
DAVIS BUCCO & MAKARA,
Requester**

v.

**UPPER DARBY TOWNSHIP,
Respondent**

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Docket No: AP 2026-2876

On May 4, 2026, Nolan Finnerty, Esq., on behalf of Davis Bucco & Makara (collectively, “Requester”), submitted a request (“Request”) to Upper Darby Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”),¹ 65 P.S. §§ 67.101 *et seq.*, seeking various records for an identified property located on Township Line Road, Upper Darby, PA 19082 (“Site”), “and any construction, demolition, site-work, or related activity occurring thereon[,]” from “January 1, 2024 through the present[,]” unless otherwise stated, which are summarized, in part, as follows:

(1) third-party communications to the Township about noise, (2) complaint forms, logs, intake forms, case files, tracking spreadsheets, databases, and similar records documenting noise complaints, (3) internal Township communications about noise, (4) Township communications with agents and third parties about noise, together with a privilege log for anything withheld on privilege grounds, (5) communications with sound engineers and consultants, including Pennoni Associates, Inc., (6) noise measurements, sound level readings, monitoring data, field notes, and underlying raw data, (7) reports, studies, analyses, and drafts concerning noise, including noise-barrier studies and mitigation plans, (8) records reflecting the identity of noise complainants, with personal identification

¹ Although the Request is dated April 21, 2026, it was not received by the Township until May 4, 2026.

information redacted and an index of redactions supplied, (9) social media communications about noise, (10) records of enforcement action, proposed enforcement action, or internal discussion of potential enforcement action, (11) communications with neighboring owners, tenants, associations, and civic groups about noise, and (12) invoices, bills, retention letters, engagement letters, and payment records between the Township and any sound engineer, acoustical consultant, noise consultant, environmental consultant, or other expert retained in connection with noise at the site.

See Requester Appeal, pp. 8-13; August 20, 2026 Requester Submission, pp. 3-4.²

On May 11, 2026, the Township invoked a thirty-day extension to respond to the Request (“Interim Response”). *See* 65 P.S. § 67.902(b)(1). On June 24, 2026, after the Request was already deemed denied on June 10, 2026, the Township issued an untimely Final Response, purporting to deny the Request, asserting that the large volume of records responsive to Items 1-11 are exempt from public disclosure under 65 P.S. § 67.708(b)(17), the attorney-client privilege and/or the attorney-work product doctrine. The Township further stated that records responsive to Item 12 do not exist.

On July 15, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.³ 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).

² The summary of the twelve item Request was included in the August 20, 2026 Requester Submission and is used here for the sake of efficiency. Additionally, we note that to the extent the Request seeks a privilege log, redaction index and an affidavit identifying any nonexistent responsive records, the Township was not required to provide evidence of a good faith search or in support of its grounds for denial at the response stage of the RTKL process. *See* 65 P.S. §§ 67.901, 903; *see also* *Levin v. Pa. Dep’t of Educ.*, OOR Dkt. AP 2023-2588, 2025 PA O.O.R.D. LEXIS 1017, *19 (explaining that “[t]he language in Section 903 does not include a requirement that the agency link a basis for denial with a specific record”).

³ The Requester granted the OOR a thirty-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)”).

Between July 27-August 18, 2026, multiple correspondence was filed, with the Township seeking two extensions of time to supplement the record. The OOR granted both extension requests, extending the parties' submission period to August 20, 2026.

On August 20, 2026, the Township submitted a position statement, reiterating its grounds for denial with respect to the over 4,900 records that are potentially responsive to Items 1-11 of the Request. It further stated that it no longer maintains its denial of Item 12 because responsive financial records may exist within the possession of a third-party vendor. The Township also asserted, in part, that it was in the process of obtaining those records from the vendor, it would need to review them for any legally permissible redactions and it would provide them to the Requester. In support of its position, the Township submitted the attestation of Crandall Jones ("Jones Attestation"), Township Chief Administrative Officer and Agency Open Records Officer ("AORO"), which is made subject to penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

In response, that same day, the Requester filed a submission, asserting that the appeal was timely filed under 65 P.S. § 67.1101(a)(1). The Requester further argued that the Township failed to identify the responsive records, and to prove that those responsive to Items 1-11 are exempt under 65 P.S. § 67.708(b)(17) and the raised privileges. In addition, the Requester argued, in part, that the responsive records are subject to the redaction provisions of 65 P.S. § 67.706; that pending litigation in the Delaware County Court of Common Pleas shows that certain responsive records must exist and are not privileged or exempt;⁴ and that the Requester's status as a litigant adverse to the Township is not a proper grounds for denial under the RTKL.⁵

⁴ The Requester explains that on September 11, 2025, the Township filed a Complaint and Petition for Injunction in *Upper Darby Township v. A. Marinelli & Sons, Inc.*, No. CV-2025-007866 (Delaware Cnty. C.C.P.), and that the Requester represents the defendants in that matter.

⁵ The Requester also asked the OOR to conduct *in camera* review of the withheld records.

On August 21, 2026, the OOR directed the parties to file a copy of the Interim Response, by August 28, 2026, stating that such was needed to determine the timeliness of the Final Response and the appeal. The OOR also directed the Township to address the points made in the Requester's August 20, 2026 submission, and to submit an exemption/privilege log pertaining to the withheld responsive records.

On August 25, 2026, in response to the OOR's inquiry, the Township filed correspondence and a copy of the Township's June 10, 2026 request to the Requester for an additional extension of the RTKL response period.

On August 28, 2026, the Township filed a supplemental position statement, addressing the points made in the Requester's August 20, 2026 Submission. The Township further argued that the appeal must be dismissed as untimely. In addition, the Township disclosed seven pages of records responsive to Item 12, which it obtained from a third-party vendor, and it further asserted, in part, that it was unable to extract, review and produce a privilege log concerning the records responsive to Items 1-11 within the timeframe requested by the OOR.

To date, the Requester has not further supplemented the record, or sought additional time to do so.

Pursuant to Sections 901 and 902 of the RTKL, within five business days of the open records officer receiving a request, an agency must either respond to the request or "send written notice to the requester" invoking an extension to do so; otherwise, the request will be deemed denied. 65 P.S. §§ 67.901, 902(b)(1)(a). Under Section 1101(a)(1), if an RTKL request "is denied or deemed denied, the requester may file an appeal with the [OOR] ... within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial." 65 P.S. § 67.1101(a)(1). Failure to file an appeal within this time period divests the OOR of any

jurisdiction over the appeal. *See e.g., Buchman v. Springdale Borough*, OOR Dkt. AP 2025-0186, 2025 PA O.O.R.D. LEXIS 354; *Bauer v. Westmoreland Cnty.*, OOR Dkt. AP 2023-2145, 2024 PA O.O.R.D. LEXIS 112.

Here, the Township's AORO received the Request on May 4, 2026. *See Jones Attestation*, ¶ 2.⁶ On May 11, 2026, the Township invoked a thirty-day extension to respond to the Request, and on June 10, 2026, the Township sought an additional extension of the RTKL response period from the Requester until June 24, 2026. *See* 65 P.S. §§ 67.902(b)(1)-(2); *see also* August 25, 2026 Township Correspondence, pp. 1-5; August 28, 2026 Township Supplemental Position Statement, p. 1.⁷ However, because the Requester did not agree to that extension in writing, the Request was deemed denied on June 10, 2026. *See* 65 P.S. § 67.902(b)(2); *see also* August 25, 2026 Agency Correspondence, pp. 1, 3-5. As such, the Requester had fifteen business days from that date, or until July 2, 2026, to file an appeal with the OOR.⁸ *See* 65 P.S. § 1101(a)(1).

Accordingly, the OOR is constrained to conclude that the appeal, which was filed on July 15, 2026, must be **dismissed as untimely**. Therefore, the OOR lacks jurisdiction at this time to address the other arguments raised by the parties on appeal.⁹ Nothing in this Final Determination

⁶ 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. Off. 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, "... 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)).

⁷ The Township's solicitors, Travis Hunsberger, Esq. and Nicole Feight, Esq. of Clarke Gallagher Barbiero Amuso & Glassman Law, "verify and attest that the facts" contained in the August 25, 2026 Township Correspondence and the August 28, 2026 Township Supplemental Position Statement, respectively, "are true and correct to the best of [their] knowledge, information and belief." August 25, 2026 Township Correspondence, p. 2; August 28, 2026 Township Supplemental Position Statement, p. 3.

⁸ The OOR was closed for business on Friday, June 19, 2026, in observance of the Juneteenth holiday; therefore, that date was not included in the calculation of the fifteen-business-day appeal period.

⁹ The OOR is bound by the timelines established in 65 P.S. § 67.1101(a)(1) and may not waive them to proceed with consideration of the merits of this appeal. *See Adams v. Elizabeth Forward Sch. Dist.*, OOR Dkt AP 2021-2284, 2021 PA O.O.R.D. LEXIS 2633.

prevents the Requester from filing a new request with the Township for the same records, and, if necessary, filing a new appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

For the foregoing reasons, the appeal is **dismissed as untimely**, and the Township is not required to take any further action.¹⁰ 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 Delaware 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.¹¹ 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 8, 2026

/s/ Megan Burns

MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Nolan Finnerty, Esq.; Crandall Jones, AORO; Travis Hunsberger, Esq. and Nicole Feight, Esq.

¹⁰ We caution the Township that continued actions to issue untimely final responses to RTKL requests, to fail to determine whether records are responsive or to properly seek additional time on appeal before the OOR to do so, could result in a future finding of bad faith.

¹¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).