



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JAMES COUNTERMAN,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-3282
	:	
BARRETT TOWNSHIP,	:	
Respondent	:	

FACTUAL BACKGROUND

On July 7, 2026,¹ James Counterman (“Requester”), submitted two separate requests (collectively the “Request”) to Barrett Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. Any and all contracts or agreements (written or oral as memorialized in writing) between [the Township] and Karl Weiler, individually or under any trade name or business entity, from January 1, 2018 to the present.
2. Any and all contracts or agreements between [the Township] and [the] Barrett Economic Development Corporation [(“BEDCO”)]--from January 1, 2018 to the present, including[,] but not limited to[,] service agreements, grant agreements, economic development agreements, and reimbursement arrangements.
3. All purchase orders, work orders, and scope-of-work documents referencing Karl Weiler or BEDCO as a vendor, contractor, or service provider.

¹ While the Request is dated July 7, 2026, the Request was received by the Township on July 10, 2026. *See* Township final response; *see also* Township 30-day extension letter.

4. All invoices submitted by Karl Weiler or BEDCO to [the Township] and all corresponding Township payment records (checks, ACH transfers, warrants), including check numbers, dates, and amounts.

5. All Board of Supervisors meeting minutes, resolutions, and motions authorizing or ratifying any payment to Karl Weiler or BEDCO.

6. All correspondence (letters, emails, text messages, or other writings) between any [Township] official or employee and Karl Weiler or any BEDCO representative concerning Township business, contracts, or payments.²

[7.] The Memorandum of Understanding [(“MOU”)] between [the Township] and [BEDCO] in its current and all prior versions, including the original executed agreement and any amendments, renewals, or replacements.

[8.] All exhibits, attachments, schedules, or addenda to any MOU or agreement between [the Township] and BEDCO.

[9.] All Board of Supervisors resolutions, motions, or minutes authorizing the execution, amendment, or renewal of any MOU or cooperative agreement with BEDCO.

[10.] All financial provisions of any MOU, including any Township funding commitments, grants, appropriations, or in-kind contributions to BEDCO.

[11.] Any annual reports, financial statements, or audits submitted by BEDCO to [the Township] pursuant to any MOU or agreement.

[12.] All correspondence (letters, emails, or other writings) between any [Township] official or employee and any BEDCO officer, director or representative concerning the negotiation, execution, or administration of any MOU or cooperative agreement.

[13.] Any BEDCO bylaws, articles of incorporation, officer lists, or governance documents in the possession of [the Township].³

On August 10, 2026, following a thirty-day extension during which to respond,⁴ 65 P.S. § 67.902(b), the Township partially granted the Request and provided records responsive to Items 2

² Items 1 through 6 seek records from January 1, 2018 through the date of the Request. *See* Request.

³ Items 7 through 14 of the Request were originally in a second request submitted to the Township and numbered 1 through 7. As such, the Items have been renumbered herein for purposes of clarity.

⁴ At the request of the OOR, the Township submitted a copy of the Township’s 30-day extension letter on August 24, 2026.

and 6.⁵ The Township denied the portion of Item 6 seeking “All correspondence...between any [Township] Official or employee and Karl Weiler or any BEDCO Representative concerning Township business” as insufficiently specific, 65 P.S. § 67.703. The Township denied Items 1, 3, 4 through 5 and 7 through 13, asserting responsive records do not exist in the Township’s possession, custody or control.

On August 11, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, the Requester asserts that responsive records should exist and Item 6 seeking all correspondence concerning “Township Business” is sufficiently specific.⁶ Additionally, the Requester seeks *in camera* review or a hearing to further evaluate the “Township’s search methodology.” 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 12, 2026, the Township submitted a position statement, reiterating its basis for partial denial of the Request. Additionally, the Township indicates that it is not required to obtain BEDCO’s records via Section 506(d)(1) of the RTKL, as the Township does not have a contractual relationship with BEDCO. In support of the Township’s position, the Township submitted two attestations, made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by Amanda Seagraves (“Seagraves Attestation”), the Township’s Agency

⁵ The Township redacted personal identification information, 65 P.S. § 67.708(b)(6)(i)(A), from the records provided in response to Item 6; however, as the Requester does not challenge these redactions or the Township’s response to Item 1, these redactions and Item 1 will not be further addressed in this Final Determination.

⁶ The Requester seeks leave to narrow this portion of Item 6, if necessary; however, 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”). As such, the OOR may not alter a Request during the appeal and makes the findings discussed herein based upon the original language of the Request.

Open Records Officer (“AORO”), and Janine Sopko (“Sopko Attestation”), the Township’s Administrative Assistant.

On August 13, 2026, the Requester submitted a position statement, claiming that BEDCO assisted the Township with the drafting of ordinances, and as such, BEDCO is performing a governmental function on behalf of the Township.⁷

On August 14, 2026, the Township submitted a second position statement,⁸ reiterating that the Township performed a good faith search for responsive records. In support of the Township’s position, the Township submitted an attestation, made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by Amanda Seagraves (“Seagraves Second Attestation”).

On August 17, 2026, the Requester submitted a second position statement, reiterating the arguments made at the time of and during the pendency of the appeal.

On August 17, 2026, the Township submitted a third position statement, reiterating the arguments previously made by the Township.

On August 19 and August 22, 2026, the Requester made a number of submissions, arguing that the responsive records provided by the Township establish that additional responsive records exist based upon the relationship between the Township and BEDCO.

On August 24, 2026, the Township submitted a fourth position statement, explaining that the Township does not have a general or continuing contractual relationship with BEDCO.⁹

⁷ The Requester submitted a corrections to the position statement on August 14, 2026. The Requester additionally seeks information regarding a former Township employee’s records. As noted previously, a Requester may not modify or expand a Request during the pendency of an appeal.

⁸ The factual information contained in the Township’s second position statement are verified to be accurate and true. *See* Seagraves Second Attestation ¶ 9.

⁹ The evidentiary record in this appeal closed on August 21, 2026. Even though both parties made submissions after this date, all submissions made after the record closed have been considered herein. *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”).

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)). 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 *in camera* review or a hearing, the OOR has sufficient information and evidence before it to adjudicate the matter. Therefore, the requests for *in camera* review and a hearing are denied.

1. A portion of Item 6 is insufficiently specific

The Township argues that the portion of Item 6 seeking “All correspondence...between any [Township] Official or employee and Karl Weiler or any BEDCO Representative concerning Township business” 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 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”).

A review of the relevant portion of Item 6 reveals a broad subject matter that consists of “Township business”; a broad scope that includes all “correspondence (letters, emails, text messages, or other writings)”; and a lengthy timeframe of over eight years. Notably, the Request does not identify any *Township* custodian of the requested records that would aid in limiting the universe of potentially responsive records. *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 scope and timeframe to help guide the agency in its search for records”).

Here, the portion of Item 6 at issue does not set forth a scope and provides a lengthy timeframe. Thus, the lack of scope cannot overcome a broad subject matter and lengthy timeframe. Accordingly, the portion of Item 6 seeking “All correspondence...between any [Township] Official or employee and Karl Weiler or any BEDCO Representative concerning Township business” 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. The Township demonstrated records responsive to Items 1, 3, 4 through 5 and 7 through 13 do not exist

The Township claims that records responsive to Items 1, 3, 4 through 5 and 7 through 13 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 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).

Here, the Request seeks a variety of records related to the Township’s relationship and interactions with BEDCO.¹⁰ In support of the Township’s position that records additional records responsive to the Request do not exist, the Township relies upon the Sopko and Seagraves Attestations. The Attestations are authored by the Township’s AORO and Administrative Assistant, individuals with knowledge of the Township’s records. The Township has demonstrated that a good faith search of the Township’s records was performed, which included a search within the Township’s correspondence relating to BEDCO, MOUs, agreements, contracts, meeting files, the Township’s resolution and minute books, correspondence files and emails.

¹⁰ Karl Weiler is also referenced in the Request; however, as Mr. Weiler is the Secretary on BEDCO’s Board of Directors, the OOR will hereinafter refer to both as BEDCO. *See* <https://betterbarrett.org/about-us/#LEADERSHIP> (last accessed by the OOR on September 2, 2026).

Seagraves Attestation ¶¶ 2, 3, 4; Sopko Attestation ¶ 4.¹¹ Additionally, the Township position statement indicates that BEDCO is not a department, office, agency, board or affiliate of the Township and that no contractual documents exist between the Township and BEDCO. Township position statement pp. 1-2. Further, the Township’s second position statement explains that while BEDCO may have assisted in the development of ordinances, such assistance does not establish that there was an MOU, contract, agreement or other formal document between the Township or BEDCO. Township second position statement p. 1. Similarly, the issuance of an invoice does not establish the existence of a contractual or recurring billing agreement between the Township and BEDCO, as the Township rents its building to organizations and individuals on an hourly, daily and monthly basis. Township second position statement pp. 1-2. Thus, there has been no sufficient evidence provided that otherwise contradicts the statements offered by the Township in the submitted statements and attestations. *See Pa. Dep’t of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). As a result, the Township’s attestations have established, by a preponderance of the evidence, that additional records responsive to the Request do not exist in the Township’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

¹¹ Under the RTKL, a statement made under 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 acted in bad faith, “the averments in [the attestations] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2013)).

¹² While the OOR understands the Requester asserts additional records should exist, 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

The Requester claims that the Township is required to obtain responsive records from BEDCO in response to the Request, asserting that a contract to perform a governmental function exists between the parties. Under the RTKL, two groups of records are accessible to requesters: records in an agency's actual or constructive possession reached directly under Section 901 of the RTKL, and records in the possession of third parties that are indirectly accessible through Section 506(d) of the RTKL. 65 P.S. § 67.506(d); *see also Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014), *aff'd* 124 A.3d 1214.

Section 506(d)(1) of the RTKL states that:

A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this action, shall be considered a public record of the agency for purposes of this act.

65 P.S. § 67.506(d)(1). In *Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, the Commonwealth Court explained that records “in the possession of a party with whom an agency has contracted to perform a governmental function on behalf of the agency” are presumptively public records subject to public access, “so long as the record (a) directly relates to the governmental function and (b) is not exempt under the RTKL.” 13 A.3d 1025, 1039 (Pa. Commw. Ct. 2011); *see also* 65 P.S. § 67.305(a).

A key requirement of Section 506(d) is that the agency contracts with the third party from whom records are sought. *Dental Benefit Providers, Inc. v. Eiseman*, 124 A.3d 1214, 1223 (Pa. 2015) (stating that Section 506(d)(1) requires an actual contract with a third party in possession of the records). The RTKL requires a written contract to exist before Section 506(d) can apply; an implied contract or a relationship wherein a third party performs some traditional governmental

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.

function without inducement is not sufficient. *See Appeal of Hadley*, 83 A.3d 1101, 1110 (Pa. Commw. Ct. 2014) (“[the r]equester represents that the [agency] delegated certain economic development functions to the [third party], including tourism and industrial recruitment. However, [the r]equester points to no contractual relationship”).

In this matter, the Township has demonstrated that no contract exists between it and BEDCO. The Requester has not provided evidence of the existence of a contract, but argues that a contract should exist, which as noted herein, one does not. Therefore, the first element of Section 506(d) has not been proven and the Township is not required to obtain records from BEDCO.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, 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 appeal to the Monroe 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 9, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.

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

APPEALS OFFICER

Sent via portal only to: James Counterman; Amanda Seagraves