



FINAL DETERMINATION

IN THE MATTER OF

**BRIAN SHANK,
Requester**

v.

**FRANKLIN TOWNSHIP,
Respondent**

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Docket No: AP 2026-3292

FACTUAL BACKGROUND

On June 23, 2026, Brian Shank (“Requester”) submitted a request (“Request”) to Franklin Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...[R]ecords related to the zoning/code complaint I submitted regarding the property adjacent to [address omitted], Dillsburg, PA:

1. The date the Township opened the investigation into this complaint.
2. All site visit or inspection records, including the date(s) of any site visit.
3. All photographs, videos, or other images taken, received, or used by the Township or Zoning Officer in connection with this complaint or any related inspection.
4. Any written notes, logs, or summaries created by the Zoning Officer or Township staff regarding this complaint.

5. Any correspondence (emails, letters, memos, or messages) related to the investigation or review of this complaint.
6. Any determination, findings, or enforcement notices issued or drafted in connection with this complaint.
7. Any documents identifying the ordinance sections being evaluated or applied during the review.¹

On July 21, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Township partially granted the Request, providing some responsive records.² The Township partially denied the Request, withholding responsive records claimed to be exempt noncriminal investigative materials, 65 P.S. § 67.708(b)(17), and asserting stormwater management, erosion and sediment control and land development plans do not exist in the Township's possession, custody or control.

On August 4, 2026, the Township supplemented its response, based on a July 22, 2026 email sent to the Township by the Requester.³ The Township provided additional responsive records to the Requester, including two Status Reports referencing the property specified in the Request. The Township further indicated that it withheld three complaints, associated notes and investigative materials that are exempt noncriminal investigative materials, 65 P.S. § 67.708(b)(17).⁴

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

¹ On June 24, 2026, the Requester clarified the Request, seeking additional records regarding the specified property, to include: stormwater management records; erosion and sediment control records; land disturbance, driveway and related approvals; and on-lot sewage disposal records. *See* Requester appeal p. 22-23. The Requester noted the additional records sought supplemented the Request and should not be processed as a new request. *Id.*

² The responsive records include a driveway permit and percolation test results.

³ The facts contained in the Township's August 4, 2026 correspondence are affirmed to be true and correct. *See* Gibb Affidavit ¶ 9.

⁴ Said letter was not provided with the Requester's appeal; however, the Township provided the letter and records with its position statement on August 27, 2026. *See* Township position statement pp. 6-15.

asserts that the Township did not specify the records withheld and did not provide a basis for the exemption claimed. 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 this appeal. 65 P.S. § 67.1101(c).

On August 27, 2026, the Township submitted correspondence, reiterating its arguments made in response to the Request. In support of the Township's position, the Township submitted an affidavit authored by Lyndsey Gibb ("Gibb Affidavit"), the Township's Agency Open Records Officer ("AORO").

On September 1, 2026, the Requester submitted a position statement, disputing the accuracy of the Gibb Affidavit and claiming that investigative records exist⁵ based upon "YCCD's⁶ June 9 inspection and June 24 enforcement directives."⁷

On September 2, 2026, at the request of the OOR, the Township submitted a position statement,⁸ providing additional details regarding the Township's zoning and code enforcement investigations.⁹ The Township also provided Township Meeting Minutes, dated July 8, 2026, June 10, 2026 and May 13, 2026. In support of its position, the Township submitted a second affidavit¹⁰

⁵ To clarify, the Township does not dispute that investigative records exist, but that those records are exempt pursuant to Section 708(b)(17) of the RTKL.

⁶ Based upon the Township's position statement, "YCCD" references the York County Conservation District ("YCCD").

⁷ The Requester claims the assertions made by the Township are inconsistent because the property is not vacant, YCCD's findings of earth disturbance of greater than one acre and YCCD's requirements. It is not within the OOR's jurisdiction to determine whether a property is vacant, whether YCCD's findings match those of the Township or if the Township has complied with YCCD's requirements. As such, these assertions will not be further addressed in this Final Determination.

⁸ The Township's position statement is authored by its solicitor, Bret P. Shaffer, Esq.

⁹ The facts contained in the Township's position statement are affirmed to be true and correct. *See* Gibb Second Affidavit ¶¶ 1, 2.

¹⁰ The Gibb Second Affidavit also references an Enforcement Notice sent by the Township on July 22, 2026. The Township also claims the Notice is exempt pursuant to Section 708(b)(17) of the RTKL; however, as this Notice was issued subsequent to the date of the Request, the OOR need not address said notice herein.

authored by Lyndsey Gibb (“Gibb Second Affidavit”).¹¹

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. The appeal as it relates to the record provided during the appeal is moot

During the pendency of the appeal, the Township provided meeting minutes dated July 8, 2026, June 10, 2026 and May 13, 2026. As such, the appeal as to the records provided to the Requester during the pendency of the appeal is dismissed as moot. *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records, and thus, “the controversy has been mooted”).

2. The Township failed to demonstrate that it properly withheld all responsive records as exempt noncriminal investigative materials

The Township asserts that the withheld responsive records are exempt because those records relate to noncriminal investigations in response to zoning complaints. Section 708(b)(17)

¹¹ The OOR extended the evidentiary submission period for both parties through August 27, 2026. While both parties made submissions after this date, to develop the record, the submissions were considered. *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”).

of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “[c]omplaints submitted to an agency,” “[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)(i)-(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).

In support of the Township’s position, the Township position statement indicates, in relevant part, the following:

...[C]omplaints have been filed with the Township alleging violations of the Township Zoning Ordinance, Ordinance No. 2006-1, as amended, due to the parking of heavy equipment in an area where (it is alleged) impermissible under said Ordinance. The Zoning Ordinance is a validly enacted ordinance, expressly permitted by Section 601 of the Pennsylvania Municipalities Planning Code (Act of 1968, P.L. 805, No. 247, as reenacted and amended), 53 P.S. § 10601. The complaints were submitted to the Township for Wayne Smith, the Zoning Officer and Code Enforcement Officer. Mr. Smith was appointed as both Zoning Officer and Code Enforcement Officer by vote of the Board of Supervisors of [the Township] at its reorganization meeting on January 5, 2026. The office of zoning officer is valid pursuant to 53 P.S. § 10614 (Appointment and Powers of Zoning Officer) and the enabling Zoning Ordinance, specifically Section 600 (Powers and

Duties of the Zoning Officer), available here: <https://franklintownship.org/wp-content/uploads/ZOrevised10-09pt2.pdf>.¹²

Complaints are collected by the Township, typically the Township Secretary or Assistant Secretary, and provided to the Zoning Officer, whose office time is limited and who is oftentimes in the field and not receiving complaints in person; the Zoning Officer then conducts an investigation, the documentation for which includes any notes or photographs taken by the Zoning Officer. While Section 612.F of the Zoning Ordinance anticipates enforcement by civil enforcement proceeding, the Township reserves the right also to prosecute any other violations discovered under the applicable ordinance, which violations may also involve filing a private criminal complaint (depending on the applicable ordinance). The Zoning and Codes Officer's investigation is retained in the Township files associated with the property address at issue. When it results in an enforcement notice being issued due to a violation, absent an emergency, the Township favors cure periods, usually set for 10-30 days, but which can be extended depending on the nature of the item needing cured. For instance, cures requiring earth disturbance may be postponed during winter months. Typically, so long as compliance moves forward at a reasonable pace, the Township is able to avoid the time and expense of issuing civil fines and participating in proceedings before the magisterial district judge. The Township has a general policy whereby it does not pursue anonymous complaints for property use violations, unless the same are readily visible without entering upon a property and are witnessed by Township staff, whether that be the Zoning and Codes Enforcement Officer, the road crew, the sewage enforcement officer, the engineer, etc. In this case, several written complaints were submitted by identified residents of the Township.

While the Zoning and Codes Enforcement Officer has the authority and independence to issue notices and take appropriate enforcement actions, many land use violations do not require immediate action and can be presented to the Board of Supervisors at its regular monthly meetings. Written reports are provided by the Zoning and Codes Enforcement Officer to the Supervisors for consideration on how aggressively to pursue an issue, usually after there has been some outreach from the property owner with a proposed time to cure. [The Township] has approximately 5,000 residents and pays its Zoning and Codes Enforcement Officer hourly; the Board of Supervisors is accountable to its residents for the use of taxpayer dollars, and different methods of proceeding (for instance, emergency filings, injunctions, actions that may overlap with county or state enforcement where jurisdiction is arguably more appropriate) are weighed depending on the nature of the act, always with the intent to be consistent between acts of the same nature.

...

¹² Of note, the link provided contained a typographical error. The correct link is <https://franklintownship.org/wp-content/uploads/ZOrevised10-09pt1.pdf> (last accessed by the OOR on September 8, 2026).

In the interest of full disclosure, the Township may have erred in not providing Requester with the violation letter and inspection report of YCCD. While the same may have been claimed as exempt, it appears that YCCD either does not believe the same is exempt or has waived claiming an exemption as pertaining to an investigation (whether criminal or civil), which we surmise is how the Requester now possesses it. The Township never reached the point of making a decision as to whether these YCCD documents were exempt, however, as the fact of the matter is that the Township overlooked these documents in assembling its response. The oversight was not intentional; nevertheless, full disclosure dictates that we acknowledge that it may have constituted a mistake if the same are not exempt records. At the least, reference to the documents should have been included in the log of items not produced in the August 4, 2026 letter sent to the Requester and previously uploaded as part of the Township's response to this appeal.

Staying on the issue of whether the YCCD violation letter and inspection report are exempt records, the Township asserts that it is not the appropriate party to determine whether to claim an exemption as to these records. Enforcement notices and notices of violations are exempt. *See Bourneuf v. Lower Nazareth Township*, OOR Docket No. 2025-0244 (which decision I would also argue supports the Township's handling of its own records pertaining to the Complaints and subsequent investigation of the Property). It is one thing for YCCD to waive any claim of exemption; it seems contrary to the RTKL if an agency (here, [the Township]) copied on a violation letter or report can determine whether to release the same, which determination may frustrate the policy or practices of the separate investigating agency¹³ (here, YCCD, although [the Township] has its own concurrent investigation, as discussed above).

A Township Zoning Officer is authorized to administer and enforce the Township's zoning ordinances pursuant to the Township's Ordinance Section 600. The Township's authorization for the Zoning Officer to do so is further supported by Section 10614 of the Pennsylvania Municipalities Planning Code. *See* 53 P.S. § 10614. Thus, the noncriminal investigations of potential zoning code violations are conducted pursuant to the Township's legislatively-granted powers. In this instance, the Township investigated the allegedly impermissible parking of heavy

¹³ While the OOR does not disagree with the contention that an agency's own violation and enforcement notices may be exempt pursuant to Section 708(b)(17), *Bourneuf v. Lower Nazareth Township*, OOR Dkt. AP 2025-0244, 2025 PA O.O.R.D. LEXIS 604, does not find that such notices in the possession of *another* agency are also exempt pursuant to Section 708(b)(17) of the RTKL.

equipment based upon complaints filed with the Township. 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 Township has demonstrated that noncriminal investigations were conducted within the meaning of the RTKL, and the withheld Township records relate to those investigations. *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)).

However, the OOR does not find that the YCCD violation letter and inspection report in the possession of the Township are exempt pursuant to Section 708(b)(17). The OOR has previously held that an agency cannot withhold records of another agency's investigation. *See Shepherd v. Delaware Cnty. Jail*, OOR Dkt. AP 2023-0573, 2023 PA O.O.R.D. LEXIS 794 (noting that an agency may not withhold records of another agency's investigation in its possession as noncriminal investigative records); *Camburn v. Montgomery Cnty. Hous. Auth.*, OOR Dkt. AP 2016-0729, 2016 PA O.O.R.D. LEXIS 735 (finding that the authority did not demonstrate that it had conducted an investigation under (b)(17), as the investigation was initiated and conducted by HUD, a federal agency). Thus, the records of YCCD in the possession of the Township are not exempt noncriminal investigative records of the Township and must be disclosed to the Requester.

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 Township’s evidence indicates that there have been no fines or penalties issued as a result of the complaints received by the Township,¹⁴ and as a result, the 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)).

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part and dismissed as moot in part**. Within thirty days, the Township is required to release records responsive to the Request as set forth herein. 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 York 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.¹⁵ 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:

¹⁴ *See* Township correspondence, dated August 27, 2026, pp. 10-15.

¹⁵ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

<http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 9, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Brian Shank (via portal only)
Bret Shaffer, Esq. (via portal only)
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