



FINAL DETERMINATION

IN THE MATTER OF	:
	:
WESLEY PERONE,	:
Requester	:
	:
v.	: Docket No: AP 2026-3384
	:
UPPER MACUNGIE TOWNSHIP POLICE	:
DEPARTMENT,	:
Respondent	:

FACTUAL BACKGROUND

On June 16, 2026,¹ Wesley Perone (“Requester”), an inmate at Lackawanna County Prison, submitted a request (“Request”) to Upper Macungie Township Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

I am seeking any and all policies/directives regarding or relating to traffic stops, incident reports, K9 deployment, maintenance of records, use of body cameras and vehicle dash cameras, surveillance investigations, joint agency/jurisdiction investigations, and writing/issuance of traffic tickets/citations/warnings by law enforcement in effect on August 15, 2023 covering the [Department] and all of its officers.

After extending its time to respond by thirty days, the Department did not issue a timely response, and the Request was thus deemed denied on July 24, 2026. 65 P.S. § 67.902(b)(2). On July 27, 2026, the Department issued a response, denying the Request by asserting that release of

¹ The Request, dated June 8, 2026, was received by the Department on June 16, 2026.

responsive records would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual, and would threaten public safety and law enforcement activities. 65 P.S. § 67.708(b)(1); 65 P.S. § 67.708(b)(2).

On August 12, 2026,² the Requester appealed to the Office of Open Records (“OOR”), challenging the Department’s denial and stating reasons for disclosure. The OOR invited both parties to supplement the record and directed the Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On August 21, 2026, the Department submitted its response to the appeal reiterating its grounds for denial. The Department also advised that although the Request was denied, the Requester was provided with policy data sheets for each requested policy demonstrating that the Department did have policies in effect for the listed items on August 15, 2023. In support of its position, the Department submitted the attestation of Keri Diehl (“Diehl Attestation”), Open Records Officer (“AORO”) for the Department.

On August 24, 2026, the OOR sought additional clarification and evidence from the Department, asking the Department to provide specific details in support of its position that the responsive policies are exempt under Sections 708(b)(1) and/or (b)(2) of the RTKL. On August 26, 2026, in response to the OOR, the Department submitted the supplemental attestation of Ms. Diehl (“Supplemental Diehl Attestation”).³

On September 2, 2026, the OOR received a supplemental position statement from the Requester, arguing that the Department has failed to meet its burden of proof regarding the

² The appeal was received by the OOR on August 17, 2026; however, it was postmarked August 12, 2026. Therefore, pursuant to the “prisoner mailbox rule,” the appeal is considered filed as of August 12, 2026. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

³ The Diehl Attestation and Supplemental Diehl Attestation are made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

specified exemptions. The Requester also argues that he has not requested personal information about any Department officers, and release of these general policies would cause no harm to the public, but rather, would help the public confirm that officers are acting in accordance with the law, and confirm that agencies, such as the Department, are not issuing policies or directives that may contradict that purpose.

LEGAL ANALYSIS

The Department 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 Department 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)).

The Department asserts that it properly denied access to the requested policies pursuant to Sections 708(b)(1) and/or (b)(2) of the RTKL. Section 708(b)(1)(ii) of the RTKL exempts from public disclosure a record that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” 65 P.S. § 67.708(b)(1)(ii). To establish that Section 708(b)(1)(ii) of the RTKL applies, an agency must show: (1) a “reasonable likelihood” of (2) “substantial and demonstrable risk” to a person’s security. *Delaware Cnty. v. Schaefer*, 45 A.3d 1149 (Pa. Commw. Ct. 2012). The Commonwealth Court has held that “[b]elief alone without more, even if reasonable, does not meet this heightened

standard.” *See Lutz v. City of Phila.*, 6 A.3d 669, 676 (Pa. Commw. Ct. 2010) (holding that “[m]ore than mere conjecture is needed” to establish that this exemption applies); *see also California Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018) (holding that in order to show a reasonable likelihood, “[a]n agency must offer more than speculation or conjecture to establish the security-related exceptions under the [RTKL]”).

Section 708(b)(2) of the RTKL exempts from disclosure “[a] record maintained by an agency in connection with ... law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity....” 65 P.S. § 67.708(b)(2). In order to establish this exemption, an agency must show: (1) the record at issue relates to a law enforcement or public safety activity; and (2) disclosure of the record would be reasonably likely to threaten public safety or a public protection activity. *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013). “Reasonably likely” has been interpreted as “requiring more than speculation.” *Rothey*, 185 A.3d at 468. To determine the adequacy of an affidavit, the Commonwealth Court considered whether it (1) includes detailed information describing the nature of the records sought; (2) connects the nature of the various records to the reasonable likelihood that disclosing them would threaten public safety in the manner described; (3) shows that such disclosure would impair the agency’s ability to perform the public safety functions. *Allegheny Cnty. Dist. Attorney’s Office v. Wereschagin*, 257 A.3d 1280, 1298 (Commw. Ct. 2021).

In support of the Department’s position particularly regarding Section 708(b)(1), the Supplemental Diehl Attestation only states that “[t]he department policies outline procedures that are designed to assist officers with maintaining their safety while in performance of their duties.

Disclosing our policies could result in the risk of physical harm or the personal security of the officer.” ¶ 5.

Under the RTKL, a statement made under made under the penalty of perjury may serve as sufficient evidentiary support 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010); however, “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); *see also Office of the District Attorney of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (“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*).

Here, the Department has not offered sufficient evidence to establish that the disclosure of the responsive policies would be reasonably likely to threaten the personal security of an individual and/or public safety. As noted above, to establish security-related exemptions under the RTKL, an agency must prove that the risk is more than mere speculation; it must be substantial, demonstrable and real or apparent. *Rothey*, 185 A.3d at 468; *see also Mission Pa. LLC v. McKelvey*, 212 A.3d 119 (Pa. Commw. Ct. 2019). From the evidence provided, it is unclear how disclosure of several general policies sought here, such as policies concerning traffic stops, incident reports, K9 deployment, maintenance of records, use of body cameras and vehicle dash cameras, and the writing/issuance of traffic tickets/citations/warnings would threaten personal security of the

officers. Further, despite the OOR's inquiry to provide more details, the evidence provided by the Department remains conclusory, and fails to explain or establish *how* release of these policies would threaten the security of the officers, or the public. Further, the Department has not actually articulated any specific risks and/or harm. Accordingly, while the OOR recognizes the serious and often dangerous nature of the work performed by law enforcement, the OOR determines that the Department has failed to demonstrate that the responsive policies are exempt from access pursuant to Sections 708(b)(1) and/or (b)(2) of the RTKL, and absent any additional evidence or argument, the Department must provide these records.⁴

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Department is required to provide the responsive policies within thirty days. 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 Lehigh 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. 65 P.S. § 67.1303. 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.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>.

FINAL DETERMINATION ISSUED AND MAILED: September 11, 2026

⁴ The OOR notes that Section 6342 of the Pennsylvania Vehicle Code provides, in part, that “[e]ach police department shall develop and implement a written emergency vehicle response policy governing the procedures under which a police officer should initiate, continue and terminate a motor vehicle pursuit,” and further provides that “[a] policy adopted under this section shall be confidential and shall not be made available to the general public.” 75 Pa. C.S. §§ 6342(a), (e). Accordingly, to the extent that any of such confidential information is located within the responsive policies, the OOR is not granting access to this information.

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

/s/ Tope L. Quadri

TOPE L. QUADRI
APPEALS OFFICER

Sent to: Wesley Perone, 2024-00414 (via first class mail)
Keri Diehl, AORO (via portal)