



FINAL DETERMINATION

IN THE MATTER OF

**BILL STRAYER,
Requester**

v.

**MALVERN BOROUGH,
Respondent**

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Docket No: AP 2026-2320

FACTUAL BACKGROUND

On May 1, 2026, Bill Strayer (“Requester”) submitted a request (“Request”) to Malvern Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the following

[Item 1.] “Legal correspondence regarding the nuisance complaint of balls constantly flying over the fence of St[.] Pat[rick’s] [S]chool being ruled a civil matter, and not a [B]orough issue/ordinance violation. This was around the time of November 2024. [Item 2.] I also want any correspondence referring to [the Requester].

On May 6, 2026, the Borough invoked a thirty-day extension to respond; however, as the Borough did not respond within the extension period, the Request was deemed denied on June 8, 2026. *See* 65 P.S. § 67.902(b)(2).¹

¹ Because the thirtieth day of the extension period fell on Sunday, June 7, 2026, the Borough had until the next business day, or Monday, June 8, 2026, to respond to the Request.

On June 12, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”) arguing that the Request was deemed denied. The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On July 24, 2026, after being provided additional time by the OOR, the Borough submitted a position statement, arguing that no records responsive to Item 1 of the Request exist, and that Item 2 is insufficiently specific under 65 P.S. § 67.703. In support of its position, the Borough submitted the attestation of Nicole S. Whitaker (“Whitaker Attestation I”), Borough Manager and Agency Open Records Officer (“AORO”).

In response, that same day, the Requester filed copies of email correspondence between the parties from November 2024-February 2025, pertaining, in part, to the Requester’s concerns regarding the balls.

On August 11, 2026, the OOR directed the Borough to provide supplemental evidence regarding its search for records responsive to Item 1 of the Request.²

On August 17, 2026, in response to the OOR’s inquiry, the Borough filed the supplemental attestation of Ms. Whitaker (“Whitaker Attestation II”).³

LEGAL ANALYSIS

The Borough 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

² The OOR extended the deadline for the issuance of the Final Determination in this matter on two occasions, ultimately to September 23, 2026, upon the agreement of and/or after receiving no objection from the Requester. *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)”).

³ Both of Ms. Whitaker’s attestations are made subject to penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

subject to the RTKL, the Borough 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) (citing 65 P.S. § 67.708).

1. The Borough’s interpretation of the Request was reasonable, and it demonstrated that no records responsive to Item 1 exist

On appeal, the Borough argues that no records responsive to Item 1 of the Request exist. In response to a request for records, “... an agency shall make a good faith effort to determine ... whether the agency has possession, custody or control of the identified 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) (*Uniontown Newspapers I*), *aff’d*, 243 A.3d 19 (Pa. 2020) (*Uniontown Newspapers II*). 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).

Moreover, an agency may interpret the meaning of a request for records, but that interpretation must be reasonable. *See Mezzacappa v. Northampton Cnty. Dist. Atty's Off.*, OOR Dkt. AP 2022-2584, 2023 PA O.O.R.D. LEXIS 80. The OOR determines the reasonableness of the agency's interpretation from the text and context of the request alone, as neither the OOR nor the Requester are permitted to expand the request on appeal. *See Dunbar v. Pa. Off. of Att'y Gen.*, No. 670 C.D. 2023, 2024 Pa. Commw. Unpub. LEXIS 494, *6 (Pa. Commw. Ct. 2024) (citing *In re Melamed*, 287 A.3d 491, 499 n.15 (Pa. Commw. Ct. 2022)).

In this instance, the Borough's attestations are authored by Ms. Whitaker, who is familiar with its records and conducted the search. *See Whitaker Attestation I*, ¶¶ 1-2, 6-9; *Whitaker Attestation II*, ¶¶ 1-2, 9-12.⁴ The evidence affirms that Ms. Whitaker interpreted Item 1 of the Request to seek "communications between Borough personnel and the Borough Solicitor regarding alleged ordinance violations for nuisance arising from reports of balls flying over the fence at St. Patrick's School onto neighboring properties[.]" *Whitaker Attestation I*, ¶ 5; *Whitaker Attestation II*, ¶ 5. Based on the plain language and context of the Request, that interpretation was reasonable.

The Borough's evidence further demonstrates that "as Borough Manager, [Ms. Whitaker] frequently respond[s] to Borough residents' complaints and/or concerns regarding alleged ordinance violations[.]" and that she "communicated directly with Requester about" his

⁴ 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 Borough has 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. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

“inquiry/complaint regarding alleged violations for nuisance arising from” said balls. Whitaker Attestation II, ¶¶ 7-8. The evidence also affirms that based on the above-mentioned interpretation of the Request, Ms. Whitaker searched for responsive records by “reviewing [her] own emails for any communications between the Borough Solicitor and” herself. *Id.* at ¶¶ 9-10. In addition, she directed the Borough’s Information Technology Services Provider (“IT Provider”):

... to review and search all emails and other electronically stored information to confirm that no other Borough personnel had communicated by email or otherwise in writing with the Borough Solicitor regarding [the] Requester’s complaints and specifically because two individuals formerly employed by the Borough from November, 2024, to July, 2026, in its administrative office are no longer working for the Borough.

Id. at ¶ 11.

The Borough’s attestations also reflect that Ms. Whitaker then reviewed the “records produced by the Borough’s ... IT Provider ... following its search ... of emails and other electronically stored information of the Borough[.]” *Id.* at ¶ 10. As a result, Ms. Whitaker “did not locate any communications between Borough personnel (including [Ms. Whitaker]) and Scott E. Yaw, Esquire, the Solicitor for [the] Borough, regarding allegations of ordinance violations for balls flying over the fence of St. Patrick’s school onto [the] Requester’s or any other property(ies).” Whitaker Attestation I, ¶ 7; Whitaker Attestation II, ¶ 12.

As previously noted, on appeal, the Requester submitted copies of email correspondence between the parties from November 2024-February 2025, pertaining, in part, to the Requester’s concerns regarding the balls. *See* July 24, 2026 Requester Correspondence, pp. 1-3. One of those emails indicates, in part, that Ms. Whitaker met with the Borough’s “engineer, solicitor, and [B]orough staff to discuss” the Requester’s concerns, and that she informed the Requester that the “balls and other items coming over the fence onto [his] property, [] is a private matter between [him] and St. Pat’s and does not involve the Borough.” July 24, 2026 Requester Correspondence,

p. 1. However, such does not actually contradict the Borough's attestations, or show that any records between the Borough and its Solicitor that are responsive to Item 1 of the Request currently exist. Moreover, the OOR makes no determinations as to whether responsive 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 (Pa. Commw. Ct. 2010); *see also* 65 P.S. § 67.705.

Accordingly, the Borough has established, by a preponderance of the evidence, that a good faith search was conducted for records responsive to Item 1 of the Request and that no such records exist within the possession, custody or control of the Borough. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (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); *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).

2. Item 2 of the Request is insufficiently specific

The Borough asserts that Item 2 of the Request is insufficiently specific because it does not identify a subject matter or timeframe. In addition, the Borough asserts that the "Requester seems to be engaging in somewhat of a classic 'fishing expedition' regarding any correspondence between anyone at the Borough regarding any subject matter in which Requester may be involved or named or mentioned."

Section 703 of the RTKL provides 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 nonexclusive, multifactor 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[,]” and “should provide a context to narrow the search.” *Pittsburgh Post-Gazette*, 119 A.3d at 1125 (quoting 65 P.S. § 67.102; *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012)). 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.

Here, Item 2 does not identify any finite time period for which the records are sought; however, Item 1 has a timeframe, spanning from November 2024 to May 1, 2026, the date of the Request. In applying that timeframe to the entire Request, Item 2 has a somewhat lengthy, sixteen month timeframe. *See Greim v. Pa. State Police*, 329 A.3d 873 (Pa. Commw. Ct. 2025) (finding that it was error for the OOR to consider one item of a request as having nothing to do with the remainder of the request); *see also Pittsburgh Post-Gazette*, 119 A.3d at 1126 (explaining that while the timeframe prong is the most fluid of the three prongs, “whether or not the request’s timeframe is narrow enough is generally dependent upon the specificity of the request’s subject matter and scope.”).

Further, Item 2 of the Request does not identify any records by type or by any particular author or sender/recipient. Instead, it generally seeks “any correspondence” authored or exchanged by any Borough official or personnel. *See Pittsburgh Post-Gazette*, 119 A.3d at 1125-

26 (“A request for a broad category of documents, such as all records, may be sufficiently specific if confined to a particular recipient or recipients”). Therefore, the scope of Item 2 is overbroad.

Additionally, Item 2 does not identify a specific “transaction or activity” of the Borough for which records are sought; instead, it seeks any correspondence referring to the Requester. Further, based on the context and plain language of the Request, as a whole, Item 2 is not necessarily limited to the same subject matter as Item 1. To the extent that the Requester’s name can be construed as a keyword, in this instance, such does not reasonably indicate any business of the Borough to which the sought-after records may relate. *See e.g. Vogt v. Pa. Dep’t of Corr.*, OOR Dkt. AP 2024-2093, 2024 PA O.O.R.D. LEXIS 2036 (finding that where the keywords were a surname and an inmate identification number, the subject matter was not well-defined); *Cooper v. Lycoming Cnty.*, OOR Dkt. AP 2022-0771, 2022 PA O.O.R.D. LEXIS 1119 (explaining that a request for a keyword search of a requester’s name over the course of six months lacked a subject matter and/or did not relate to well-known matters of agency business).

Therefore, without additional limiting factors as to subject matter or scope, Item 2 of the Request does not enable the Borough to ascertain what records are actually being requested. *See* 65 P.S. § 67.703. Accordingly, Item 2 is insufficiently specific in its entirety. However, nothing in this Final Determination prevents the Requester from submitting a more specific RTKL request to the Borough for the same information, and if necessary, filing a new appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Borough 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 Chester 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.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 17, 2026

/s/ Megan Burns

MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Bill Strayer; Nicole Whitaker, AORO; and Scott Yaw, Esq.

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