pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
ALFRED ANOTONELLI, JR., **Requester**	:	
v.	:	**Docket No: AP 2026-3522**
TOWER CITY BOROUGH, **Respondent**	:	

FACTUAL BACKGROUND

On August 10, 2026, Alfred Anotonelli, Jr. ("Requester"), emailed a request ("Request") to Tower City Borough ("Borough") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., stating, in part, as follows:

> Under the [RTKL] and the Pennsylvania Uniform Construction Code [("UCC")], I am requesting copies of the following public records maintained by or in the possession of [the] Borough, including records held by its contracted third-party code administrator, Light-Heigel & Associates, Inc. [("Light-Heigel")] (pursuant to 65 P.S. § 67.506(d)(1)):
>
> Request Documents:
>
> 1. Third-Party Municipal Inspection Contract: A copy of the fully executed contract, agreement, retainer, scope of services, and fee schedule between [the] Borough and [Light-Heigel] for [UCC] administration, plan review, and building code inspection services, including any current extensions, amendments, or fee schedules.
>
> 2. UCC Building Permit Application & Issued Permit: Copies of the completed UCC Building Permit Application and any issued permit for modular/residential construction at [address and tax ID information omitted].

3. Modular Construction Certification Letter: A copy of the letter signed and sealed by a PA licensed design professional certifying that off-site modular unit construction hidden from view complies with the UCC/IBC, along with any list of proposed alternative construction materials or methods under 34 Pa. Code § 403.44 submitted for this parcel.

4. UCC Field Inspection Reports: All official field inspection logs and reports conducted by the Construction Code Official for [address omitted]

On August 13, 2026, the Borough denied the Request ("Final Response") because it was not submitted using the Office of Open Record's ("OOR") Standard RTKL Request Form.

On August 25, 2026, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.[1] 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 September 8, 2026, the submission period closed and, to date, neither party made a submission on appeal.

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 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

[1] 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)").

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 Borough failed to demonstrate that it has a posted RTKL Policy that requires the use of the OOR's Standard RTKL Form

The Borough denied the Request because it was not submitted on the OOR's Standard RTKL Request Form. Pursuant to Section 504(a) of the RTKL, an agency may promulgate regulations and policies to govern its administration of the RTKL. *See* 65 P.S. § 67.504(a). An agency that has a posted policy requiring the use of a specific form may deny access to the requested records where the requester fails to use the required form by either not responding or by notifying the requester of the policy. *See Miller v. Chester Cnty.*, OOR Dkt. AP 2025-3497, 2025 PA O.O.R.D. LEXIS 3384; *see also Pa. Gaming Control Bd. v. Off. of Open Records*, 103 A.3d 1276, 1282 (Pa. 2014) (agency RTKL policies must be posted).

In this instance, the Final Response stated, in part, that:

> [] I spoke with [an employee of Light-Heigel] and he said you must send me an official RTK request and as soon as I receive that, he will comply with your [R]equest. I am attaching the RTKL Form for you to fill out. As soon as I receive it I will inform [the employee of Light-Heigel] and he will take it from there. Thank you for your patience and understanding but it is imperative that you fill out a formal RTK Form.

Although the Borough's webpage[2] includes contact information for its Borough Secretary (i.e. sectr@towercityboro.comcastbiz.net),[3] there is no posted Borough RTKL policy or a statement on that webpage that states that the aforementioned form must be used by a requester to submit an RTKL request to the Borough.

[2] *See* https://towercityboroughauthority.com/contact-borough-or-police (last visited September 17, 2026).
[3] The OOR notes the OOR's notice of appeal was sent to this address, and the Borough logged into the OOR's portal system on September 1, 2026.

Accordingly, the Borough has failed to establish that it properly denied the Request under 65 P.S. § 67.504. *Cf. Poudel v. McKeesport City*, OOR Dkt. AP 2026-0910, 2026 PA O.O.R.D. LEXIS 1187, *3-4 (finding, in part, that the requester failed to comply with the city's posted policy under 65 P.S. § 67.504 where the city's website indicated, "'Please complete the State RTK Form' and 'RTK Form' is a link to the OOR's standard RTKL form").

2. The Borough failed to prove that the requested records are exempt from disclosure but may withhold those records explicitly protected by the UCC

The Borough bears the burden of proof to show that it complied with its statutory duties under the RTKL and must submit evidence demonstrating that the records are exempt from disclosure under the RTKL. Because the Borough failed to submit detailed evidence as to the search conducted for records responsive to the Request and failed to explain why any responsive records may have been withheld from public access, the OOR is constrained to grant the appeal for the Borough's failure to meet its burden of proof. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

Notwithstanding, the Request expressly seeks records that are subject to the confidentiality provisions within the UCC. Section 403.85(e) of the UCC provides that a municipality may prohibit the release of "applications received, building plans, specifications, inspection reports, and similar documents …." 34 Pa. Code § 403.85(e). Further, the UCC "applies to the construction, alteration, repair, movement, equipment, removal, demolition, location, maintenance, occupancy or change of occupancy of every building or structure which occurs on or after April 9, 2004, and all existing structures that are not legally occupied." 34 Pa. Code § 403.1(a)(1). Pursuant to Section 102 of the RTKL, any record that is "exempt from being disclosed under any Federal or State law or regulation or judicial order or decree" is not a public record. 65 P.S. § 67.102.

Here, the OOR notes that the Request, on its face, seeks certain records explicitly protected from disclosure under the UCC – "applications received, building plans and specifications, inspection reports and similar documents." *See* 34 Pa. Code § 403.85(e); *see also Schranghamer v. Falls Twp.,* OOR Dkt. AP 2016-0348, 2016 PA O.O.R.D. LEXIS 470 (acknowledging that, while building permit applications are protected by the UCC, other permit applications are not); *Walkauskas v. Town of McCandless,* OOR Dkt. AP 2013-1195, 2013 PA O.O.R.D. LEXIS 681 (finding that applications for zoning permits are not exempt under the UCC). Therefore, so long as the above-identified records are explicitly exempt from disclosure under the UCC – e.g., are records on or after April 9, 2004, the Borough is not required to produce them, as they are clearly described as records that would be protected under the UCC.

As for the remaining responsive records, the Borough fails to offer adequate proof that such records are protected from disclosure under the UCC. There is no account or description of the responsive records, and it is unclear how the remaining records fall within those categories or otherwise qualify as "similar documents" subject to protection. Without additional details, the OOR is unable to discern whether records might relate to an inspection or constitute "similar records" that are protected under 34 Pa. Code. § 403.85(e). Accordingly, the Borough has failed to prove that the remaining records, other than those expressly sought in the Request as explained above, are protected from disclosure by the UCC.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Borough is required to provide: (1) all responsive records within thirty days subject to those protected from disclosure by the UCC; or (2) a detailed sworn affidavit or statement made under the penalty of perjury demonstrating that a search was conducted and that responsive records do

not exist. The Borough may withhold those records protected under 34 Pa. Code § 403.85(e). 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 Schuylkill 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.[4] 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 21, 2026

/s/ Lyle Hartranft

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LYLE HARTRANFT, ESQ.
APPEALS OFFICER

Sent via OOR Portal to: Alfred Anotonelli, Jr.; Irene Dubbs, AORO

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