

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF

**MICHELLE DOVISHAW,
Requester**

v.

**ERIE CITY POLICE DEPARTMENT,
Respondent**

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Docket No: AP 2026-3003

FACTUAL BACKGROUND

On July 13, 2026, Michelle Dovishaw (“Requester”) submitted three requests (collectively “Requests”) to the Erie City Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[Request 1]

1) TASER CEW USE REPORT pertaining to subject Keven Sparks.

[Request 2]

2) Certification of TASER training for any officer involved with the apprehension, arrest and detainment of Keven Sparks.

[Request 3]

3) The Officers’ Offense Reports; The Police Blotter and/or Daily Activity Log; for Sunday, June 28, covering the time period of 9:00 a.m. through 2:00 p.m., related to incidents occurring within the area bounded by East 20th Street through East 26th Street, and German Street through Ash Street.

On the same date, the Department denied Requests 1 and 3, asserting that the responsive records are exempt from public disclosure as records relating to criminal and non-criminal investigations under the RTKL, 65 P.S. §§ 67.708(b)(16), (17), and pursuant to the Criminal History Records Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101 *et seq.* Regarding Request 2, on July 20, 2026, the Department invoked a thirty-day extension to respond to Request 2. *See* 65 P.S. § 67.902(b).

On July 23, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denials.¹

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 5, 2026, the Department submitted an attestation made under the penalty of unsworn falsification to authorities² from Sergeant (“Sgt.”) Jason Luschini (“Luschini Attestation”),³ the Department’s Open Records Officer (“AORO”). The Department reiterates its grounds for denial for Requests 1 and 3, and asserts that it timely invoked a thirty-day extension to respond to Request 2, and as such, the appeal is premature in part.

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

¹ The Requester granted the OOR a 30-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).”).

² 18 Pa.C.S. § 4904.

³ 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. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith or that the requested records exist, “the averments in [the Attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

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)).

1. The appeal for Request 2 is dismissed as premature

On July 13, 2026, the Requester submitted Request 2 to the Department. On July 20, 2026, the Department timely invoked a thirty-day extension to respond to the Request. *See* 65 P.S. § 67.902(b). The Department had until August 19, 2026, to respond to the Request. On July 23, 2026, the Requester filed this instant appeal. Because an appeal may only be filed from the denial or deemed denial of a request, and the Department did not have an opportunity to respond to the Request prior to receiving the appeal, the appeal must be dismissed as premature in part. 65 P.S. § 67.901.⁴ The Requester is not prohibited from filing a new request with the Department and, if necessary, filing an appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

2. Requests 1 and 3 seek records related to a criminal investigation

The Department denied Requests 1 and 3 asserting that the responsive records are part of a criminal investigation and exempt from public disclosure. Section 708(b)(16) of the RTKL exempts from disclosure “a record of an agency relating to or resulting in a criminal investigation, including ... [i]nvestigative materials, notes, correspondence, videos and reports....” 65 P.S. § 67.708(b)(16)(ii). The OOR does not have jurisdiction to hear appeals related to criminal investigative records held

⁴ Section 901 of the RTKL allows an agency to respond to a written request for records within five business days of the request’s receipt by the agency’s open-records officer. 65 P.S. § 901. Section 902 of the RTKL permits an agency to notify a Requester within five business days of receipt of the Request that, if certain statutory factors are present, a thirty-day extension to response to the Request will be invoked. 65 P.S. § 67.902.

by local law enforcement agencies. *See* 65 P.S. § 67.503(d)(2). Instead, appeals involving records alleged to be criminal investigative records held by a local law enforcement agency are to be heard by an appeals officer designated by the local district attorney. *See id.*

In this appeal, the record reflects and the Department's evidence shows that the requested records relate to the arrest of a particular individual as part of a criminal investigation. *See* Luschini Attestation, ¶¶ 9-12, 14-16, 28-36. The Requester does not dispute that the responsive records are criminal investigative records or that the records are in the possession of the Department, a local law enforcement agency. *See Pa. Game Comm'n v. Fennell*, 148 A.3d 101 (Pa. Commw. Ct. 2016) (explaining that the OOR must consider uncontradicted statements contained in the appeal as evidence). Thus, the language of the Requests, the records sought, and the Luschini Attestation demonstrate that the requested records relate to a criminal investigation. *See* Luschini Attestation, ¶¶ 9-12, 14, -16, 28-36. Additionally, the Department's final response notified the Requester that, "[y]ou have a right to appeal this denial in writing to: Brendan Sala, Right to Know Appeals Officer, Erie County Court House, 140 West 6th Street Suite 506, Erie PA 16501." As a result, the Requester was properly notified of appellate rights and the OOR is without jurisdiction determining whether the records responsive to Requests 1 and 3 relate to criminal investigations.⁵ *See* 65 P.S. § 67.503(d)(2); *Rihl v. Williamsport Bureau of Police*, OOR Dkt. AP 2026-0644, 2026 PA O.O.R.D. LEXIS 850, *7-8 (dismissing part of an appeal for lack of jurisdiction where the appeal record reflected that pages of a report may relate to a criminal investigation and the requester was properly notified in the final response of his appellate rights to the local district attorney's office).

⁵ Given the determination that the records are not subject to disclosure under the RTKL, the OOR will not address the Department's alternate grounds for denying the Request.

CONCLUSION

For the foregoing reasons, the appeal is **dismissed for lack of jurisdiction in part** and **dismissed as premature** and the Department 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 Erie 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.⁶ 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: September 25, 2026

/s/ Damian J. DeStefano

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Michelle Dovishaw; Sgt. Jason Luschini, AORO

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).