



FINAL DETERMINATION

IN THE MATTER OF

**CHRISTY MORENO,
Requester**

v.

**ROSETO BOROUGH,
Respondent**

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Docket No: AP 2026-2964

FACTUAL BACKGROUND

On June 1, 2026, Christy Moreno (“Requester”) submitted a request (“Request”) to Roseto Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...[C]opies of the following public records maintained by the [Borough] regarding the real property located at [address omitted], Roseto, PA 18013:

[1.] Any and all Certificates of Occupancy (including initial, historical, temporary, or conditional residential occupancy permits) that were active, issued, or in effect for this property at any point between February 8, 2019, and June 1, 2026.

[2.] Any and all Code Inspection Reports, Rental Inspection Evaluations, Field Notes, and Checklists generated by any Borough code enforcement office[r], building inspector, or third-party agency acting on behalf of the Borough, for inspections conducted at this property between February 8, 2019, and June 1, 2026. This specifically includes, but is not limited to, the inspection reports and files from the inspections conducted on April 7, 2026, and April 23, 2026.

[3.] Any Notices of Violation, Municipal Code Citations, or O[r]de[r]s to Correct iss[u]ed by the Bo[r]ough to the property owner or la[n]dlord regarding [address omitted] from February 8, 2019, to June 1, 2026.¹

On June 5, 2026, the Borough invoked a thirty-day extension during which to respond to the Request, 65 P.S. § 67.902(b). On July 13, 2026, the Borough issued an untimely final response,² partially granting the Request and providing records responsive to Item 1 of the Request.³ The Borough denied the remainder of the Request, asserting the responsive records are exempt noncriminal investigative records, 65 P.S. § 67.708(b)(17), and may contain confidential proprietary or trade secret information, 65 P.S. § 67.708(b)(11).⁴

On July 21, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”) challenging the partial denial and stating grounds for disclosure.⁵ Specifically, the Requester asserts that additional records responsive to the Request exist and that the Borough should disclose any records held by a third party. 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 this appeal. 65 P.S. § 67.1101(c).

On August 12, 2026, in support of its partial denial of the Request, the Borough submitted an affidavit, duly sworn, authored by Jeffrey Cooper (“Cooper Affidavit”), the Borough’s Agency Open Records Officer (“AORO”). Additionally, the Borough asserts that disclosure of the

¹ The Request was numbered by the OOR for purposes of clarity.

² The Borough’s final response is dated July 2, 2026; however, the Borough noted it was in the process of setting up a new RTKL process, and as such, the final response was emailed to the Requester on July 13, 2026. As the Requester did not receive the Borough’s response by the expiration of the thirty-day extension, or by July 8, 2026, the Request was deemed denied on that date. *See* 65 P.S. § 67.902(b)(2).

³ The responsive records contain redacted personal identification information, 65 P.S. § 67.708(b)(6)(i)(A), and information protected by the right to privacy; however, as these redactions are not challenged by the Requester, said redactions will not be addressed in this Final Determination.

⁴ Because the Borough abandoned the Section 708(b)(11) argument, the OOR will not further address the exemption in this Final Determination.

⁵ 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).”).

responsive records would likely endanger the safety or physical security of a building, 65 P.S. § 67.708(b)(3), and based upon its good faith search, additional responsive records do not exist in the Borough's possession, custody or control.

On August 12, 2026, at the request of the OOR, the Borough submitted an additional affidavit, duly sworn, authored by Ronold J. Karasek, Esq. ("Karasek Affidavit"), the Borough's solicitor. The Karasek Affidavit outlines the Borough's legislatively granted authority to conduct inspections during the permitting process.

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 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).

1. The Request seeks exempt noncriminal investigative materials

The Borough asserts that records potentially responsive to the Request are exempt because they relate to noncriminal investigations conducted by its zoning officer. Section 708(b)(17) 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).

The language of Items 2 and 3 of the Request confirm the Requester is seeking noncriminal investigative records. Specifically, the Requester is requesting code inspection reports and any violations or citations issued regarding the property named in the Request. The Commonwealth Court has concluded that uncontradicted facts from the face of the record may establish a RTKL exemption. In *Pa. Game Comm’n v. Fennell*, the Commonwealth Court held that the OOR can make a determination based on the record, and without a submission by either party, if a record is related to a noncriminal investigation under Section 708(b)(17) of the RTKL. 149 A.3d 101, 104-105 (Pa. Commw. Ct. 2016). In *Fennell*, the record established uncontradicted facts regarding a complaint made concerning a specific incident and the Commonwealth agency known to be actively investigating the complaint, and the requester sought a copy of the report from that specific

incident. *Id.* at 105; *see also Office of the Governor v. Davis*, 122 A.3d 1185, 1194 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record).

A Borough Zoning Officer is authorized to perform inspections of real property, as well as administer and enforce the Borough's zoning ordinances, pursuant to the Borough's Zoning Ordinances, including Ordinance No. 291.⁶ The Borough'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 Borough's legislatively-granted powers. 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 language of Items 2 and 3 of the Request itself and the evidence presented, the Borough has demonstrated that noncriminal investigations would be conducted within the meaning of the RTKL for the records responsive to Items 2 and 3 of the Request.⁷ *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

⁶ *See* Karasek Affidavit ¶ 1; *see also* Borough Ordinance 291, submitted on August 27, 2026.

⁷ 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 Borough's evidence indicates that upon a search of its files, the items listed do not exist in relation to Item 2 of the Request. *See* Cooper Affidavit ¶ 4.

the violation of municipal ordinances are exempt from disclosure under Section 708(b)(17)). Accordingly, the Department has demonstrated that the records responsive to the Request are exempt under Section 708(b)(17) of the RTKL and as a result, were appropriately withheld.⁸

2. The Borough demonstrated that additional responsive records do not exist in its possession, custody or control

The Borough asserts that other than the records provided to the Requester prior to the appeal and the exempt records withheld, no further responsive records exist in the Borough's possession, custody or control. In response to a request for records, "an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the 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), *aff'd*, 243 A.3d 19 (Pa. 2020). 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).

⁸ Because the Borough has demonstrated that the responsive records are exempt noncriminal investigative records, the OOR need not reach the Borough's alternative grounds for denying access. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

Here, the Request seeks permits, inspection reports, and code enforcement records regarding a specified property. The Requester asserts that additional records exist. In support of the Borough's argument that it does not possess additional responsive records, the Cooper Affidavit indicates that a search was performed of Borough records, to include the Borough's electronic files, and additional records do not exist. Cooper Affidavit ¶ 4.⁹ The Borough has demonstrated that a good faith search of the Borough's records was performed. Thus, based on the evidence provided, the Borough has demonstrated that it does not possess additional responsive records. There has been no sufficient evidence provided by the Requester that otherwise contradicts the statements offered by the Borough in the attestations submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the Borough has met its burden of proof that additional records responsive to the Request do not exist in the Borough's possession, custody or control.¹⁰ *Hodges*, 29 A.3d at 1192.

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 Northampton 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

⁹ Under the RTKL, an affidavit or statement made under 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 [affidavit] 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)).

¹⁰ The OOR makes no determination as to whether 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; *see also* 65 P.S. § 67.705.

party to any appeal and should not be named as a party.¹¹ 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: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 30, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent via portal only to: Christy Moreno; Ronold J. Karasek, Esq.; Jeffrey Cooper

¹¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).