pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
HENRY BARD,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-3312**
	:	
MUNHALL BOROUGH,	:	
Respondent	:	

FACTUAL BACKGROUND

On August 3, 2026, Henry Bard ("Requester") submitted a request ("Request") to Munhall Borough ("Borough") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> [1.] Organizational audit logs sufficient to show access of Flock (and other relevant [Automated License Plate Reader ("ALPR")]) cameras by individuals employed by [the Borough] Police Department from Jan[uary] 1, 2026 until the present.
>
> [2.] Network audit logs sufficient to show access of Flock (and other relevant ALPR []) cameras from Janu[uary] 1, 2026 until the present.
>
> [3.] Records which are sufficient to show emails between any member or representative of [the Borough] Police Department and the email domain (@flocksafety.com) from Sept[ember] 1, 2025 until the present.
>
> [4.] Records which are sufficient to show purchase records, quotes, or other relevant financial documents related to Flock Safety.

> [5.] Emails sent to or by individuals employed by or associated with [the Borough] Police which mention or reference Flock Safety (and relevant variations of the name) between Jan[uary] 1, 2025 and the present.
>
> [6.] Records sufficient to show [the Borough] Police's guidance, policy, or other information distributed to officers employed by the department on ALPR [] cameras.

As the Requester did not receive the Borough's response within five business days of the Request, the Requester filed an appeal with the Office of Open Records ("OOR") on August 12, 2026, claiming that the Request was deemed denied.[1] *See* 65 P.S. § 67.901. 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 26, 2026, the Borough submitted a position statement authored by its Chief of Police, Jamie Caterino ("Caterino Statement"), claiming that the Borough does not have a contract with Flock Camera Systems. Additionally, the Borough claims that all Flock cameras have been removed from the Borough, and as such, the Borough has no access to data related to the Flock Camera System.[2]

On September 21, 2026, the OOR requested that the Borough verify the factual assertions contained within its position statement by September 23, 2026; however, through the date of this Final Determination, no further submissions of any nature were made by the Borough.

[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).").

[2] On August 25, 2026, the OOR granted an evidentiary extension to both parties through August 31, 2026, as the OOR did not receive a submission from the Borough by the original submission deadline, or by August 24, 2026. On August 27, 2026, the Requester objected to the Borough's submission or, in the alternative, sought an evidentiary submission extension to respond to the Borough's position statement. As a result, the OOR granted a second evidentiary submission to both parties through September 3, 2026. To date, the Requester has made no further submissions. *See* 65 P.S. § 67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

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).

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).

Under Section 705 of the RTKL, when responding to a request, "an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705; *see also Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010) (holding that an agency cannot be made to create a record that does not exist).

As to the requested records, the Borough claims in the Borough position statement that the Borough does not have a contract with Flock Camera System, that all the Flock cameras have been removed from the Borough and that the Borough has no access to any data from the Flock Camera System. *See* Caterino Statement. In *Pa. Dep't of Health v. Mahon*, the Commonwealth Court discussed the evidence required to establish the absence of records, quoting its previous decision in *Hodges v. Pa. Dep't of Health*, which held that an agency "may satisfy its burden of proof...with either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record." *Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (quoting *Hodges*, A.3d 1190, 1192 (Pa. Commw. Ct. 2011)); *see also 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).

Here, the Borough did not submit "…either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record" regarding the assertions

made in the Caterino Statement. The Borough additionally failed to provide the locations searched or inquiries made in order to determine whether other responsive records exist, such as emails or financial documents. As a result, the OOR is constrained to find that the Borough has not demonstrated that it conducted a good faith search for the responsive records.

Nevertheless, the OOR is mindful that an agency cannot be required to produce records that do not exist. 65 P.S. § 67.705. If the Borough completes its search for records responsive to the Request and determines that responsive records do not exist, it must provide the Requester with an attestation explaining the search for the records and affirming that the responsive records do not exist within its possession, custody or control.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Borough is required to produce records responsive to the Request, or, if a portion of the responsive records do not exist, a detailed attestation describing its search, 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 Allegheny 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 party to any appeal and should not be named as a party.[3] 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.

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

FINAL DETERMINATION ISSUED AND MAILED: October 6, 2026

/s/ Bandy L. Jarosz

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BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent via portal only to: Henry Bard; David Tye