



FINAL DETERMINATION

IN THE MATTER OF

**EVAN WOOD,
Requester**

v.

**PENNSYLVANIA STATE POLICE,
Respondent**

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Docket No: AP 2026-3446

FACTUAL BACKGROUND

On July 14, 2026, Evan Wood (“Requester”) submitted a request (“Request”) to the Pennsylvania State Police (“PSP”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*¹ The Request seeks records related to the Requester’s application for employment with the PSP as a Liquor Enforcement Officer Trainee (“LEOT”). Specifically, the Request seeks the following:

1. All records concerning Evan Robert Wood’s LEOT 4019 candidacy, applicant processing, background review, polygraph/background processing, disqualification, reconsideration, record-correction request, preservation request, and related internal review.
2. All records concerning Evan Robert Wood’s LEOT 4015 candidacy, applicant processing, background review, disqualification, reason codes, reconsideration, record-correction request, and related internal review.

¹ Although the Request is dated June 25, 2026, it was not received by the PSP until July 14, 2026.

3. All records concerning the June 2, 2026 LEOT 4019 disqualification decision, including decision records, reason-code entries, review notes, routing notes, memoranda, emails, internal messages, review forms, approval records, and records relied upon.
4. All records concerning any request for reconsideration, record clarification, correction, preservation, appeal, or review submitted by Evan Robert Wood regarding LEOT 4019 or LEOT 4015, including records concerning the June 2 and June 7, 2026 requests.
5. All records concerning the Equality and Inclusion Office review involving Evan Robert Wood and the LEOT 4019 disqualification, including notes, memoranda, emails, drafts, internal communications, investigative materials, decision materials, and records reviewed or relied upon.
6. All communications between or among PSP Recruitment, PSP Bureau of Liquor Control Enforcement, PSP legal counsel, PSP background investigators, PSP polygraph personnel, PSP Equality and Inclusion Office, PSP Officer Placement Section, PSP LEOT Process personnel, or any other PSP employee concerning Evan Robert Wood, LEOT 4019, LEOT 4015, his military record, special court-martial, discharge status, discharge upgrade, veteran status, disability/accommodation issues, protected activity, civil-rights complaints, CHRIA, or USERRA.
7. All records identifying the specific criminal-history record information, if any, PSP contends was considered under CHRIA regarding Evan Robert Wood, including record source, jurisdiction, offense, disposition, classification, and date.
8. All records showing whether PSP classified any UCMJ finding, court-martial finding, special court-martial record, or military adjudication involving Evan Robert Wood as a Pennsylvania felony, misdemeanor of the first degree, misdemeanor of the second degree, misdemeanor of the third degree, civilian arrest, civilian conviction, felony-equivalent event, misdemeanor-equivalent event, automatic disqualifier, or discretionary suitability factor.
9. All policies, procedures, matrices, rubrics, manuals, training materials, directives, written guidance, or precedents used by PSP to evaluate military court-martial records, special court-martial records, general court-martial records, UCMJ findings, military discharge status, upgraded discharges, military duty-status offenses, or military justice records for LEOT applicants.

10. All policies, procedures, matrices, rubrics, manuals, training materials, directives, written guidance, or precedents used by PSP to evaluate criminal-history record information under CHRIA for LEOT applicants.
11. All policies, procedures, matrices, rubrics, manuals, training materials, directives, written guidance, or precedents used by PSP to evaluate credibility, candor, crimen falsi, impeachment, Brady/Giglio, false statements, dishonesty-related conduct, theft-related conduct, or fraud-related conduct for LEOT applicants.
12. All records showing whether PSP performed any Brady/Giglio, impeachment, crimen falsi, prosecutor-disclosure, credibility, or courtroom-testimony analysis regarding Evan Robert Wood.
13. All records showing whether PSP considered the Army Review Board / Army Discharge Review Board upgrade of Evan Robert Wood's discharge to General, Under Honorable Conditions, and what weight PSP gave that official military action.
14. All records showing whether PSP considered the special court-martial forum limit, the Pre-Trial Agreement, the nine-month confinement cap, or any offense-grading analysis regarding Evan Robert Wood.
15. All records showing whether PSP considered Articles 80, 81, 86, and 107 of the UCMJ separately or collectively in connection with Evan Robert Wood's LEOT 4019 disqualification.
16. All records showing the decision-maker chain for Evan Robert Wood's LEOT 4019 disqualification, including who made the initial decision, who reviewed it, who approved it, and who participated in the Equality and Inclusion Office review.
17. All non-exempt comparator records, in redacted or aggregated form if necessary, showing how PSP evaluated LEOT applicants who self-disclosed old dishonesty-related, theft-related, fraud-related, military justice, or credibility-related conduct but had no civilian arrest or civilian conviction.
18. All records showing whether PSP compared Evan Robert Wood to civilian applicants with comparable historical conduct but no civilian arrest, no civilian conviction, no recent misconduct, and rehabilitation evidence.
19. All records concerning the meaning, application, or use of the phrases: criminal activity; criminal behavior; criminal history record information; fraudulent insurance claim; conviction; misdemeanor-equivalent; felony-equivalent; automatic disqualifier; suitability factor; military conviction;

court-martial; or special court-martial in connection with Evan Robert Wood's LEOT 4019 or LEOT 4015 processing.

20. All records concerning communications between PSP and the Pennsylvania Office of Administration regarding Evan Robert Wood's LEOT 4019 or LEOT 4015 candidacy, disqualification, reconsideration, veteran status, military record, disability/accommodation issues, civil-rights activity, CHRIA, USERRA, or appeal rights.

On August 20, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the PSP denied the Request, arguing that records responsive to Items 1-8 and 12-20 are exempt pursuant to 65 P.S. § 67.708(b)(7)(iv) as the employment application of an individual who is not hired by the agency, 65 P.S. § 67.708(b)(17) as a record of an agency relating to a noncriminal investigation, and/or 65 P.S. § 67.708(b)(10)(i)(A) as a record that reflects the internal, predecisional deliberations of an agency. The PSP also asserted that it does not possess records for Items 9, 10, and 11 of the Request. The PSP's denial was supported by a verification, made subject to penalties under 18 Pa.C.S. § 4904, from Deputy Open Records Officer Ileanna Pierce ("Pierce Verification").

On August 20, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. The Requester argues that the exemptions do not apply to every record, that a good faith search for those records was not conducted, and that the responsive records are subject to the redaction provisions of 65 P.S. § 67.706. The OOR invited both parties to supplement the record and directed the PSP to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On September 2, 2026, the OOR granted the PSP's request to extend the submission deadline. On September 11, 2026, the PSP submitted a position statement reiterating its grounds for denial, along with a verification made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, from William Rozier, Open Records Officer for the PSP

(“Rozier Verification”). PSP further argues that the results of polygraph testing are exempt pursuant to the Employee Polygraph Protection Act, 29 U.S.C. § 2008.

On September 11, 2026, the Requester submitted an extension request, seeking additional time to supplement the record. That same day, the Requester agreed to extend the Final Determination deadline to October 7, 2026. *See* 65 P.S. § 67.1101(b). On September 15, 2026, the Requester submitted a reply to the PSP’s position statement.

LEGAL ANALYSIS

The PSP is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 PSP 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)).

One method an agency may use in meeting the burden of proof that a record is exempt is testimonial affidavits, which if “found to be relevant and credible may provide sufficient evidence in support of a claimed exemption.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 381 (Pa. Commw. Ct. 2014) (quoting *Heavens v. Pa. Dep’t of Env’tl. Prot.*, 65 A.3d 1069, 1073 (Pa. Commw. Ct. 2013)).

- 1. Records containing information obtained during a polygraph test are not subject to public access under the RTKL**

Item 1 seeks, *inter alia*, records concerning the Requester’s “polygraph/background processing.” The PSP explains that as part of the Requester’s LEOT application process, polygraph testing was conducted. The PSP also identified records containing information obtained during polygraph testing of other individuals. The PSP claims that these records are exempted pursuant to the Employee Polygraph Protection Act, 29 U.S.C. § 2001, *et seq.*

Section 2008 concerns disclosure of information under the Employee Polygraph Protection Act, and reads in full:

(a) In general. A person, other than the examinee, may not disclose information obtained during a polygraph test, except as provided in this section.

(b) Permitted disclosures. A polygraph examiner may disclose information acquired from a polygraph test only to—

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test; or

(3) any court, governmental agency, arbitrator, or mediator, in accordance with due process of law, pursuant to an order from a court of competent jurisdiction.

(c) Disclosure by employer. An employer (other than an employer described in subsection (a), (b), and (c) of section 7 [29 USCS § 2006(a)–(c)]) for whom a polygraph test is conducted may disclose information from the test only to—

(1) a person in accordance with subsection (b); or

(2) a governmental agency, but only insofar as the disclosed information is an admission of criminal conduct.

Not only is the statutory language permissive – an examiner “may disclose information” – this disclosure is limited to specific individuals, not the public. 29 U.S.C. § 2008(b). Because the responsive records containing information obtained during polygraph tests are confidential under the Employee Polygraph Protection Act, they are not subject to public access under the RTKL. *See* 65 P.S. § 67.3101.1 (“If the provisions of [the RTKL] regarding access to records conflict with

any other Federal or State law, the provisions of this act shall not apply.”); 65 P.S. § 67.306 (“Nothing in [the RTKL] shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.”). Accordingly, the PSP is not required to provide information obtained during polygraph tests.

2. Background investigation records are exempt from disclosure as records related to a noncriminal investigation

According to the PSP, the remaining responsive records were created and assembled as part of background investigations into the eligibility of the Requester and other LEOT applicants for employment with the PSP.

Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “[i]nvestigative materials, notes, correspondence and reports.” 65 P.S. § 67.708(b)(17)(ii). 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 factfinding and investigative powers. *See Pa. Dep’t of Pub. Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” *Id.* at 259. In determining whether the noncriminal investigation exception applies to particular documents, “courts [should] focus[] on the nature of the particular documents involved and whether they were created during the course of an investigation.” *See Pa. Dep’t of Health*, 4 A.3d at 813.

The OOR has previously found that a background check of a prospective employee is a necessary function of an agency that goes beyond routine fact-finding and constitutes a “systematic or searching inquiry, a detailed examination, or an official probe.”. *See Keliojor v. Pa. Dep’t of General Services*, OOR Dkt. AP 2025-1870, 2025 PA O.O.R.D. LEXIS 1867 (finding that “all documents related to a background check that was done for potential employment with PA capitol police” exempt from disclosure under Section 708(b)(17) of the RTKL); *Engle v. City of York*, OOR Dkt. AP 2025-2238, 2025 PA O.O.R.D. LEXIS 2487 (finding, in relevant part, that the “complete background packet compiled” exempt from disclosure); *Maldonado v. Bloomsburg Police Dep’t*, OOR Dkt. AP 2026-0559, 2026 PA O.O.R.D. LEXIS 1454 (finding that records compiled as part of a comprehensive background investigation as part of the Department’s official employment application are exempt as records related to a noncriminal investigation).

In this instance, the PSP conducted background investigations of the Requester and other individuals after receiving applications for employment as LEOTs. The PSP Commissioner has the authority to hire new members, 71 P.S. § 251, and Rozier states that “[n]umerous responsive records were contained in the Employment Application file of the Requester,” and “[t]he entire employment file is the result of a non-criminal background investigation conducted by the PSP in order to determine Requester’s eligibility for employment.” Rozier Verification, ¶¶ 8, 9.

Additionally:

All remaining responsive records that were located pertained to individuals other than the requester. These other records included background investigation screening panel review forms, polygraph examination review forms, and communications made prior to and regarding the decisions to disqualify various other applicants from consideration. These records were withheld for the same reasons as the records relating to Requester and pursuant to the same exemptions.

Id., ¶ 13.

Based upon this evidence, the PSP demonstrated that the responsive records are exempt from disclosure. Therefore, the PSP has met its burden of proof. 65 P.S. § 67.708(a)(1).

3. The PSP demonstrated that no responsive records exist for Items 9, 10, and 11

On appeal, the PSP argues that a good faith search was conducted, and that no responsive records exist for Items 9, 10, and 11 of the Request.

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).

On appeal before the OOR, the burden of proving a record does not or no longer exists is placed on the agency. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (citing 65 P.S. §67.708). 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*,

which holds 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*, 29 A.3d at 1192); see *Moore v. Off. of Open Recs.*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010) (search of records and affidavit that documents are not in agency’s possession are enough to satisfy burden of demonstrating nonexistence). “It is questionable to what degree additional detail and explanation are necessary to establish the nonexistence of a record rather than its exemption from disclosure. In the absence of any competent evidence that the agency acted in bad faith or that the agency records exist, the averments in such affidavits [of nonexistence] should be accepted as true.” *Mahon*, 283 A.3d at 936 (citing *Smith Butz, LLC v. Pa. Dep’t of Env’t Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016)).

In *Moore*, the requester sought copies of documents from his criminal case that the Department of Corrections claimed did not exist. To meet its burden of proving that the record did not exist, the Department submitted to the OOR “an unsworn attestation made subject to the penalty of perjury and a notarized Affidavit of Nonexistence of Record swearing to the non-existence” of the requested documents within the Department’s possession. *Moore*, 992 A.2d at 908-09. The OOR determined that the Department satisfied its burden through the submission of these documents. *Id.* at 909. The Commonwealth Court affirmed the OOR’s holding that the statements contained within the sworn and unsworn affidavits were sufficient to satisfy the Department’s burden. *Id.*

Here, the PSP submitted the verification of Mr. Rozier, who states, “[i]n regard to Items 9, 10, and 11, this office contacted PSP Bureau of Research and Development, the bureau who houses all PSP policies and regulations and no responsive records were discovered.” Rozier Verification,

¶ 14. Accordingly, the PSP has established, by a preponderance of the evidence, that a good faith search was conducted, and that no additional responsive records exist within the possession, custody or control of the PSP. *See 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 tantamount to a “more likely than not” inquiry).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the PSP 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 Commonwealth Court. 65 P.S. § 67.1301(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.² 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 openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: October 7, 2026

/s/ Josh Macel

JOSH MACEL
APPEALS OFFICER

Sent via OOR Portal to: Evan Wood; William Rozier (AORO); Colin Hitt, Esq.

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).