



FINAL DETERMINATION

IN THE MATTER OF	:
	:
SARA-JANE RICE,	:
Requester	:
	:
v.	: Docket No: AP 2026-3949
	:
LEHIGH AND NORTHAMPTON	:
TRANSPORTATION AUTHORITY,	:
Respondent	:

FACTUAL BACKGROUND

On July 30, 2026, Sara-Jane Rice (“Requester”) submitted a request (“Request”) to the Lehigh and Northampton Transportation Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking thirty enumerated items regarding the Authority’s relationship, communications, records, assessments, and business dealings with charter school transportation in the Whitehall-Coplay School District.

On August 27, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Authority provided a final response, granting in part and denying in part. The Authority provided copies of the following documents: the Authority’s Transit Service Access Agreement with the Whitehall Coplay School District, email communications between the Authority staff and Whitehall-Coplay School District staff, Authority’s Transit Service Access Agreement with the Allentown School District, the Authority’s records retention and destruction

policy and the Authority's age of riding policy. Any further records were denied, with the Authority stating they either did not exist in the nature requested, are vague, and/or not recognized industry documentation requirements.

On September 16, 2026, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Authority to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On September 29, 2026, the Authority provided a position statement. In support of its position, the Authority supplied a supporting affidavit from Owen O'Neil ("O'Neil Affidavit"), Agency Open Records Officer ("AORO"). After a request for clarification from the OOR,² the Authority provided a supplemental affidavit from Owen O'Neil ("O'Neil Affidavit 2"). On October 6, 2026, the Requester provided an email correspondence between a parent and AJ Knee the Authority's Director of Planning and Scheduling, referencing a capacity study performed in cooperation with Whitehall-Coplay School District, in support of the argument that the Authority has additional documents responsive to the Request in its possession, custody and control.

LEGAL ARGUMENT

The Authority is a local agency subject to the RTKL. 65 P.S. § 67.301. 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. On appeal, the Authority argues that it has conducted a good faith search, provided the responsive records, and

¹ The Requester states in her appeal that she was provided with records responsive to Items 2, 8, 14, 16, 27 and 29. The Items on appeal are 1, 3-7, 9-13, 15, 17-26, 28 and 30.

² The OOR requested the Authority submit evidence describing the search for responsive records, including the locations and types of records searched, with whom inquiries were made, and why those individual(s) have knowledge of and/or are the most likely custodians of responsive records.

no further responsive records exist. 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 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 all 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 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 [Authority] has acted in bad faith or that the requested records exist, “the averments in [the Affidavits] should be accepted as true.” *McGowan v. Pa. Dep’t of Envlt. 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)).

However, an agency cannot rely on conclusory statements to sustain its burden of proof. *See Scolforo*, 65 A.3d at 1103. (“[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records”); *see also Marshall v. Neshaminy Sch. Dist.*,

OOR Dkt. AP 2010-0015, 2010 PA O.O.R.D. LEXIS 67 (finding that an agency's conclusory affidavit was insufficient); *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 649 (Pa. Commw. Ct. 2016) ("Affidavits that are conclusory or merely parrot the exemption do not suffice") (citing *Scolforo*).

The Authority's position is that the Request was correctly partially denied because the documents that were not provided did not exist, were too vague to properly identify and provide and/or were not recognized as industry documentation requirements. The position statement argues that as a public transit agency, the Authority is not required to track safety events for school separately from other safety events and it therefore does not track school safety events. In support of its argument that the Authority does not have these requested records, the Authority provided the O'Neil Affidavit. Mr. O'Neil states that he personally conducted a diligent search of the records and could not find any other documents responsive to the Request besides what was provided. O'Neil Affidavit, ¶3. After the OOR requested clarification, Mr. O'Neil submitted the O'Neil Affidavit 2 wherein he stated that he searched the Authority network drives used by Authority administrative staff to store policy and project related documents. O'Neill Affidavit 2, ¶3(a)(i). Mr. O'Neil also spoke with AJ Knee, the Authority's Director of Planning and Scheduling, who was the primary staff person involved in the subject agreement. *Id.* at ¶3(b)(i). There was no further evidence or information offered by the Authority.

Here, the Authority's two affidavits do not address the twenty-four individual items in the Request. The Authority does not address whether there are additional communications, proposals and presentations, internal communications, board and committee records, route analyses for affected students and charter schools, data or addresses provided by the district, safety assessments and risk reviews, stop conditions and infrastructure, service schedules and reliability, school-day

compatibility, service changes and funding constraints, pass usage and location data, emergency and contingency procedures, complaints and incidents involving minors (personal identifying information redacted), customer service records, accessibility and disability considerations, paratransit and alternative services, insurance, liability and indemnification, legal and regulatory compliance, communications with other entities, communications and planning with other school districts, public statements and factual support, or monitoring and evaluation. The Request sought a breadth of different records, which the two affidavits do not touch upon.

The OOR must consider uncontradicted statements in the appeal materials. *See Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016); *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). However, in this case it is not clear which exemption or argument the Authority is applying to any portion of the Request. There were no further details provided by the Authority.

The Requester also provides evidence in the form of an email correspondence between a parent and AJ Knee of the Authority, referencing a capacity study performed in cooperation with Whitehall-Coplay School District, in support of the argument that the Authority has additional documents responsive to the Request in its possession, custody and control. As a result, the OOR cannot consider the affidavit uncontradicted. Therefore, the Authority has not met its burden by a preponderance of the evidence that the records do not exist.

CONCLUSION

For the foregoing reasons, the appeal is **granted** and within thirty days the Authority is required to either provide, to the Requester, any responsive records or provide an attestation explaining which portion of records do not exist. This Final Determination is binding on all

parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Lehigh 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.³ 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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: OCTOBER 8, 2026

/s/ Meryl M. Peterman

MERYL M. PETERMAN, ESQ.
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Sara-Jane Rice
Jill Nagy, Esq.
Owen O'Neil (AORO)

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