pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
AMANDA WHITEBREAD,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2026-3696**
	:	
MIDDLETOWN BOROUGH,	:	
Respondent	:	

On August 21, 2026, Amanda Whitebread ("Requester") submitted a request ("Request") to Middletown Borough ("Borough") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., stating:

> **Target Custodian:** Councilman James Curry / Middletown Borough Council
>
> **Timeframe:** January 1, 2026 to Present
>
> … I am formally requesting public records in the possession, custody, or control of the Borough [] regarding electronic communications generated, received, or maintained by Councilman James Curry.

1. SCOPE OF RECORDS REQUESTED

> Any and all electronic communications and digital media – including text messages (SMS/MMS), iMessages, emails, Facebook messages (including Facebook Messenger and Direct Messages), social media platform logs (e.g., WhatsApp, Signal, Instagram), photographs, digital images, video files, message attachments, or written memos – sent or received by Councilman James Curry containing any of the following search terms or involving the specified individuals:
>
> - Senders / Recipients / Subjects:
>   - Sean Geiter

- Chrissi Geiter
- Ashley Nicholson
- Dwayne Davis
- Kenny Whitebread
- Amanda Whitebread

- Keywords / Search Terms / Media Types:
  - "Fire Chief" OR "Chief"
  - "Moose" OR "Moose Lodge"
  - "Thursday"
  - "Dinner"
  - "Surveillance" OR "Track" OR "Tracking" OR "Confirm" OR "Confirmation"
  - Spotted" OR "Saw" OR "Watching" OR "Here" OR "Pulled up" OR "Leaving" OR "Table" or "Bar"
  - "Photo" OR "Picture" OR "Image" OR "Pic"

2. LEGAL APPLICABILITY (PERSONAL DEVICES & MEDIA) & STATUTORY DUTY

This [R]equest specifically includes communications, photographs, and media files on both Borough-issued devices and Councilman Curry's personal electronic devices (cell phones, tablets, personal email accounts, cloud/social media storage).

On July 21, 2026, during an official, public Borough Council meeting utilizing municipal audio equipment, Councilman Currey publicly stated on the official Borough record that he receives location and status "confirmations" regarding the private whereabouts of the Borough's Volunteer Fire Chief.

Because Councilman Curry introduced these tracking confirmations and updates into the official public record during a government meeting while acting in his capacity as a Councilman, these communications and any attached or transmitted media (including photographs) possess a direct nexus to municipal affairs and constitute public agency records under the RTKL, regardless of whether they reside on a personal device or personal account.

[…]

3. FORMAT:

Please provide responsive records, including full resolution copies of any attached or transmitted photograph filed, in electronic format via email.

On September 4, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Borough partially[1] denied the Request, arguing that personal identification information was redacted from the responsive record pursuant to Section 708(b)(6) of the RTKL, 65 P.S. § 67.708(b)(6)(i)(A), and the constitutional right to privacy, PA. CONS. ART. 1, § 1.

On that same day, the Requester appealed to the Office of Open Records ("OOR"), challenging the partial denial and stating grounds for disclosure. 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 the appeal. 65 P.S. § 67.1101(c).

On September 18, 2026, the Borough submitted a position statement, reiterating its grounds for the partial denial.[2] In support, the Borough submitted a statement made under the penalty of unsworn falsification to authorities by its Open Records Officer, Grace Miller ("Miller Attestation"), which describes the Borough's search for records responsive to the Request and addresses the Borough's basis for redacting the responsive record provided to the Requester.

On that same day, the Requester provided a statement in support of the appeal, arguing that the Borough's search was insufficient.[3] The Requester also provided a link to a video of the July 21, 2026 Borough Council meeting. *See* https://www.youtube.com/live/SrcV-1jSJPk?si=IxSrmihI-3zHN-MJ (last accessed September 25, 2026).

LEGAL ANALYSIS

[1] The Borough provided one responsive recording, "a screen shot of a text message including a picture."
[2] The Borough's position statement also addresses the Requester's argument that the Borough improperly denied the Request as insufficiently specific, 65 P.S. § 67.703, confirming that the Borough did not deny the Request on this basis. Moreover, there is nothing in the appeal records that suggests the Request was denied on the basis of specificity. As such, the Requester's argument will not be further addressed in this final determination.
[3] The Requester also provided a letter dated September 14, 2026, from the Borough to the Requester that appears to be a response to a subsequent RTKL request. However, as the letter does not relate to the issue underlying this appeal, it will not be considered in this final determination. *See* 65 P.S. § 67.1102(a)(2) (stating that "[t]he appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute").

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. Nonresponsive records could be redacted

The Borough argues that it properly redacted nonresponsive information from the text message chain containing the record responsive to the Request. The Requester argues that the Borough is required to provide the "complete, uncropped, and unredacted text thread."

Generally, an agency may not redact "nonresponsive" information from responsive records solely for that reason. *See Chwastyk v. Telford Borough Police Dep't*, OOR Dkt. AP 2025-0309, 2025 PA O.O.R.D. LEXIS 434 (citing *Kerr v. N. Huntingdon Twp.*, OOR Dkt. AP 2014-1080, 2014 PA O.O.R.D. LEXIS 1031). However, the Commonwealth Court has held that individual emails within a chain can be separately identified and withheld as non-responsive even when one email in the chain is responsive. *See Haverstick v. Pa. State Police*, 273 A.3d 593, 600 n.6 (Pa. Commw. Ct. 2022).

Here, Miller Attestation states that "the Borough redacted a portion of the text chain" that is "not directly responsive to the keywords included in the [R]equest." *See* Miller Attestation, ¶ 13.[4] Therefore, the Borough demonstrated that the redacted information is part of a text message chain, the information is not responsive to the Request, and the information is not a part of any responsive record. As such, the redactions are proper. *Haverstick*, *supra*; *see also Shepherd v. Pa. Off. of the Governor*, OOR Dkt. AP 2023-0861, 2023 PA O.O.R.D. LEXIS 1357.

2. Expressly exempt personal identification information was properly redacted from the responsive record, but the Borough did not demonstrate that all redactions were proper

The Borough argues that personal identification information was redacted from the responsive record under Section 708(b)(6) of the RTKL and under the constitutional right to privacy. *See* 65 P.S. § 67.708(b)(6)(i)(A). The Requester argues that there is a public interest in release of the redacted information because the public has "an absolute right to know who" is photographing residents and "sending [the] photo[graph]s…to an elected official."

a) Expressly exempt information was properly redacted

The Borough argues that it properly redacted expressly exempt personal identification information under Section 708(b)(6) of the RTKL, which exempts from disclosure "[a] record containing all or part of a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number." 65 P.S. § 67.708(b)(6)(i)(A). The Miller Attestation confirms that the responsive text message was sent by

[4] 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); *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)).

a private individual and, insofar as personal identification information was redacted the redactions are proper. *Id*.; *see also* Miller Attestation, ¶¶ 12-13.

b) Constitutional right to privacy

The Borough argues that it properly redacted the name of the private individual who sent the responsive text message under the constitutional right to privacy. The Requester argues that there is a public interest in release of the name of the individual who sent the responsive text message and that there is no privacy interest in "the name of a person who is acting as a surveillance lookout and sending photos of residents to an elected official."

If a request for records implicates personal information that is not expressly exempt from disclosure under the RTKL, the Pennsylvania Supreme Court has held that individuals still possess a constitutional right to privacy in certain types of information. *See Pa. State Educ. Ass'n v. Commonwealth*, 148 A.3d 142 (Pa. 2016). When considering information that is not expressly exempt from disclosure under the RTKL, the OOR must balance the individual's interest in informational privacy with the public's interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest. *Id*; *see also Sapp Roofing Co. Inc. v. Sheet Metal Workers' International Assoc.*, 713 A.2d 627 (Pa. 1998) (finding names, home addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test); *Hartman v. Pa. Dep't of Conserv. & Nat. Res.*, 892 A.2d 897, 906-07 (Pa. Commw. Ct. 2016) (finding the names and home addresses of snowmobile registrants to be protected by the constitutional right to privacy).

To determine whether the constitutional right to privacy precludes disclosure of an individual's personal information, the OOR must apply the balancing test enunciated in *Denoncourt v. Pennsylvania State Ethics Commission*, 470 A.2d 945 (Pa. 1983), and applied in

the public records context in *Times Publishing Company, Inc. v. Michel*, 633 A.2d 1233, 1237 (Pa. Commw. Ct. 1993), "weighing privacy interests and the extent to which they may be invaded, against the public benefit which would result from disclosure. Because the Borough redacted an individual's name from the record responsive to the instant Request, the OOR must conduct the balancing test.

The Borough argues that the individual who sent the text message to the Borough Council member "would not have expected their personal information to be shared publicly." As stated above, the Miller Attestation confirms that the responsive text message was sent by a private individual. *See* Miller Attestation, ¶ 12. The Requester identifies two issues for consideration—does a person who sends photographs depicting residents and Borough volunteers to elected officials have a reasonable expectation of privacy in his or her name and do Borough residents have a public interest in knowing the identity of the individual?

The expectation of privacy in personal information that is protected by the constitutional right to privacy inures to the individual. S*ee, e.g., Butler Area Sch. Dist. v. Pennsylvanians for Union Reform*, 172 A.3d 1173, 1184-85 (Pa. Commw. Ct. 2017).[5] In *Pennsylvanians for Union Reform*, the Commonwealth Court held:

> [C]ertain factors are constant when evaluating a privacy interest in information. One is an individual's reasonable expectation that the information is of a personal nature.... When information is public as a matter of statute, it is unreasonable for a person to expect that it is of a personal nature.... Another factor is how the agency obtained the information; when an individual voluntarily submits information, it may be disclosed...; whereas, information obtained by an agency premised on statutory confidentiality is protected.... Also, the context holds additional significance, as does whether the information is an essential component of a public record....

[5] Conversely, there is no right to privacy regarding names of business or commercial entities. *Mission Pa., LLC v. McKelvey*, 212 A.3d 119 (Pa. Commw. Ct. 2019).

172 A.3d at 1182-84 (citations omitted). To discern whether a party may have a privacy interest in the release of his or her name, the OOR assesses whether the information is traditionally public, whether an individual has a cognizable interest in the status of the records, and whether the record is personal, such that an individual has a reasonable expectation of privacy. *Id*. at 1173.

Here, there is no evidence to show that the individual who sent the text message has an interest in the status of the record or that the record is personal to that individual. Rather, the appeal record shows that the text message is a photograph of the Requester's family taken in a public place, while dining with a Borough Council member, and without the Requester's knowledge. Further, there is no evidence to suggest that the individual did not voluntarily send the text message to the Borough Council member, and the Council member mentioned the photograph at a public meeting as part of a discussion about updating its member code of conduct. *See* https://www.youtube.com/live/SrcV-1jSJPk?si=IxSrmihI-3zHN-MJ (last accessed September 25, 2026). Additionally, while the OOR has determined that there is a strong privacy interest in the names of private citizens who send complaints to their elected officials, here, the Borough did not provide evidence to show that the sender of the responsive test message was making a complaint about the conduct of the Council member depicted in the photograph or about any Borough business.[6] The video of the July 21, 2026 Council meeting shows only that Councilman Curry stated that individuals send "confirmation" that another Council member had dinner with the Requester and her family, which Councilman Curry used to bolster his argument that the code of conduct should be updated. *Id*. Moreover, the Requester's argument that there is a public interest in knowing the name of an individual who is "sending photos of [Borough] residents [and

[6] *See*, *e.g.*, *Viola v. Royersford Borough,* OOR Dkt. AP 2021-1491, 2021 PA O.O.R.D. LEXIS 1872 (finding that the name of complainant who submitted a code enforcement complaint is not subject to access pursuant to the constitutional right to privacy); *see also Zimmerman v. Pine Grove Twp.*, OOR Dkt. AP 2026-1227, 2026 PA O.O.R.D. LEXIS 1892; *Kinney v. Reading Twp.*, OOR Dkt. AP 2026-1495, 2026 PA O.O.R.D. LEXIS 2957.

their families] to an elected official" is persuasive, especially when the photographs are discussed in a public Council meeting. Therefore, because it appears that the message was voluntarily sent, does not contain personal information, and as there is a public interest in the identity of the individual who is sending photographs of Borough residents and volunteers to elected Borough officials for use and discussion at Borough Council meetings, the *Denoncourt* test favors disclosure of the redacted name. 470 A.2d 945 (Pa. 1983).

3. The Borough demonstrated that it conducted a good faith search for records responsive to the Request and that no additional records exist

The Borough argues that it conducted a good faith search for records responsive to the Request and that no additional records exist. The Requester argues that Borough's search was not thorough; specifically, she argues that the Borough's Open Records Officer should have searched the named Council member's "message logs or app histories."

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).

In support of the Borough's position, the Miller Attestation states:

> 6. …Upon receipt [of the Request] and in coordination with Councilman James Curry, I conducted a thorough, good faith search for responsive records, including a thorough examination of the files in the possession, custody and control of the Borough for records responsive to the [R]equest.
>
> 7. I contacted Councilman James Curry and requested that he also conduct a thorough examination of any records in his possession to identify records responsive to the request. This included communications regarding Borough business that were sent or received on private devices or through private accounts.
>
> 8. Councilman Curry and I identified all records within the Borough's possession, custody and control that are responsive to the request. I also sought legal review of these records.

See Miller Attestation, ¶¶ 6-8. Moreover, no evidence has been presented to contradict the Miller Attestation or to show that additional records responsive to the Request do, in fact, exist. Rather, the Requester's argument is, in sum, that the Borough Open Records Officer should have searched Councilman Curry's devices. However, in *Mutchler v. Pennsylvania Public Utility Commission*, the Commonwealth Court rejected a requester's argument that the agency's search was inadequate because it simply relied on each Commissioner conducting his or her own search. No. 1714 C.D. 2024, 2026 Pa. Commw. Unpub. LEXIS 161, *15 (Pa. Commw. Ct. 2026);[7] *see also Baker v. W. Perry Sch. Dist.*, OOR Dkt. AP 2026-0932, 2026 PA O.O.R.D. LEXIS 1430. Accordingly, based on the evidence presented, the Brough has demonstrated that it conducted a good faith search and that no additional records responsive to the Request exist within its possession, custody or control. *See Hodges*, 29 A.3d at 1192; *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

[7] An unpublished opinion of the Commonwealth Court may be cited for its persuasive value. 210 Pa. Code § 69.414.

by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a "more likely than not" inquiry); *Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022) (concluding that, in the absence of countervailing evidence, an agency may satisfy its burden of proving a record does not exist by submitting "either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record").

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and within thirty days, the Borough is required to provide a copy of the responsive record with the sender's name unredacted. 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 Dauphin 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.[8] 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: October 9, 2026

/s/ *Erika Similo*

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ERIKA SIMILO
APPEALS OFFICER

Sent via portal to: Amanda Whitebread
Lauren M. Burge, Esq.
Grace Miller

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