



FINAL DETERMINATION

IN THE MATTER OF	:
	:
LYLE GAINES and GAINES ADVISORY	:
& PUBLISHING GROUP, LLC,	:
Requester	:
	:
v.	:
	:
LOWER PAXTON TOWNSHIP,	:
Respondent	:
	:

Docket No: AP 2026-3544

FACTUAL BACKGROUND

On July 20, 2026, Lyle Gaines and Gaines Advisory & Publishing Group, LLC (collectively “Requester”), submitted a request (“Request”) to the Lower Paxton Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[1.] Workforce Demographics – Full-Time Career Employees¹

...[C]opies of any existing records, reports, spreadsheets, databases, EEO reports, workforce demographic reports, affirmative action reports, or similar records relating to full time career employees only, including Police, Fire, Public Works, Administration, Parks and Recreation, and all other Township departments. Specifically, I request:

- [a.] Records identifying the number of full-time African American male employees hired during each calendar year[;]
- [b.] Records identifying the number of full-time African American male employees whose employment ended for reasons other than voluntary resignation, including termination, dismissal, discharge, layoff, retirement in lieu of termination, or any other involuntary separation[;]

¹ Item 1 included a timeframe of January 1, 2016 through the date of the Request. *See* Request.

- [c.] Records identifying the number of full-time African American male employees employed by the Township during each calendar year[; and]
- [d.] Copies of all EEO-4 Reports, Equal Employment Opportunity reports, workforce demographic reports, affirmative action reports, workforce analyses, or similar records maintained by or submitted on behalf of the Township.

[2.] Additional Compensation Paid to Fully Exempt Employees

For the period January 1, 2023, through the present, I request:

- [a.] All policies, procedures, administrative directives, resolutions, memoranda, compensation policies, payroll policies, or other documents authorizing or governing the payment of additional compensation, premium pay, stipends, bonuses, supplemental compensation, compensatory pay, or any other additional pay to fully exempt employees[;]
- [b.] Records identifying each fully exempt position that received additional compensation beyond its regular salary, including: [p]osition title; Department; [d]ate(s) of payment; [a]mount paid; [r]eason for the payment; and [t]he individual or office authorizing the payment[;]
- [c.] Records identifying the source of funds used for each payment, including the fund number, account number, budget line item, grant, or other funding source from which the payment was made[;]
- [d.] Copies of accounting records, budget amendments, budget transfers, journal entries, payroll records, grant reimbursement requests, financial reports, or similar records documenting the source of funds used for such payments[;]
- [e.] Records identifying whether any federal, state, or local grant funds designated for Police, Fire, EMS, or other uniformed public safety purposes were used, directly or indirectly, to provide additional compensation to exempt non-uniformed employees[;]
- [f.] Records identifying which fully exempt positions were eligible to receive additional compensation and which fully exempt positions were not eligible[;]
- [g.] If the Township maintains existing EEO or workforce demographic records identifying the race of employees occupying exempt positions that received additional compensation, I request copies of those existing records[; and]
- [h.] Records identifying the criteria, approval process, or authority required before a fully exempt employee may receive additional compensation.

[3.] Recruitment and Outreach – Part-Time Deputy Fire Chief Positions

For the period January 1, 2023, through the present, I request:

- [a.] Copies of all job postings, vacancy announcements, advertisements, recruitment notices, and hiring announcements for any Part-Time Deputy Fire Chief position[;]
- [b.] Records identifying every location where the position was advertised or posted, including newspapers, websites, professional organizations, recruitment services, social media platforms, or any other advertising medium[;]
- [c.] Copies of any recruitment plans, Equal Employment Opportunity (EEO) recruitment plans, affirmative action plans, diversity recruitment plans, or similar documents applicable to recruitment for these positions[;]
- [d.] Copies of records reflecting outreach conducted to minority organizations, minority firefighter associations, historically Black colleges and universities (HBCUs), minority professional organizations, community organizations, or any other organizations for the purpose of increasing minority recruitment[;]
- [e.] Copies of correspondence, emails, memoranda, or other communications concerning outreach to minority organizations or efforts to recruit minority applicants for the Part Time Deputy Fire Chief position[;]
- [f.] Records identifying whether any federal, state, or local grant funding applicable to public safety staffing required compliance with Equal Employment Opportunity, affirmative action, or diversity recruitment requirements[;]
- [g.] Copies of all policies, procedures, directives, or guidelines governing Equal Employment Opportunity compliance, recruitment, outreach, and diversity recruitment for public safety positions[; and]
- [h.] Copies of any existing applicant flow logs, applicant demographic reports, EEO applicant reports, demographic summaries, or similar records identifying the race, ethnicity, and gender of applicants for the Part-Time Deputy Fire Chief position.

On August 21, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Township partially granted the Request and provided records responsive to Item 1 containing redactions representing exempt information relating to discipline, demotion or discharge of Township employees. *See* 65 P.S. § 67.708(b)(7)(viii). The District denied Items 2 and 3 of the Request, claiming responsive records do not exist in the Township's possession, custody or control.

On August 26, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the Township’s denial and stating grounds for disclosure.² Specifically, the Requester challenges the Township’s search for responsive records, claims the Township failed to provide a log detailing all withheld records and asserts that the Township did not meet its burden of proof regarding Section 708(b)(7) because Section 708(b)(7) does not apply to an agency’s final action that results in demotion or discharge.³ The OOR invited both parties to supplement the record and directed the Township to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On September 18, 2026, the Township submitted a position statement, reiterating the basis for its partial denial of the Request. Further, the Township provided additional responsive records, located during a second search for records following the receipt of the appeal. In support of Township’s position that it appropriately redacted records and additional responsive records do not exist, the Township submitted an attestation, made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, authored by Shellie R. Smith (“Smith Attestation”), the Township’s Administrative Assistant and Alternate Agency Open Records Officer (“AORO”).

On October 19, 2026, at the request of the OOR, the Township submitted a second attestation made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904,

² 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).”).

³ The Requester also asserts that the Township’s final response does not comply with Section 903 of the RTKL because the final response was signed by the Township’s Administrative Assistant, rather than its AORO. Pursuant to Section 903 of the RTKL, an agency’s response denying access to records is required to include “[t]he procedure to appeal the denial of access under this act.” *See* 65 P.S. § 67.903(5). Agencies are also required to provide “[t]he specific reasons for the denial, including a citation of supporting legal authority.” 65 P.S. § 67.903(2). The Township’s final response complies with Section 903, as it contains all of items outlined. Additionally, the author of the final response is the Township’s Alternate AORO. *See generally* Smith Attestation. As such, the Requester’s assertion will not be further addressed herein.

authored by Shellie R. Smith (“Smith Second Attestation”), providing additional details concerning the redactions made pursuant to Section 708(b)(7)(viii) of the RTKL.⁴

LEGAL ANALYSIS

The Township 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 Township 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 appeal as it relates to the records provided during the appeal is moot

During the pendency of the appeal, the Township provided approximately 33 pages of potentially responsive records, which included a 2023 EEOC Form 164, the Township’s Compensation Program for Administrative Employees, memoranda, correspondence and emails.⁵ As such, the appeal as to the records provided to the Requester during the pendency of the appeal is dismissed as moot. *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d

⁴ The evidentiary submission record originally closed in this appeal on September 9, 2026; however, multiple evidentiary submission extensions were provided to both parties during the course of the appeal. *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”).

⁵ *See* Smith Attestation ¶¶ 8, 9.

1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records, and thus, “the controversy has been mooted”).

2. The Township demonstrated the redacted material reflects exempt information related to termination of Township employees

The Township argues that a portion of the responsive records contain redacted materials that are exempt under Section 708(b)(7)(viii) of the RTKL, which permits an agency to withhold the following:

(viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.

65 P.S. § 67.708(b)(7)(viii).

In *Silver v. Borough of Wilkinsburg*, the Commonwealth Court held that language regarding prior disciplinary history in a termination letter was not subject to public access, but rather, only the language notifying the employee of the termination was subject to access. 58 A.3d 125 (Pa. Commw. Ct. 2021). Further, the OOR has previously found that Section 708(b)(7) exempts from disclosure the reasons or circumstances for an employee’s termination on lists drawn from agency databases, since those descriptions do not constitute the final action of an agency. *Sanchez v. Chester Cnty.*, OOR Dkt. AP 2021-1158, 2021 PA O.O.R.D. LEXIS 1151.

The Request specifically seeks Township records containing information for Township employees whose employment ended for reasons other than “voluntary resignation, including termination, dismissal, discharge, layoff, retirement in lieu of termination, or any other involuntary separation.” See Request, Item 1a. In response, the Township provided an EEO-4 report, dated January 1, 2016, containing redactions in the columns labeled “Termination Reason” and

“Termination Type.” See Requester appeal pp. 21-28; see also Smith Second Attestation ¶ 3.⁶ Upon review of the report, the Township did not redact the content within the columns when the columns read “Resignation” or “Voluntary.” See Requester appeal p. 24. An EEO-4 Report is a report that requires agencies to provide workforce demographic data upon request of the United States Government or based upon the size of the employer.⁷ Here, in order to complete such a report, the Township uses software to compile the information contained within the report from the Township’s electronic personnel files. Smith Second Attestation ¶ 4. Thus, as in *Sanchez*, the data used to compile such a report is pulled from an agency database and therefore exempt pursuant to Section 708(b)(7)(viii).⁸

Section 708(b)(7)(viii) also carves out an exception for final actions of an agency, stating that “[t]his subparagraph shall not apply to the final action of an agency that results in demotion or discharge.” 65 P.S. § 67.708(b)(7)(viii). As the Township affirms the redacted information does not reflect the final action for demotion or discharge of the employees listed within the EEO-4,⁹ the exception contained within Section 708(b)(7)(viii) is not at issue in this instance.

3. The Township has demonstrated that no additional responsive records exist

The Township asserts that other than the records provided prior and during the appeal, additional records responsive to the Request do not exist in the Township’s possession, custody or

⁶ 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 Township has acted in bad faith, “the averments in the [attestations] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. 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)).

⁷ See <https://www.eeoc.gov/data/eo-4-state-and-local-government-information-report-statistics> (last accessed by the OOR on October 19, 2026).

⁸ Further, the Request clearly seeks information related to discipline, demotion or discharge. Therefore, the Request itself indicates that the records sought contain information that is not subject to public access under the RTKL. See *Pa. Game Comm’n v. Fennell*, 149 A.3d 101, 104 (Pa. Commw. Ct. 2016) (holding that evidence may be unnecessary when an exemption is clear from the face of the record); 65 P.S. § 67.708(b)(7)(viii).

⁹ See Smith Second Attestation ¶ 5.

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).

Here, the Request seeks records related to work force demographics, compensation paid to fully exempt employees and information related to the part-time Deputy Fire Chief position. In support of the Township’s argument that it does not possess additional responsive records, the Township’s Alternate AORO indicates that a search was performed of all physical records located in the Township’s building, including those in filing cabinets and the Township’s records room. Smith Attestation ¶ 4. The Alternate AORO additionally searched the Township’s electronic records and inquired with the Township’s finance director and human resource manager for responsive records. Smith Attestation ¶¶ 3, 4, 7. Thus, based on the evidence provided, the Township has demonstrated that it does not possess additional records responsive to the Request.

There has been no sufficient evidence provided that otherwise contradicts the statements offered by the Township in the attestation submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided and the Township's outlined search parameters, the Township has met its burden of proof that additional records responsive to the Request do not exist.¹⁰ *Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the appeal is **denied** and the Township 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 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 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.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: October 22, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent via portal only to: Lyle Gaines; Idan Ghazanfari, Esq.; Michael Gossert

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.

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