pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JOHN MALASKA,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-4240**
	:	
DELAWARE COUNTY,	:	
Respondent	:	

FACTUAL BACKGROUND

On August 24, 2026, John Malaska ("Requester") submitted a request ("Request") to Delaware County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking the following:

> 1. CAD incident lists and call summaries for drone-related calls received by the county 911 center, December 1, 2024 through January 31, 2025, with December 12 and 13, 2024 of particular interest. I ask that the following fields be included where they exist in the system: incident number, date, time received, municipality, location to the block, call type, narrative or call-taker notes, responding agency, and disposition.
>
> 2. Any [C]ounty-level tally, roll-up, summary, or report of drone-related call volume for the same period, and any correspondence with PEMA, the PEMA 9-1-1 Bureau, or a state 911 coordinator on the subject.
>
> For both items, the search terms are, in this order: drone, UAS, UAV, unmanned, orb, plasmoid, aerial anomaly, suspicious aircraft. "Drone" is listed first because it is the word Pennsylvania agencies actually used in the records I have already received; please do not limit the search to the acronym alone. To be clear about what I am not asking for: I am not requesting 911 audio recordings or dispatch audio. I understand that 65 P.S. Section 67.708(b)(18)(i)

> exempts audio recordings of 911 calls, and that the same provision expressly excepts time response logs from that exemption. It is the written record I am after, meaning the incident and time response log data described above. I am glad to have caller names, home addresses, and telephone numbers redacted from any responsive record. The incident-level data described above, not any caller's identity, is what I am asking for.[1]

On September 29, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County denied the Request, stating that "a search has shown no responsive records" and that the County is unable to search with the parameters specified in the Request.

On September 30, 2026, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial. The OOR invited both parties to supplement the record and directed the County to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On October 14, 2026, the County requested an extension of time to submit evidence in this appeal, which was granted. On October 19, 2026, the County submitted a position statement, arguing that the County is unable to conduct a search for records responsive to Part 1 of the Request and that no records responsive to Part 2 of the Request exist in the County's possession, custody, or control. In support of its position, the County submitted the attestation of Leah Lewis, the Open Records Officer ("AORO") for the County ("Lewis Attestation").

LEGAL ANALYSIS

The County 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

[1] On August 25, 2026, the Requester amended the search terms for the Request as follows:

> UAP, unidentified aerial phenomenon, UFO, 'lights in the sky,' 'purple lights,' 'white lights,' ball of light, fireball, glowing, and anomalous.
> The added terms are meant for CAD narrative, call-taker text, and incident-report free text fields only. If any part of the search touches an email account, please limit that to drone, drones, UAS, UAV, and unmanned aircraft. Inbound marketing, news alerts, weather bulletins, and vendor mail are not responsive.

law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. The County is required to demonstrate, "by a preponderance of the evidence," that records are exempt from public access. 65 P.S. § 67.708(a)(1).

1. Part 1 of the Request is insufficiently specific as drafted

The County argues that Part 1 of the Request is insufficiently specific. Section 703 of the RTKL states that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." 65 P.S. § 67.703. When determining whether a particular request is sufficiently specific, the OOR undertakes a nonexclusive, multi-factor test, considering "the extent to which the request specifies subject matter, the extent to which it defines the scope of the records it seeks, and the extent to which it limits the timeframe of the request." *Pa. Off. of the Governor v. Brelje*, 312 A.3d 928, 937 (Pa. Commw. Ct. 2024) (citing *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015)). The test is not "a conjunctive, bright-line rule requiring each 'element' of the test to be satisfied; rather, it [is] a flexible approach" consistent with relevant caselaw. *Id*.

First, "[t]he subject matter of the request must identify the 'transaction or activity' of the agency for which the record is sought." *Pittsburgh Post-Gazette*, 119 A.3d at 1125 (quoting 65 P.S. § 67.102). Second, "[t]he scope of the request must identify 'a discrete group of documents, either by type . . . or by recipient.'" *Id*. (quoting *Carey v. Pa. Dep't of Corr*., 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)). Finally, "[t]he timeframe of the request should identify a finite period of time for which records are sought." *Id*. at 1126 (citing *Carey, supra*). "The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request's timeframe is narrow enough is generally dependent upon the specificity of the request's subject matter and scope." *Id*.

The above factors are intended "to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested . . . The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements." *Pa. Dep't of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Further, the Commonwealth Court has warned that an evaluation of sufficient specificity turns on each case's unique facts and that a lack of subject matter does not necessarily lead to a conclusion that a request is insufficiently specific. *See Brelje*, 312 A.3d at 933; *see also*, *Methacton Sch. Dist. v. Office of Open Records*, 271 A.3d 548 (Pa. Commw. Ct. 2021).

The Lewis Attestation states that a search was conducted for records responsive to both portions of the Request. *See* Lewis Attestation, ¶¶ 6-8.[2] The AORO states that the records administrator for the County Emergency Services Department was unable to complete the search for records responsive to Part 1 of the Request, as CAD reports cannot be searched by subject matter. *Id*. at ¶¶ 6-8. The record is clear that the County's ability to search CAD reports is limited to information relating to a specific date, event type, or address of the incident. *Id*. The Lewis Attestation states that a successful search of the County's CAD records requires "a valid 'event type' to search, the address of the incident, or a phone number associated with the incident in question", as opposed to the terms that the Requester listed. *Id*. at ¶ 7. Thus, although the Request provides a two-month timeframe, it does not identify with sufficient specificity the transaction or

[2] 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 County has acted in bad faith, "the averments in [the attestation] should be accepted as true." *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)).

activity for the County to conduct a search. Based on the evidence submitted, the County has met its burden that Paragraph One of the Request is insufficiently specific.

2. The County proved that no records responsive to Part 2 of the Request exist

The County argues that no records responsive to Part 2 exist in the County's possession, custody, or 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 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).

In relation to Part 2 of the Request, the Lewis Attestation states she conducted a search for responsive records with the records custodians within the County. *See* Lewis Attestation, ¶ 8. The AORO attests that there are no records of a county-level, tally, roll-up, summary or report of drone related call volume, nor are there any corresponsive records with PEMA or the state 911 coordinator on the subject of drones for the period of December 1, 2024, through January 31, 2025.

Id. Based on the evidence submitted, the County has met its burden, by a preponderance of the evidence, that no records responsive to Part 2 of the Request exist in the County's possession, custody, or control. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the County 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 or petition for review to the Delaware 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: November 2, 2026

/s/ Catherine R. Hecker

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CATHERINE R. HECKER, ESQ.
APPEALS OFFICER

Sent via OOR E-file appeal portal to: John Malaska
Leah Lewis, AORO
Meghan Byrnes, Esq.

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