pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ELAINE ETTORRE,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-3718**
	:	
LANCASTER COUNTY DISTRICT ATTORNEY'S OFFICE,	:	
Respondent	:	

On August 24, 2026,[1] Elaine Ettorre ("Requester") submitted a request ("Request") to the Lancaster County District Attorney's Office ("Office") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking certified copies of private criminal complaints filed against her and "internal policies, manuals, directives, guidelines, and/or standard operating procedures" related to reviewing private criminal complaints.

On September 2, 2026, the Office denied access to criminal complaints, arguing that records are related to criminal investigations, 65 P.S. § 67.708(b)(16), and access is barred by the Criminal History Record Information Act ("CHRIA"), 18 Pa.C.S. §§ 9101-9183. The Office explained that if a criminal charge were filed, the complaint would become public. Regarding the policies and standard operating procedures, etc., the Office explained that Pa. Rule Crim. Pro. 506 itself is the Office's policy and explained what that process looks like.

[1] The Request was dated August 21, 2026, but was not filed until the later date.

On September 7, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.[2] The OOR invited both parties to supplement the record and directed the Office to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

As the Appeals Officer assigned to this matter by the Office of Open Records ("OOR"), I have reviewed the appeal filed with the OOR and the Requester's position statement and sworn affidavit.[3] Based upon my review of the appeal and necessary evidence, I make the following conclusions of law and findings of fact:

- The OOR lacks jurisdiction over private criminal complaints. The Office is a local agency, and the OOR has no jurisdiction over appeals related to criminal investigative records held by local agencies. *See* 65 P.S. § 503(d). While Section 708(b)(16)(i) excepts private criminal complaints from the exemption, the OOR nevertheless lacks jurisdiction to determine whether the exception to the exemption set forth in Section 708(b)(16)(i) would apply to the requested records. *See Schneller v. Phila. Dist. Attorney's Off.*, No. 1313 C.D. 2016, 2017 Pa. Commw. Unpub. LEXIS 575, n.6 (Pa. Commw. Ct. 2017).
- The Office has not met its burden of proving that it has no written policies or similar records related to the process for reviewing private criminal complaints. Although the Office explains that Pa. Rule Crim. Pro. 506 itself is its policy, it has provided no evidence that no written policies exist. As such, it has not met its burden of proof.[4]

[2] The Requester granted the OOR a thirty-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).
[3] The Office did not make a submission.
[4] The OOR is mindful that an agency "shall not be required to create a record which does not currently exist…." 65 P.S. § 67.705. However, agencies have the burden of proving that a record does not exist, *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). Because the Office has not presented evidence as to whether the requested records exist or if a good faith search was conducted, the Office has not met its burden of proof.

For the foregoing reasons, the appeal is **granted in part** and **dismissed for lack of jurisdiction in part**, and within thirty days, the Office must conduct a good faith search for responsive policies, manuals, directives, guidelines, or standard operating procedures and produce any records discovered thereby. If no records are discovered, the Office shall provide an attestation or sworn affidavit so stating. 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 Lancaster 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.[5] 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 4, 2026

/s/ Blake Eilers
Blake Eilers, Esq.
Senior Appeals Officer

Delivered via e-file portal to: Elaine Ettorre; Linda Gerencser;

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