pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
EUGENE CHOI AND GOLIATH DATA,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-4954**
	:	
BETHLEHEM CITY,	:	
Respondent	:	

On October 13, 2026, Eugene Choi and Goliath Data (collectively, "Requester") submitted a request ("Request") to Bethlehem City ("City") pursuant to the Right-to-Know Law ("RTKL"),[1] 65 P.S. §§ 67.101 *et seq*., seeking:

> …a list of the…[City's] code enforcement cases (Code Enforcement / Bureau of Housing & Health — property maintenance, housing and rental code) and notices of violation issued from October 1, 2025 to…[October 10, 2026]. For each, only the fields the records already carry: the case number, the violation type, the date opened or issued, the status, and the property address or tax parcel number. An electronic copy (spreadsheet or CSV export from the case system) is ideal. No information identifying a complainant is requested.
>
> If the City can send the same list each month going forward, that would be ideal.

Requester Appeal, pp. 5, 10.[2]

[1] While the Request was emailed on Saturday, October 10, 2026, it was deemed received by the City on the next business day, or Tuesday, October 13, 2026, because Monday, October 12, 2026, was Columbus Day/Indigenous People's Day, a federal and state holiday.

[2] Although the timeframe is listed in the Request as "October 1, 2025 to the date this [R]equest is processed[,]" the Request can only seek record that were in existence up until October 10, 2026, the date of the Request. *See Pa. Dep't of Labor & Indus. v. Tabor*, No. 525 C.D. 2015, 2016 Pa. Commw. Unpub. LEXIS 251 (Pa. Commw. Ct. Mar. 31, 2016) (indicating that a request can only seek records that exist at the time of the request).

That same day, the City denied the Request ("Final Response"), referring the Requester to its previous October 5, 2026 response to the Requester's substantially similar October 5, 2026 request, which stated that the City does not maintain the sought-after records in the manner requested. *See* 65 P.S. § 67.705. In addition, the City informed the Requester that "records provided via RTK are done on a by-request basis, and cannot be produced on a recurring/monthly schedule without a new request for records being submitted every time."

On November 2, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. Specifically, the Requester argued that the City possesses notices of violation and the fact that the City "does not maintain a ready-made list, is not a ground for denial under the" RTKL. The OOR invited both parties to supplement the record and directed the City to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

The City accessed the appeal docket via the OOR's e-File Portal on November 6, 2026, but it never made a submission or sought additional time to do so.

Based upon my review of the appeal and evidence, I make the following conclusions of law and findings of fact:

- On appeal, the Requester asserts that the notices of violations would be responsive to the Request. However, the Request does not expressly seek such notices; instead, based on its plain language, it seeks a list of both the code enforcement cases and notices of violation issued from October 1, 2025 to October 10, 2026, and sets forth the fields of information that should be included in that list. To the extent that the Requester is now attempting to modify of expand the Request on appeal to seek the actual notices of violation, such is impermissible and cannot be considered by the

OOR. *See, e.g., McKelvey v. Off. of the Att'y Gen.*, 172 A.3d 122, 125 (Pa. Commw. Ct. 2017); *Michak v. Pa. Dep't of Pub. Welfare*, 56 A.3d 925, 930 (Pa. Commw. Ct. 2012). Nothing in this Final Determination prevents the Requester from submitting a new RTKL request to the City for said notices, and, if necessary filing a new appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a).

- The City did present any argument or evidence on appeal to demonstrate that it conducted a good faith search, or that no responsive records exist.[3] Therefore, the City has failed to meet its burden of proof under the RTKL. *See* 65 P.S. §§ 67.305, 708(a)(1). Accordingly, the City is directed to conduct a good faith search for all responsive records and to provide them to the Requester.[4] To the extent that no such records exist, the City is required to provide an affidavit or attestation describing its search for those records and affirming their nonexistence. *See* 65 P.S. § 67.705.[5]

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the City is required to provide all responsive records to the Requester within thirty days, or in the alternative, a sworn affidavit or a statement made under the penalty of perjury demonstrating that no such records exist. 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 Northampton County Court

[3] *See* 65 P.S. § 67.901 ("[A]n agency shall make a good faith effort to determine if the record requested is a public record…and whether the agency has possession, custody or control of the identified record").
[4] An agency cannot waive a third party's right in nondisclosure by action or inaction." *Baron v. Dep't of Human Servs.*, 169 A.3d 1268, 1275 (Pa. Commw. Ct. 2017). To the extent that any of the responsive records contain personal identification information that is either expressly exempt under 65 P.S. § 67.708(b)(6)(i)(A) or protected by the constitutional right to privacy, it may be redacted by the City.
[5] Notably, despite the Requester's arguments, an agency is not required to create a list or spreadsheet containing the requested information, if the information is not already maintained or compiled in that manner. *See* 65 P.S. § 67.705; *see also Vadyak v. Lansford Borough*, OOR Dkt. AP 2026-1336, 2026 PA O.O.R.D. LEXIS 1473.

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.[6] 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: November 25, 2026

/s/ Megan Burns

MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Eugene Choi; and Nikolas Franekic, AORO

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