



### **FINAL DETERMINATION**

IN THE MATTER OF	:
	:
TERRY TREXLER,	:
Requester	:
	:
v.	: Docket No: AP 2022-1224
	:
NEWTOWN BOROUGH,	:
Respondent	:

### **INTRODUCTION**

Terry Trexler (“Requester”) submitted a request (“Request”) to Newtown Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records pertaining to the Borough’s police cars and patrol logs for a specific officer for a specific period of time. The Borough granted the Request. The Requester appealed to the Office of Open Records (“OOR”), arguing that additional records should exist. For the reasons set forth in this Final Determination, the appeal is **denied**, and the Borough is not required to take any further action.

### **FACTUAL BACKGROUND**

On March 31, 2022, the Request was filed, seeking: “Copy of Completed Pa form 14Mg (application for municipal Government Registration Plate) along with either Form MV-1, MV-120, MV-140 or summary Applicant Statement, (whichever was used) for all four of Police cars with permanent registration owned or leased to Newtown Borough Pa.” and “[c]opy(s) of

completed Patrol logs as defined by Newtown Borough directive #7 (revised 2/2010) for George Rusinko for Period Jan 1 2022 to Feb 1 2022”. *See* Request. On April 4, 2022, the Borough sent a letter acknowledging the Request and informing the Requester it was exercising its right to take a thirty-day extension to provide a response to the Request. *See* 65 P.S. § 67.902. On May 3, 2022, the Borough granted the Request and provided all unredacted responsive records within its possession, custody or control.

On May 23, 2022, the Requester filed an appeal with the OOR, arguing more, or different, records should exist beyond what was provided on May 3, 2022. The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On June 2, 2022, the Borough submitted a position statement, stating that all responsive records in the Borough’s possession, custody or control have been provided to the Requester. In support of its position, the Borough submitted the sworn affidavit of Judy Musto, the Borough’s Open Records Officer. On the same day, the Requester submitted a position statement and provided copies of previous RTKL requests and records provided by the Borough in response to those prior requests. The Requester states the records provided in response to the Request do not look the way they should and do not contain information required in order to comport with the Borough’s policies and procedures.

## **LEGAL ANALYSIS**

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45.A.3d 1029, 1041 (Pa. 2012). This important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the

actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonable, probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The Borough is a local agency subject to the RTKL that is required to disclose public records. 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. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). 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.” 65 P.S. § 67.708(a); *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).

In the instant case, the Borough argues that all records in the possession, custody or control of the Borough have been provided to the Requester and that no additional responsive records exist. In support of its position, Ms. Musto attests, in pertinent part, as follows:

1. I serve as the Open Records Officer for Newtown Borough (“Borough”) and have personal knowledge of the facts contained herein. I am also the Borough Secretary.
3. On or about March 31, 2022, the Borough received Mr. Trexler’s RTK request (“Request”).
5. The Borough undertook a record search to locate records. I worked with the Borough Treasurer, Patricia Ours and Chief of Police, James Sabath, to review paper and electronic files for records responsive to the [R]equest.
6. As a result of the search, the following records were located: vehicle registration cards and patrol logs for Officer Rusinko for January 1 – February 1, 2022.
7. No application forms (i.e. no Form MV-14MG, MV-1, MV120, MV-140), or summary Applicant Statement pertaining to the registration of the Borough’s police cars were located in the Borough or Police Department files. However, vehicle registration cards are maintained by the Police Department and copies of the vehicle registrations cards are maintained in a file by the Borough Treasurer.
8. It was determined that copies of the vehicle registration cards were the only records in the Borough’s possession that are responsive to the first portion of the Request.
9. It was determined that complete copies of the vehicle registration cards should be released without any redactions.
10. In response to the second portion of the [R]equest, the Chief of Police produced patrol logs for Officer Rusinko for January 1 – February 1, 2022.
11. The Chief of Police advised that the patrol logs produced are the only patrol logs generated. The police do not maintain any other patrol logs in any other format.
12. It was determined that complete copies of the patrol logs should be released without any redactions.
13. All responsive records were provided to [the Requester] on May 3, 2022.
14. No additional responsive records were located in the Borough’s record search.
15. No additional responsive records were withheld from disclosure.

Under the RTKL, a sworn 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 Borough has acted in bad faith or that additional responsive records exist, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. 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)).

Here, the Borough provided specific information obtained directly from the record holders, Borough employees, who have actual knowledge based on job responsibilities that the records in its possession, custody, and control were provided and no additional responsive records exist. *See Hays v. Pa. State Police*, OOR Dkt. AP 2015-0193, 2015 PA O.O.R.D. LEXIS 294 (finding that an agency conducted a good faith search by “contact[ing] the Bureau most likely to possess responsive records, and ... explain[ing] why that Bureau is most likely to possess those records”); *Yakim v. Municipality of Monroeville*, OOR Dkt. AP 2017-1946, 2017 PA O.O.R.D. LEXIS 1685. As such, the Borough met its burden of proof that it conducted a good faith search and provided all the records within its possession, custody and control that are responsive to this Request. *Hodges*, 29 A.3d at 1192.

The Requester argues that other responsive records should exist based on information he obtained from prior RTKL requests that demonstrate the records provided do not comport with the Borough’s policy or prior records; however, the OOR makes no determination as to whether records should exist, only whether the Borough possesses them. *Gorol v. Forest Hills Borough*, OOR Dkt. AP 2019-0329, 2019 PA O.O.R.D. LEXIS 427 (“While...evidence may establish that a [record] should exist, the OOR lacks jurisdiction to rule on the propriety of the lack of such [record] – the OOR may only determine whether a responsive record does, in fact, exist.”). Accordingly, the Borough has met its burden proving that it provided all responsive records, and

no additional responsive records exist in its possession, custody or control. *Hodges*, 29 A.3d at 1192.

### CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Borough 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 Bucks 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 Section 1303 of the RTKL. 65 P.S. § 67.1303. 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.<sup>1</sup> This Final Determination shall be placed on the website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: June 14, 2022**

*/s/ Lois Lara*

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APPEALS OFFICER  
LOIS LARA, ESQ.

Sent to: Terry Trexler, (via email only)  
Nicole L. Feight, Esq. (via email only)  
Judy Musto (via email only)

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<sup>1</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).