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IN THE MATTER OF	:	DISTRICT ATTORNEY'S OFFICE
	:	
LISA TRUDEL,	:	CHESTER COUNTY, PENNSYLVANIA
Requester	:	
	:	RIGHT TO KNOW APPEAL
v.	:	
	:	FINAL DETERMINATION
EAST BRANDYWINE TWP.	:	
POLICE DEPARTMENT,	:	DA-RTKL-A NO. 2023-011
Respondent	:	

**INTRODUCTION**

On November 6, 2023, Requester filed a right-to-know request with the Respondent, pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*. On November 8, 2023, the request was denied. On November 13, 2023, Requestor appealed to the Chester County District Attorney's Office. This appeal was received on November 15, 2023. For the reasons set forth in this Final Determination, the appeal is **DENIED** and the Respondent is not required to take any further action.

## FACTUAL BACKGROUND

On November 6, 2023 Requester filed a right-to-know request with the Respondent, pursuant to the Right to Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*, requesting:

Since 1993 to present if can't or since 2007 to present call list for security. Mark address you can call him \*\*\*-\*\*\*-4921 to see where.<sup>1</sup>

November 6, 2023 Right-to-Know Form, p. 1. On November 8, 2023, the request was denied by letter, stating in part:

Your request is denied as it is too broad and incomprehensible for us to decipher what records you are requesting.

November 8, 2023 Right-to-Know Response, Deputy Chief Jeffery C. Yankanich, p. 1. On November 13, 2023, Requester appealed to the Chester County District Attorney's Office. This appeal stated in part:

I suppose this is my right to appeal this request. I hoped that you can accomplish the task as well as considering that someone is not taking my health seriously or my family life as a parent in the county as well as many other things like studying in a home for getting a job outside the home and being record in a vehicle as well as airtalk all over the place.

I have asked for records for right to know for our home address. I put from 1993 as this is when our deed records date is listed for the home. My husband left the home in 2016 with minor children.

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<sup>1</sup> The phone number listed has been redacted by this Appeals Officer.

Please note, that today I received a notice from the East Brandywine Township a copy of this letter dated November 8, 2023.

I want a copy of the records to see if they have reported accuracy with relation to what has happened since my husband has left our home. As well as before when I don't think we had many problems.

The police in the township recommend an electrical panel for need in our home and I had to price out accordingly. It is a 6000.00 panel that I am uncertain if truly not a commercial panel versus residential as it is labeled differently than Tired Tom the electrician had wired for Mark when he had moved in I think. As he and his friend Andrew Motel an attorney in West Chester lived together as roommates in this home.

Chief Kelly and Brittany and the District Attorney have been met. I never heard back from the District Attorney when I called years ago. I have also placed a call to another District Attorney in another area out of worry.

I was told by Chief Kelly it was medical that was doing this to me with shocking through Radio Frequency and other areas as well as medication management zero medication. As this is what I have raised our children like in this home and before unless there truly was a need for medication or was it more threatening in it's behavior or don't read it just take it kind of thing. Ask your attorney for a malpractice attorney name is what chief said, I've yet to hear.

I need medical attention I have for quite some time due to allergens that are not being taken seriously. Dr. Beth Bingamin is my primary care physician since 2019. A year after a testimony there and elsewhere had already been addressed.

Nurse Barbara from Dr. Daniel Beninati's office explained after the fact what it would feel like with an object I am allergic to and nobody has retrieved out of me and I did not ask for this or other devices or implants or recordings or hannus treatment in a home

I am not moving from. I have asked whom is doing this shock and stim and talk in my body as even Dr. Beth Bingamin and the PUC if listened to the phone would know of problems that others have put inside of me and our home and are hovering for quite some time now in murdering me in it that might be on the security list from Stanley which I will not connect to this through our phone anymore.

Our property is posted and someone is in and out of this property and whom is it? I'd like to know.

Please also see the letter Chief Kosci sent to me in an email. Am I breaching the rights of the others by sending the email to all in the police department is this against the law too? I addressed an email. I'll include Mark on this as it is a join marital property that I raised our children in both minors and until one left pre-college summer to grandmother's I have no idea why I can't be on that property are they allowed on this property? Are we divorced yet? As Mark wanted one.

I don't know what to do as the county did not support even after a parenting meeting of minors that they did not help assist me with anything.

Please let me know how I'm going to get the implants and devices and products out my family respect and togetherness back and a quiet home and car and everything else and the people that are doing things they should not to stop. I have never filled out a PUC form and this lady is tough in Harrisburg and I keep thinking I'm helping myself and she comes back just the police and people walking all over me for 12 years now 8 phones later in this township. (Even longer truly)

Thanks, I hope to receive at least 96 to present. I thought Mark might want since his big stick was LISA BE ACCOUNTABLE FOR YOUR ACTIONS!

~~I could go on for now maybe someone can help as I just mailed multiple mailings to Premier Orthopaedics for the one object asked for to be placed in my body which needs to be removed as~~

well. Dr. Beninati's is most hannus with the Radio Frequency how do they do this everywhere on me? Nurse Barbara liked AXIA. I went and told them no shock nor stim 1 out of 35 patients that did not ask Emily nor Sara for this on pt which I can longer even get on a bike or a lot of other things. Please do advise.

November 13, 2023 Letter of Lisa Trudel, pp. 1-3.

On November 15, 2023, this Appeals Officer for the Chester County District Attorney's Office gave Notice to the parties of the following:

On September 13, 2023<sup>2</sup>, Requester filed a right-to-know request with the Respondent, pursuant to the Right to Know Law ("RTKL"), 65 P.S. § 67.101, *et. seq.*. On November 8, 2023, the request was denied. On November 13, 2023, Requestor appealed to the Chester County District Attorney's Office. This appeal was received on November 15, 2023.

Unless the Requester agrees otherwise, as the appeals officer, I shall make a final determination, which shall be mailed to the Requester and the Respondent, **within 30 days of November 15, 2023 which is Friday, December 15, 2023.** 65 P.S. § 67.1101(b)(1). If a final determination is not made within 30 days, the appeal is deemed denied by operation of law. 65 P.S. § 67.1101(b)(2). Prior to issuing a final determination, a hearing may be conducted. However, a hearing is generally not needed to make a final determination. The final determination shall be a final appealable order and shall include a written explanation of the reason for the decision. 65 P.S. § 67.1101(b)(3).

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<sup>2</sup> The correct date is November 6, 2023. Requester had previously filed a RTK Request on September 13, 2023 that was denied and never appealed.

**The Respondent should submit any response on or before November 27, 2023**

***The Respondent should note:*** The Supreme Court has held that a Respondent is permitted to assert exemptions on appeal, even if the agency did not assert them when the request was originally denied. Levy v. Senate of Pennsylvania, 619 Pa. 586, 65 A.3d 361 (2013). **Merely citing exceptions to the required disclosure of public records or conclusory statements are not sufficient to justify the exemption of public records.** Office of the Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Cmwlth. 2013).

**The Requester should submit any response on or before December 4, 2023.**

***The Requester should note:*** The Commonwealth Court has held that, pursuant to 65 P.S. § 67.1101(a), the appeal shall state the grounds upon which the Requester asserts that the record is a public record and shall address any grounds stated by the agency for denying the request. **When a Requester fails to state the records sought are public, or fails to address an agency's grounds for denial, the appeal may be dismissed.** Padgett v. Pennsylvania State Police, 73 A.3d 644 (Pa. Cmwlth. 2013); Saunders v. Department of Correction, 48 A. 3d 540 (Pa. Cmwlth. 2012); Department of Corrections v. Office of Open Records, 18 A.3d 429 (Pa. Cmwlth. 2011).

**Any statements of fact must be supported by an Affidavit made under penalty of perjury by a person with actual knowledge.** However, legal arguments and citation to authority do not require Affidavits.

November 15, 2023, Letter of Assistant District Attorney Daniel E. Roland, Esq.,

Appeals Officer, at 1 – 2 (emphasis in original).

The Respondent did not submit a response. The Requester did not submit a relevant response.<sup>3</sup> Consequently, this decision is based on the initial request and response, and the appeal documents.

### LEGAL ANALYSIS

The Chester County District Attorney's Office is authorized to hear appeals relating to access to criminal investigative records in the possession of a local agency located within Chester County. 65 P.S. §67.503(d)(2) ("The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter

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<sup>3</sup> After this Appeals Officer e-mailed the parties the November 15, 2023 letter, Requester responded on November 17, 2023 with a 1,423 word e-mail repeating the irrelevant allegations, in addition to many others, made in the November 13, 2023 appeal letter. In this e-mail, Requester failed to provide any reason her RTK Request should be granted beyond "I am asking for this information again as I have asked for this before." Additionally, Requester included 10 parties unrelated to her appeal on this e-mail. This Appeals Officer sent a reply to Requester and Respondent, stating:

My e-mail was clear, you were only to send a response in accordance with letter I provided regarding your right to know appeal.

All responses should be limited to myself and the East Brandywine Township Police Department email ([ebtpd@ebtpd.org](mailto:ebtpd@ebtpd.org)). I have included the EBTPD on this e-mail as you did not do so in your correspondence. I do not know who these other e-mails are but they are not to be included in any future correspondence in this matter for any reason.

It is inappropriate to include parties not involved in the matter before me as an Appeals Officer.

Please abide by the letter that was provided to you.

November 17, 2023 E-Mail of Assistant District Attorney Daniel E. Roland, Esquire. Since the sending of the November 17, 2023 e-mail, Requester has sent **25 e-mails** totaling **264 pages** to this Appeals Officer, each time including irrelevant parties ranging from Requester's former spouse, the Red Cross, the Chester County Coroner's Office, various doctor's office, and members of the Catholic Church. These e-mails, by virtue of being correspondence in this RTK Appeal, are included in the appendix but in no way offer evidence or affidavits as to why the Requester's Appeal should be granted.

11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.”).

The East Brandywine Township Police Department (“Respondent”) is a local agency subject to the RTKL that is required to disclose public documents. 65 P.S. §67.302. Records of a local agency are presumed “public” unless the record: (1) is exempt under 65 P.S. §67.708(b); (2) is protected by privilege; or (3) is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. §67.305. “Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. §67.306.

The Respondent bears the burden of proving, by a preponderance of the evidence, that the document requested is exempt from public access. 65 P.S. §67.708(a)(1). A preponderance of the evidence standard is the lowest evidentiary standard. The preponderance of evidence standard is defined as the greater weight of the evidence, *i.e.*, to tip a scale slightly is the criteria or requirement for preponderance of the evidence. Commonwealth v. Brown, 567 Pa. 272, 284, 786 A.2d 961, 968 (2001), *cert. denied*, 537 U.S. 1187, 123 S.Ct. 1351, 154 L.Ed.2d 1018 (2003). “A ‘preponderance of the evidence’ is defined as ‘the greater weight of the evidence ... evidence that has the most convincing force; superior evidentiary



weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other...’ Black’s Law Dictionary 1301 (9th ed. 2009).” Mitchell v. Office of Open Records, 997 A.2d 1262, 1264 n.3 (Pa. Cmwlth. 2010); See also Commonwealth v. Williams, 532 Pa. 265, 284-286, 615 A.2d 716, 726 (1992) (preponderance of the evidence in essence is proof that something is more likely than not).

Under the RTKL, an affidavit may serve as sufficient evidence to support an appeals officer’s decision. Office of Governor v. Davis, 122 A.3d 1185, 1194 (Pa.Cmwlth. 2015); 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) (affidavit suffices to establish nonexistence of records). In the absence of any evidence that a Respondent has acted in bad faith, the averments in an affidavit should be accepted as true. McGowan v. Pa. Dep’t of Env’tl. Prot., 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014); Office of the Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013).

Based on the evidence provided, the Respondent has met its burden of proof, as the Right to Know request is overbroad and insufficiently specific, and complying with the request would be impractical and burdensome for the Respondent.

The RTKL provides that:

A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by agency rules, by any other electronic means. A written request must be addressed to the open-records officer designated pursuant to section 502.1 Employees of an agency shall be directed to forward requests for records to the open-records officer. **A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested and shall include the name and address to which the agency should address its response.** A written request need not include any explanation of the requester's reason for requesting or intended use of the records unless otherwise required by law.

§ 67.703. Written requests, PA ST 65 P.S. § 67.703 (emphasis added). The central question in evaluating the adequacy of a request is whether the request “sufficiently informs an agency of the records requested.” Department of Corrections v. St. Hilaire, 128 A.3d 859, 863 (Pa.Cmwlt., 2015). An open-ended request that gives an agency little guidance regarding what to look for may be so burdensome that it will be considered overly broad. Mollick v. Township of Worcester, 32 A.3d 859, 871 (Pa.Cmwlt.2011). In Mollick, the Commonwealth Court considered a request that sought, among other things, “(1) all emails between the Supervisors regarding any Township business and/or activities for the past one and five years; and (2) all emails between the Supervisors and the Township employees regarding any Township business and/or activities for the past one and five years.” Mollick, 32 A.3d at 871. The Commonwealth Court held that the request was insufficiently specific because it failed “to specify what category or type of Township business or activity for which [the requestor was] seeking information.” Id. The court further

stated that “it would place an unreasonable burden on an agency to examine all of its emails for an extended time period without knowing, with sufficient specificity, [to] what Township business or activity the request is related.” Id.

The request at issue here is similar to Mollick, in that Requester seeks supposedly all records from 1993 to present or in the alternative, 2007 to present, without specifying what category or type of records, or in what context she is seeking these records from for a requested period of 30 years. Outside of this 30 year (or 16 year) period, Requester fails to specify any details about the records sought. Because of this, there is no context for which the Respondent could look to regarding the nature of the records. Without any context or specificity, the Respondent cannot narrow down their search, or even begin to search for that matter.

The fact that a request is burdensome will not, in and of itself, deem the request to be overbroad. Office of the District Attorney of Philadelphia v. Bagwell, 155 A.3d 1119, 1143 (Pa.Cmwlt., 2017). However, an open-ended request that fails to give a local agency guidance in its search for the information sought may be so burdensome that the request will be found overbroad under the RTKL. Id. There can be no doubt that the request in this appeal is both open-ended and burdensome. A request for “[s]ince 1993 to present if can’t or since 2007 to present call list for security” provides no guidance to the Respondent on what records to search for outside of the 30 year period for which the Requester seeks.


As stated above, there is sufficient evidence to support the determination that the request is overly broad and lacks sufficient specificity for the Respondent to comply with.

## CONCLUSION

For the foregoing reasons, the appeal is **DENIED**, and the Respondent is not required to take any further action. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may petition for review, to the Chester County Court of Common Pleas, pursuant to 65 P.S. §67.1302(a). All parties must be served with a copy of the petition. The Chester County District Attorney's Office shall also be served with a copy of the petition, pursuant to 65 P.S. §67.1303(a), for the purpose of transmitting the record to the reviewing court. See East Stroudsburg University Foundation v. Office of Open Records, 995 A.2d 496, 507 (Pa. Cmwlth. 2010).

**FINAL DETERMINATION ISSUED AND EMAILED ON: December 15, 2023**

APPEALS OFFICER:

  
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## **INDEX OF APPENDICES**

**APPENDIX "A"** Appeal Documents

**APPENDIX "B"** November 15, 2023 Letter of Assistant District Attorney Daniel E. Roland, Esquire, Appeals Officer for District Attorney's Office of Chester County

**APPENDIX "C"** November 6, 2023 Right-To-Know Request

**APPENDIX "D"** Requester E-Mails

# APPENDIX “A”

# APPENDIX “B”



# APPENDIX “C”

# APPENDIX “D”