



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**TERRENCE BELL,  
Requester**

**v.**

**COLLIER TOWNSHIP,  
Respondent**

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**Docket No: AP 2024-0604**

### **FACTUAL BACKGROUND**

On February 21, 2024, Terrence Bell (“Requester”) submitted a request (“Request”) to Collier Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...

[1.] I also want a step-by-step calculation of the 2024 [Fuel Cost Adjustment] to be provided by the Township Manager...further investigation of the [Solid Waste Contract] produced other questions that I want answered as part of this [Request].

[2.] Question 1...Did the Township ever check this formula to determine if it was correct?...

[3.] Question 2...Why did the Township execute a contract with such a glaring refuse truck fuel consumption error?

[4.] Question 3...Why was an inflated number of vehicles used in this formula?

[5.] Question 4...Why then does the FCA formula use 4.33 weeks as a customer month?

[6.] Question 5...Why did the Township accept the higher [route vehicles] and [weeks per month], when the lower values for [route vehicles] and [weeks per month] were attainable[?] Why accept a 44% increase in this [solid waste disposal] cost comparison?

[7.] Question 6...The bid was to be for 3826 units[,] but the contract was executed for 2719 units? Please explain.

...I am seeking answers to these questions.

On February 28, 2024, the Township denied the Request, stating that the Township is not required to answer questions, the Requester did not request records and no records exist that are responsive to the Request.

On March 4, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>1</sup> Specifically, the Requester argues that the Township did not address Item 1 of the Request and asserts the six questions contained in the Request concern taxpayer funds expended for solid waste disposal.<sup>2</sup> The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 15, 2024, the Township submitted a position statement and provided records responsive to Item 1 of the Request.<sup>3</sup> On March 20, 2024, the Township submitted an attestation

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<sup>1</sup> The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

<sup>2</sup> The Requester also provided his basis for the Request; however, under the RTKL, whether the documents are accessible is based only on “whether a document is a public record, and if so, whether it falls within an exemption that allows that it not be disclosed. The status of the individual requesting the record and the reason for the request, good or bad, are irrelevant as to whether a document must be made accessible under Section 301(b) [of the RTKL].” *Hunsicker v. Pa. State Police*, 93 A.3d 911, 913 (Pa. Commw. Ct. 2014); *see also* 65 P.S. § 67.102; 65 P.S. § 67.305; *Cafoncelli v. Pa. State Police*, 2017 Pa. Commw. Unpub. LEXIS 405 (Pa. Commw. Ct. 2017) (citing *Hunsicker*).

<sup>3</sup> Via submissions on March 18 and March 25, 2024, the Requester indicates in response to the records provided by the Township, that the calculations are to be performed by the Township Manager, not by the hauler of the contract. The Requester further claims the calculations are incorrect; however, the determination whether the calculations are performed or endorsed by the correct entity or whether the calculations are correct is not within the jurisdiction of the

made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by George Macino (“Macino Attestation”), the Township Manager. The Township asserts no additional responsive records exist in its possession, custody or control.<sup>4</sup>

### LEGAL ANALYSIS

The Township 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 law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Township is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). 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.” *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).

#### **1. The appeal as it relates to the records provided is moot**

During the pendency of the appeal, the Township provided records responsive to Item 1 of the Request. As such, the appeal as to the records provided on appeal is dismissed as moot. *See Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. 2019) (holding that an appeal is properly dismissed as moot where no controversy remains).

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OOR. As a result, these issues will not be addressed in this Final Determination.

<sup>4</sup> All submissions made by the Township and the Requester were received after the record closed; however, to develop the record, the submissions were considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

## **2. Items 2-7 of the Request do not seek records**

Section 703 of the RTKL states, “[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. Records are defined as “information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.” 65 P.S. § 67.102.

The Township asserts that Items 2-7 of the Request do not seek records under the RTKL. Under the RTKL, a request must seek records rather than answers to questions. *Walker v. Pa. Ins. Dep’t*, No. 1485 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 425 at \*16 (Pa. Commw. Ct. 2012) (“The RTKL is not a forum for the public to demand answers to specifically posed questions to either a Commonwealth or local agency. In fact, there is no provision in the RTKL that requires an agency to respond to questions posed in a request.”); *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at \*14 (Pa. Commw. Ct. 2012) (noting that the portion of a request “set forth as a question” did not “trigger a response” ); *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (“The [RTKL] did not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens access to existing public records”).

Looking at the original Request, it is evident that the Requester is requesting answers and explanations in regard to specific questions. The OOR cannot refashion a question into a request for records. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct.

2010) (“Nowhere in [the RTKL] has the General Assembly provided that the OOR can refashion the request”). Further, Items 2 through 7, as written, include question marks, and seek to receive answers, i.e., why certain decisions were made by the Township and explanations regarding those decisions, rather than responsive documents. *See Faggiolo v. Aston Twp.*, OOR Dkt. AP 2022-0934, 2022 PA O.O.R.D. LEXIS 1479 (holding that the presence or absence of a question mark is not determinative as to whether a request asks a question). The Requester further confirms in the Request, “I am seeking answers to these questions.” Accordingly, the Items 2 through 7 of the Request did not trigger a response under the RTKL. Because Items 2 through 7 of the Request do not seek records as required by the RTKL, the OOR does not have jurisdiction over these portions of the Request.<sup>5</sup>

### **3. The Township demonstrated it does not possess additional responsive records**

The Township asserts that other than the records provided, no further records responsive to Item 1 of the Request exist in the Township’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 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 potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

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<sup>5</sup> Nothing in this Final Determination prevents the Requester from filing a RTKL request for records pertaining to the same information, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

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).

Here, the Item 1 of the Request seeks a step by step fuel cost adjustment, which was provided during the pendency of the appeal. In support of the Township's argument that it does not possess any further responsive records, the Macino Attestation indicates, in relevant part, as follows:

1. In my capacity as Township Manager, I am aware of and familiar with the Solid Waste Collection contract the Township has with Republic Services.
2. The document previously supplied by the Township in this [R]equest is the only document associated with the calculation requested by the Requester.
3. A search of Township records show no other documents exist or any documents are available to the best of my knowledge aside what was previously provided.

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 Township has acted in bad faith or that additional responsive records exist, "the averments in the [attestation] 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)).

The Township's attestation is authored by the Township Manager, an individual with knowledge of the Township's Solid Waste Collection contract. The Township has demonstrated

that its Manager conducted a good faith search, which included a search of Township records. Additionally, the Township's position statement explains that the Township Manager did not make the calculation—the calculation was made by the hauler of the Contract, i.e. Republic Services, as noted by the Requester in the original Request. *See* Township Position Statement p. 1. Based on the evidence provided, the Township has demonstrated that it does not possess additional records responsive to Item 1 of the Request. There has been no sufficient evidence provided that otherwise contradicts the statements offered by the Township in the attestation submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the Township has met its burden of proof that additional records responsive to Item 1 of the Request do not exist.<sup>6</sup> *Hodges*, 29 A.3d at 1192.

### CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed in part**, and the Township 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 to the Allegheny 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 as per Section 1303 of the RTKL; 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>7</sup> 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent

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<sup>6</sup> The OOR makes no determination as to whether additional records *should* exist, as our inquiry is limited to only whether or not records are “in existence and in possession of the ... agency at the time of the right-to-know request.” *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705.

<sup>7</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at:  
<http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: March 28, 2024**

*/s/ Bandy L. Jarosz*

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BANDY L. JAROSZ, ESQ.  
APPEALS OFFICER

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Michael Santicola, Esq. (via portal only)  
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