pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
RYAN MILLER,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-1329**
	:	
OCTORARA AREA SCHOOL DISTRICT,	:	
Respondent	:	

FACTUAL BACKGROUND

On March 3, 2026, Ryan Miller ("Requester") filed two requests ("Requests") with the Octorara Area School District ("District") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*. The first Request sought records sufficient to show:

> 1. The factual or legal basis relied upon by the District when treating the referenced litigation as a District or official-capacity lawsuit, including any internal memoranda, correspondence, legal analysis, or insurer communications supporting that characterization.
>
> 2. Records reflecting how the District addressed or reconciled objections raised by Director Anthony Falgiatore regarding the use of District funds for legal expenses associated with the matter, including whether the characterization of the litigation as a District or official-capacity matter was relied upon in overruling or disregarding those objections.
>
> a. (Submission File: Mentions by name emails(9301009.1)_Redacted.pdf) Pages: 113 & 114)
>
> b. … District Minutes (11/20/23)
>
> i. Page 1 (Director Anthony Falgiatore Objection)

ii. Page 1 Records sufficient to show the basis for the statement reflected in the … District Regular Meeting Minutes dated November 20, 2023, Page 1, wherein it is recorded that "Mr. Pratt confirmed the lawsuit is not a private person capacity lawsuit."

3. Records reflecting any correction, clarification, or retraction of prior characterizations where statements describing the litigation as a District or official-capacity matter conflicted with pleadings, captions, or filings in the underlying case.

4. Communications between the District, its solicitor, and any insurer or outside counsel (including but not limited to AIG or Carlton Fields) that reference or rely upon the characterization of the litigation as a District matter, including records reflecting whether such communications were treated as opinion, assessment, or factual determination.

5. Records identifying the source documents (e.g., pleadings, court orders, filings, or legal opinions) relied upon when such characterization was communicated to third parties or used in authorizing legal expenditures.

The second Request sought:

1. The original written trespass notice (or "no trespass" letter) issued to [the Requester], including all versions, drafts, or reissues.

2. Any record identifying the author, approving authority, or issuing official for that trespass notice.

3. Any internal communications (emails, memoranda, or directives) authorizing, directing, or discussing issuance of the trespass notice prior to or contemporaneous with its issuance.

4. The record(s) authorizing rescission of the trespass notice, including the date of authorization and the individual(s) or body granting such authorization.

5. Any internal communications, directives, or memoranda implementing the rescission of the trespass notice.

6. Any records reflecting removal, correction, or update of internal District records, databases, logs, or alerts relating to the trespass notice following rescission.

7. Any communications transmitting notice of rescission of the trespass notice to:
   - ○ school security personnel,
   - ○ local law enforcement,
   - ○ Pennsylvania State Police,
   - ○ or any other enforcement or governmental entity.

> ○ including any lists, alerts, bulletins, or internal/external notices identifying the Requester as barred from property or events.
>
> 8. Any records reflecting decisions not to notify such entities, if applicable.
>
> 9. Any written probable cause affidavit, statement, report, or narrative authored by District personnel (including but not limited to Michelle Orner) and provided to the Pennsylvania State Police or other law-enforcement agency in connection with issuance of a trespass warning or enforcement action involving the Requester.
>
> 10. Any transmittal records (email, fax, letter, or attachment) by which such affidavit or statement was provided to law enforcement.
>
> 11. Any internal communications discussing preparation, submission, or reliance upon such affidavit or statement.

On April 1, 2026, after invoking a thirty-day extension to respond, the District denied Items 1-3 and 5 of the first Request, arguing that they ask questions, seek to obligate legal research or are otherwise insufficiently specific. *See* 65 P.S. § 67.703. To the extent these Items properly seek records, the District argues that records either do not exist or are subject to various RTKL exemptions, *see* 65 P.S. §§ 67.708(b)(10), (17), (27). The District argues that Item 4 expressly seeks records that are protected by the attorney-client privilege and that the pleadings and court documents mentioned in Item 5 are available from the judiciary. The District also argues that the Request is duplicative and burdensome. The District argues that it already provided a number of records that are responsive to the second Request and argues that it is duplicative and burdensome.

On April 3, 2026, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the District to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 17, 2026, the Requester submitted two position statements, reiterating that the Request was materially different from previous requests and the District's response did not identify

which portions of the previous requests were answered. On the same date, the Requester agreed to an extension of the Final Determination due date. *See* 65 P.S. § 67.1101(b)(1). On April 20, 2026, the Requester submitted an additional position statement, and on June 9, 2026, the Requester responded to the OOR's request for clarification about the scope of the appeal. The District did not make a submission on appeal.

LEGAL ANALYSIS

The District 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 District 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)).

1. The District has not proven that the second Request is duplicative and burdensome

The District argues that the first Request is duplicative and burdensome. Section 506(a) of the RTKL provides that "[a]n agency may deny a requester access to a record if the requester has made repeated request for that same record and the repeated requests have placed an unreasonable burden on the agency." 65 P.S. § 67.506(a). "Under this section … an agency must demonstrate that (1) 'the requester has made repeated requests for th[e] same record[(s)]' and (2) 'the repeated requests have placed an unreasonable burden on the agency.'" *Pa. Off. of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011); *see also Brown v. Pa. Commission on Crime and*

Delinquency, OOR Dkt. AP 2018-0451 ("A repeated request alone is not enough to satisfy § 506(a)(1)") (internal citations omitted). Here, however, the District has submitted no evidence that the first Request is duplicative or burdensome. Accordingly, the District must produce all records responsive to the second Request.[1]

2. Requests cannot ask questions or require legal research

The District argues that Items 1-3 of the first Request seek questions or require legal research. RTKL requests must seek existing records and cannot simply ask questions. *See 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," but asking rhetorically how a request for information is not a request for records).

In a related vein, the Commonwealth Court has found that "[a] request that explicitly or implicitly obliges legal research is not a request for a specific document; rather it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request." *Askew v. Pa. Off. of the Governor*, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013); *see also Gingrich*, 2012 Pa. Commw. Unpub. LEXIS *14 (holding that a request to verify certain information may involve research and was therefore inappropriate).

[1] 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 District has not presented evidence as to what records exist, the District has not met its burden of proof. The District is therefore directed to conduct a good faith search for records responsive to the Request as set forth in 65 P.S. § 67.901, and provide any records discovered as a result of that search. If no records are located as a result of this search, the District shall inform the Requester of such in writing.

Item 1 seeks "[t]he factual or legal basis relied upon by the District" to treat the litigation in a certain way. The OOR has previously held that a request for an agency to identify the legal authority to take specific actions would require an agency to conduct legal research. *See Reasbeck v. Pa. Dep't of Community and Econ. Dev.*, OOR Dkt. AP 2026-0483, 2026 PA O.O.R.D. LEXIS 948 (holding that a request seeking records reflecting internal policy, instruction, guidance, directive or law relied upon to authorize or justify certain actions; *Rogers v. Lycoming Cnty.*, OOR Dkt. AP 2022-1027, 2022 PA O.O.R.D. LEXIS 1271 (holding that a request seeking authority to tax a property required legal research). Thus, the Item requires legal analysis and does not seek a particular record. While it does state that it includes "internal memoranda, correspondence, legal analysis, or insurer communications," the plain language of the Item seeks to require the District to research whether it relied on a given record to reach a legal conclusion.

In a similar vein, Item 2 seeks an explanation of how the District "addressed or reconciled objections" and requests "records sufficient to show the basis" for a statement made by a Board member discussing the Solicitor's legal opinion. To provide the requested explanation and to produce records sufficient to show the basis for a statement regarding the characterization of a lawsuit would require the District to conduct legal research. Further, as the Requester disavows interest in privileged records, it is not entirely clear what records might exist that would not be privileged.

The District argues that Item 3 does not seek identifiable records, but instead requires the District to determine whether any "correction, clarification, or retraction" occurred in circumstances where prior characterizations allegedly "conflicted with pleadings, captions, or filings," which would require the District to analyze and compare records, assess alleged inconsistencies and identify responsive materials based on that analysis. As Item 3 conditions the

identification of responsive records on an assessment of legal filings, the OOR finds that it improperly requires legal research.

As Items 1-3 impermissibly ask questions or would require the District to conduct legal research, they are not valid requests for records.

3. The District has not proven that records responsive to Item 4 of the first Request are exempt or privileged

The District argues that Item 4 of the first Request seeks exempt correspondence with its insurance carrier, *see* 65 P.S. § 67.708(b)(27), and records that are protected by attorney-client privilege and/or the attorney-work product doctrine. However, the District identifies no particular responsive documents and provides no evidence. *See Scolforo v. Off. of the Governor*, 65 A.3d 1095, 1130 (Pa. Commw. Ct. 2013) ("[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records"); *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 659 (Pa. Commw. Ct. 2016) ("Affidavits that are conclusory or merely parrot the exemption do not suffice"); *W. Chester Univ. of Pa. v. Schackner et al.*, 124 A.3d 382, 393 (Pa. Commw. Ct. 2015) ("The evidence must be specific enough to permit this Court to ascertain how disclosure of the entries would reflect that the records sought fall within the proffered exemptions") (citing *Carey*, 61 A.3d at 375-79). As such, the District has failed to meet its burden of proving that any records responsive to Item 4 are exempt or privileged.

4. Item 5 of the first Request is insufficiently specific

The District argues that Item 5 of the first Request is not sufficiently specific to enable it to locate responsive records. Section 703 of the RTKL states that "[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. When determining whether a particular request is sufficiently specific, the OOR undertakes a nonexclusive, multi-factor test, considering

"the extent to which the request specifies subject matter, the extent to which it defines the scope of the records it seeks, and the extent to which it limits the timeframe of the request." *Pa. Off. of the Governor v. Brelje*, 312 A.3d 928, 937 (Pa. Commw. Ct. 2024) (citing *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015)). The test is not "a conjunctive, bright-line rule requiring each 'element' of the test to be satisfied; rather, it [is] a flexible approach" consistent with relevant caselaw. *Id*.

First, "[t]he subject matter of the request must identify the 'transaction or activity' of the agency for which the record is sought." *Pittsburgh Post-Gazette*, 119 A.3d at 1125 (quoting 65 P.S. § 67.102). Second, "[t]he scope of the request must identify 'a discrete group of documents, either by type … or by recipient.'" *Id.* (quoting *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). Finally, "[t]he timeframe of the request should identify a finite period of time for which records are sought." *Id*. at 1126 (citing *Carey*, *supra*). "The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request's timeframe is narrow enough is generally dependent upon the specificity of the request's subject matter and scope." *Id.*

The above factors are intended "to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested …. The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements." *Pa. Dep't of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022).

Here, an initial examination Item 5 establishes that its subject matter is the authorization of legal expenditures related to the referenced litigation, and although the Item lacks an express time frame, one can be implied from the dates of the litigation. In terms of scope, the Item seeks "source documents," and provides as examples pleadings, court orders, filings or legal opinions.

Upon closer analysis, however, it is unclear what exactly the Item is seeking. If court documents are available from the court and not under the RTKL, *see* 65 P.S. §§ 67.102, 503(b), and the Requester does not seek privileged records, the Item does not provide sufficient context to guide a search. Locating potentially responsive records would require the District to make judgment calls as to whether a given record is actually responsive to the Request. *See Off. of the Dist. Att'y of Phila. v. Bagwell*, 155 A.3d 1119, 1145 (Pa. Pa. Commw. Ct. 2017) (holding that a request is sufficiently specific where it enumerates a "clearly defined universe of documents."); *Pa. Dep't of Env't Protection v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) (finding that a request that sought a clearly defined universe of responsive records and did not require judgments to be made as to the relation of the documents to the request was sufficiently specific). Accordingly, Item 5 is insufficiently specific. *See* 65 P.S. § 67.703.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**, and within thirty days, the District is required to produce records responsive to Item 4 of the first Request. The District is also required to conduct a good faith search for records responsive to the second Request and produce all responsive records discovered thereby. If certain requested records are not located, the District 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 to the Chester 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, 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any

appeal and should not be named as a party.[2] 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: June 26, 2026

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

Delivered via OOR E-file Appeal Portal to: Ryan Miller; Audrey Flojo

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