

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF

**DARWIN LEUBA,
Requester**

v.

**WEST YORK BOROUGH POLICE
DEPARTMENT,
Respondent**

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Docket No: AP 2026-3954

FACTUAL BACKGROUND

On July 29, 2026, Darwin Leuba (“Requester”) submitted a request (“Request”) to West York Borough Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

All records identifying the officers of the [Department] credentialed, certified, trained, or nominated under the 287(g) program at any time during the period January 1, 2025 – July 29, 2026, including any officer whose credential took effect before January 1, 2025 and remained in effect during any part of that period, and the date each credential took effect and, where applicable, ended, regardless of when the record was created. This includes but is not limited to any roster, list, spreadsheet, certification log, or nomination sent to or received from U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), Homeland Security Investigations (HSI), the U.S. Department of Homeland Security (DHS), or the U.S. Marshals Service, and each version of any such roster or list in effect at any point during the period. If the agency withholds any name, please state the exemption relied on for that individual; redact each name separately rather than obscuring whole rows or columns; and leave dates, punctuation, numbering, and row structure intact, so that the number of officers listed remains apparent from the record.

On August 25, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department denied the Request pursuant to 65 P.S. § 67.708(b)(1)(ii).

On September 16, 2026, the Requester appealed to 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 Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On October 1, 2026,¹ the Department submitted a position statement reiterating its grounds for denial. In support of its position, the Department submitted the attestation made under penalty of perjury² authored by Matthew J. Millsaps (“Millsaps Attestation”), the Department’s Chief of Police.

On October 15, 2026, the OOR directed the Department to identify the responsive records to this Request and to indicate whether responsive records must be withheld in their entirety or could be redacted.

On October 15, 2026, the Department submitted a supplemental position statement, indicating that the records must be withheld in their entirety to ensure the personal safety of the Department’s officers.

LEGAL ANALYSIS

The Department 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 Department is required to demonstrate, “by a preponderance of the evidence,”

¹ While the Department’s submission was late, it is still accepted into the record for its probative value. *See* 65 P.S. 67.1102(a)(2) (stating that “[t]he appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute”).

² 18 Pa. C.S. § 4904.

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)).

The Department asserts that responsive records must be withheld because release would be reasonably likely to threaten the personal security of an individual. *See* 65 P.S. 67.708(b)(1)(ii). Section 708(b)(1)(ii) of the RTKL exempt from public disclosure a record that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” 65 P.S. § 67.708(b)(1)(ii). To establish that Section 708(b)(1)(ii) of the RTKL applies, an agency must show: (1) a “reasonable likelihood” of (2) “substantial and demonstrable risk” to a person’s security. *Del. Cnty. v. Schaefer*, 45 A.3d 1149 (Pa. Commw. Ct. 2012). The Commonwealth Court has held that “[b]elief alone without more, even if reasonable, does not meet this heightened standard.” *See Lutz v. City of Phila.*, 6 A.3d 669, 676 (Pa. Commw. Ct. 2010) (holding that “[m]ore than mere conjecture is needed” to establish that this exemption applies); *see also California Borough v. Rothey*, 184 A.3d 456, 468 (Pa. Commw. Ct. 2018) (holding that in order to show a reasonable likelihood, “[a]n agency must offer more than speculation or conjecture to establish the security-related exceptions under the [RTKL]”).

In support of its position, the Department relies on *Ciavaglia v. Bucks Cnty. Sheriff’s Office*, OOR Dkt. AP 2025-2649, 2025 PA O.O.R.D. LEXIS 3175, *16 . In *Ciavaglia*, the OOR determined “[w]hile there is a clear public interest in the training certification of law enforcement, the OOR finds that the Office has met its burden of proof by a preponderance of the evidence

that the disclosure of the responsive 287(g) certification records poses a likelihood of a substantial and demonstrable risk to the personal security of those deputies.”

Chief Millsaps indicates that the records responsive to the Request would identify by name or other identifying information, the individual Department officers that are credentialed, certified, trained, or nominated under the 287(g) program. Millsaps Attestation ¶ 7. Chief Millsaps acknowledges that ordinarily, the identification of officers is public, but argues that the specific identification of officers participating in the 287(g) immigration enforcement program is exempt, as disclosing the officers’ identities creates a substantial and demonstrable risk to the officers’ personal security beyond what ordinary law enforcement duty does not. *Id.* ¶ 10. Based upon Chief Millsaps’ 28 years of experience in law enforcement at local, state and federal levels, including service within the U.S. intelligence community, it is his professional judgment that the public identification of 287(g) officers creates a substantial and demonstrable risk to their personal security and to the personal security of their families. *Id.* ¶ 11. The most serious risk to these officers is doxxing, which commonly includes the publication online of the home addresses and telephone numbers of officers and their family members, direct threats of violence and death, coordinated harassment campaigns on social media, the making of false emergency reports calculated to provoke an armed emergency response to an officer’s home. *Id.* ¶ 14. Examples of these types of threats has escalated nationally, as reported by the U.S. Department of Homeland Security. *Id.* ¶ 15. Further, federal prosecution of individuals committing these acts against officers has occurred. *Id.* ¶¶ 16-17. Chief Millsaps attests that he believes disclosure of the withheld records would also identify personnel of other agencies, federal and local, in connection with 287(g) activity, which also places those individuals at risk. *Id.* ¶ 21. Chief Millsaps confirms that there is

no manner in which the Department can grant the Request without compromising the personal security of these individuals.³ *Id.* ¶ 22.

The OOR finds that the Department has submitted credible evidence that threats, doxxing, and other forms of harassment have been directed toward law enforcement charged with enforcing existing federal immigration laws. The OOR further finds credible the professional opinion of Chief Millsaps in assessing the present risks facing law enforcement officers and will not substitute its judgment for that of those with far more familiarity with the issues involving personal security. *See Stedjan v. Lower Swatara Twp. Police Dep't*, OOR Dkt. AP 2022-1252, 2022 PA O.O.R.D. LEXIS 1539; *Sides v. Pa. Dep't of Corr.*, OOR Dkt. AP 2016-1480, 2016 PA O.O.R.D. LEXIS 1339.

However, while the Department has established that releasing of the identity of law enforcement officers would be reasonably likely to threaten their personal security, it has not sufficiently established that withholding records in their entirety is necessary. The Millsaps Attestation discusses the threat to his officers if their identities were released but does not address or discuss the responsive records themselves, what they contain, and why the records cannot be redacted of the exempt information.

Section 706 of the RTKL states that:

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the

³ 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 Department 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)).

agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted.

65 P.S. § 67.706. While the Department asserts that the Request only seeks identifying information, the Request also specifically references the likelihood of redacted names, stating, “[i]f the agency withholds any name, please state the exemption relied on for that individual; redact each name separately rather than obscuring whole rows or columns; and leave dates, punctuation, numbering, and row structure intact, so that the number of officers listed remains apparent from the record.” Clearly, the Requester is seeking more than just the identity of officers.

Therefore, to the extent the responsive records can be redacted of the exempt material, the RTKL requires that this be done rather than that the records be withheld in their entirety. The OOR finds that the Department has met its burden of proof by a preponderance of the evidence that the disclosure of the identity of Department employees and employees of other agencies poses a likelihood of a substantial and demonstrable risk to the personal security of those individuals, and information that would disclose their identity must be withheld.⁴ *See Fennell v. Pa. Dep’t. of Corr.*, OOR Dkt. AP 2015-1944, 2015 PA O.O.R.D. LEXIS 1687; *Bayne v. New Kensington City*, OOR Dkt. AP 2021-0106, 2021 PA O.O.R.D. LEXIS 176; *Steinheiser v. SEPTA*, OOR Dkt. AP 2022-1908, 2022 PA O.O.R.D. LEXIS 2352.

⁴ The Department’s alternative ground for exemption of personal identification information pursuant to 65 P.S. 67.708(b)(6) need not be addressed further herein, as the Department has established the identity of the officers and agents are exempt pursuant to 65 P.S. § 67.708(b)(1)(ii). Further, the Department’s arguments regarding a conflict with other Federal or State law pursuant to 65 P.S. §§ 67.305(a)(3), 67.306, and 67.3101.1 must fail, as no conflicting statute is cited and it is merely stated in the position statement that information is considered confidential by U.S. Immigration and Customs Enforcement (“ICE”) program policy. *See* position statement. Finally, to the extent the Department raises an argument that some responsive records may be solely created and maintained by ICE, the OOR agrees that the Department is not required to produce or create records not already within the possession, custody or control of the Department. 65 P.S. § 67.705.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to provide redacted responsive records pursuant to 65 P.S. § 67.708(b)(1)(ii) within thirty days. 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 York 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 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.⁵ 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: October 16, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Darwin Leuba
Robert Gavin, Esq.
Nancy Love, AORO

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