



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF:</b>	:	
	:	
<b>JOSEPH GUARRASI</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2010-0140</b>
	:	
<b>BUCKS COUNTY DISTRICT</b>	:	
<b>ATTORNEY’S OFFICE</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

Joseph Guarrasi (the “Requester”) filed a right-to-know request (the “Request”) with the Bucks County District Attorney’s Office (the “Office”) seeking copies of certain forms. The Office granted the Request. The Requester appealed to the Office of Open Records (“OOR”) arguing that he had not been given all responsive records.

For the reasons set forth in this Final Determination, the appeal is **granted** and the Office is required to take action as set forth below.

**FACTUAL BACKGROUND**

On a form dated January 22, 2010, the Requester filed the Request via first class mail seeking:

A copy of all the local Bucks County forms used by the Bucks County Detectives and/or the Bucks County District Attorney’s Office, to enforce or abide with the statutory requirements of Title 18 Pa.C.S. Sections 5704, 5714 and 5717 (commonly known as the Pa Wiretap Act), from 1/1/2004 through 6/1/2007.

In a letter dated February 2, 2010, the Office approved the Request, but also indicated that the Requester could appeal the denial of the Request to the County District Attorney's Office. It is unclear why the appeal information was included in a response approving the Request.

On February 12, 2010, the Requester filed an appeal with the OOR stating that no office in Bucks County is willing to provide full disclosure and requested the OOR to have the agency provide full disclosure. The record in this appeal closed on February 24, 2010. The Office responded to the appeal on February 25, 2010, seeking further clarification of the Request. The Office's response also expressed concern over submitting an affidavit regarding the alleged vague Request.

### **LEGAL ANALYSIS**

The Office of Open Records is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. §67.503(a). The Office is a local agency subject to the RTKL. See 65 P.S. § 67.302. It appears from the records that the Office granted the Request and concedes that the requested records are public. The Requester asks the OOR to provide full disclosure while claiming that no Bucks County office is willing to give full disclosure. However, he provides no support or basis for these statements. Likewise, the Office failed to supply the OOR with any support or affidavit(s) stating that all relevant and responsive records had been provided.

The RTKL is clear that agencies bear the burden of proving the applicability of any exceptions by a preponderance of the evidence. *See* 65. P.S. § 67.708. Preponderance of the evidence has been defined as "evidence which as a whole shows that the fact sought

to be proved is more probable than not." Black's Law Dictionary 1064 (8<sup>th</sup> ed. West 2004). *See also Commonwealth v. Williams*, 615 A.2d 716 (PA. 1992).

The OOR is unable to conclude that all responsive records were provided as the Office advised the Requester of his appeal rights and failed to submit an affidavit. Therefore, the Office is directed to provide the Requester with the records requested or an affidavit, from a person with knowledge, identifying the records sought and attesting that all responsive documents were provided.

### **CONCLUSION**

For the foregoing reasons, the Requester's appeal is **granted** and the Office is directed to provide the records requested or an affidavit as set forth above. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the Bucks County Court of Common Pleas. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S. §67.1301. The parties are further advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

**FINAL DETERMINATION ISSUED AND MAILED** March 15, 2010



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APPEALS OFFICER  
NATHANAEL J. BYERLY, Esquire

Final Determination Sent To: Joseph Guarrasi, Lt. Terry Lachman