

- f. [R]ecords of all Philadelphia housing rental licenses that have been issued since January 1, 2014, including by license number, date of issuance, date of expiration, property address and property identification number; and
- g. [R]ecords of all certificates of rental suitability that have been issued since January 1, 2024, including by license number, date of issuance, date of expiration, property address and property identification number.

On March 12, 2024, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department denied the Request in part, arguing that it provided all records responsive to the Request and that no additional records responsive to portions of the Request exist in its possession, custody or control.

On April 1, 2024, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, the Requester argues that the Department failed to meet its burden to show that there are no responsive records to Items 1(e) and that the Department failed to produce all records responsive to Items 1(f-g). The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On April 11, 2024, the Department submitted a position statement, arguing that the Department “performed a good faith search by searching [its] electronic databases and providing all responsive records.” The Department further argues that the portion of the Request seeking “internal communications” is insufficiently specific.² In support of its argument that all responsive records have been provided, the Department submitted the attestation of Tia Platts (“Platts Attestation”), Open Records Officer for the Department.

On April 23, 2024, in response to the OOR’s request for clarification, the Department submitted a supplemental attestation from Ms. Platts (“Platts Supplemental Attestation”),

² “Internal communications” relate to Item 1(d) of the Request. As the Requester is only raising challenges to Items 1(e-g), the OOR need not address this argument.

explaining that the Department conducted an additional search for records in its database from 2008 to 2018. As a result of this search, the Department has now provided the Requester with additional records responsive to the Request.³ See Platts Supplemental Attestation, ¶¶ 2-4.

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,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). The preponderance of the evidence standard 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 appeal, as noted above, the Department conducted an additional search for records responsive to the Request and, as a result, provided additional records responsive to the Request to the Requester. See records attached to Platts Supplemental Attestation. As such, the appeal as it relates 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).

³ The responsive records are attached to the Platts Supplemental Attestation.

2. The Department demonstrated that no additional records responsive to the Request exist in its possession, custody or control

The Requester argues that the Department failed to meet its burden to show that there are no responsive records to Item 1(e) and that the Department failed to produce all records responsive to Items 1(f-g). The Department argues that it performed a good faith search and provided all responsive records.

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.

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).

In support of the Department’s assertions, the Platts Attestation⁴ states, in relevant part, the following:

⁴ Under the RTKL, statements made under penalty of 18 Pa.C.S. § 4904 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

5. Upon receipt of the [R]equest, [the Department's Open Records Officer] conducted a thorough examination of files in the possession, custody and control of [the Department]. Specifically, [the Open Records Officer] searched all [Department] electronic databases for responsive records.
6. [The Department's] electronic databases contain all [Department] licenses, certificates, violations and inspection reports going back to 2018. The databases do not contain records prior to this year.
7. After conducting a good faith search of the [Department's] files, [the Department's Open Records Officer] identified all records within the [Department's] possession, custody or control that are responsive to the [R]equest.
8. All responsive records were provided to [the Requester] on March 12, 2024.
9. Based on [the Department's Open Records Officer] search, [the Department] has no further responsive records in its custody, possession or control.

The Platts Supplemental Attestation states, in relevant part, the following:

2. In response to the OOR's April 19, 2024 letter, I have conducted an additional search for records responsive to the [R]equest[.]
3. [The Department's] electronic databases provide limited access to responsive records from 2008 to 2018. Not all responsive records from this period can be extracted from the database. I have conducted a search for responsive records from this time.
4. All responsive records that can be extracted from the databases are attached to [the Platts Supplemental Attestation].
5. [The Department] possesses no responsive records apart from those that can be extracted from [the Department's] electronic databases.

It is important to note that the OOR makes no determinations as to whether additional responsive records should exist, and its inquiry is limited only to whether records are "in existence

or that additional records exist, the Department's evidence "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)).

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. As such, allegations that additional records could exist or should exist are insufficient to establish that the records do, in fact, exist.

The Department’s attestations are authored by the Department’s Open Records Officer, who attests that the Department “conducted a thorough examination of files in the possession, custody and control of [the Department]. Specifically, [the Open Records Officer] searched all [Department] electronic databases for responsive records.” Platts Attestation, ¶ 7. The Department further attests that it “conducted an additional search for records” and that its “electronic databases provide limited access to responsive records from 2008 to 2018.” Platts Supplemental Attestation, ¶¶ 2-3. The Department provided “[a]ll responsive that can be extracted from the databases[.]” *Id.* at ¶ 4. Finally, the Department’s attestations state that “[b]ased on the [Open Records Officer’s] search, [the Department] has no further responsive records in its custody, possession or control[.]” Platts Attestation, ¶ 4, and that the Department “possesses no responsive records apart from those that can be extracted from [the Department’s] electronic databases[.]” Platts Supplemental Attestation, ¶ 5.

Thus, based on the evidence provided, the Department has demonstrated that it does not have additional records responsive to the Request. Although the Supplemental Attestation demonstrates that additional records were located after another search, it credibly states that there is no more responsive information that can be extracted. Therefore, the Department has met its burden of proof that a good faith search was performed and that no additional records responsive to the Request exist in its possession, custody or control. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Department 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 or petition for review to the Philadelphia 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 Section 1303 of the RTKL. 65 P.S. § 67.1303. 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.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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 24, 2024

/s/ Lyle Hartranft

LYLE HARTRANFT, ESQ.
APPEALS OFFICER

Sent via e-file portal to: Adria Lamba, Esq.; Tia Platts, AORO; Javier Solar, Esq.

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