



FINAL DETERMINATION

IN THE MATTER OF

**JESSICA HOFFMAN,
Requester**

v.

**WALNUTPORT BOROUGH POLICE
DEPARTMENT,
Respondent**

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Docket No: AP 2024-0566

FACTUAL BACKGROUND

On January 9, 2024, Jessica Hoffman (“Requester”) filed a request (“Request”) with the Walnutport Borough Police Department (“Borough” or “Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking copies of various types of bonds, insurance policies and oaths of office.¹ On February 9, 2024, after invoking a thirty-day extension to respond, *see* 65 P.S. § 67.902(b), the Borough denied the Request, arguing that responsive records do not exist in its possession, custody or control.²

On February 27, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.³ The OOR invited both parties

¹ The Request was submitted to the Borough. Upon receiving confirmation that the Borough received the Request, the Requester sought to clarify that she sought information for the Department.

² The Department’s response indicated that the records do not exist because they were from 2000. On February 13, 2024, the Requester inquired about this statement, noting that she had requested current information and the Department subsequently clarified that this was a typographical error.

³ The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On March 15, 2024, the Borough provided a supplemental response to the Requester, noting that the Request had originally been denied because the Department did not have responsive records. However, upon receipt of the Request, the Borough had contacted its insurance carrier, Pennsylvania Intergovernmental Risk Management Association (“PIRMA”), requesting responsive records. On February 13, 2024, PIRMA provided a Legal Defense and Claim Payment Agreement, which includes a section entitled “Law Enforcement Liability,” as well as a Certificate of Coverage, verifying the Borough’s Law Enforcement Liability coverage. The Borough’s supplemental response included a copy of the email chain between the Borough’s Secretary and PIRMA, wherein PIRMA confirms that no bonding documents exist for the Department. The Borough’s supplemental response was verified under the penalties of unsworn falsification to authorities by its Solicitor, Michael Corriere, Esq. (“Corriere Attestation”).

Because the Borough’s supplemental response mentioned Section 708(b)(27) of the RTKL, the OOR asked whether it was withholding records. *See* 65 P.S. § 67.708(b)(27). On April 3, 2024, the Borough submitted a verified response (“Supplemental Corriere Attestation”), clarifying that no records were withheld; it had merely cited Section 708(b)(27) to demonstrate that the Requester was legally entitled to the records. *Id.* (“This paragraph shall not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.”). Although the Requester had indicated an interest in records pertaining to the Department, the Borough also provided the bonding documents for the Borough’s Secretary and Assistant Secretary.

LEGAL ANALYSIS

The Borough 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 Borough 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 appeal is moot in part

On appeal, the Borough has produced records responsive to much of the Request. Accordingly, insofar as the requested records have been provided, the appeal is dismissed as moot. *See Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. Sept. 13, 2019) (unreported opinion) (holding that an appeal is properly dismissed as moot where no controversy remains).

2. No bonding documents for the Department exist

The Borough argues that no bonding documents for the Department exist. Both Attestations affirm that the Borough has no such documents and PIRMA confirmed that the Department is not bonded, as it is fully covered by its liability insurance.

“The 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). An attestation by the individual who searched for responsive records is sufficient to meet an agency’s burden of proving the nonexistence of a record. *Id.*; *see also Pa. Dep’t of Health v.*

Mahon, 283 A.3d 929, 936 (holding that, when there is evidence that a record does not exist, “[i]t is questionable to what degree additional detail and explanation are necessary....”); *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry). In the absence of any evidence that the Borough has acted in bad faith, “the averments in the [attestations] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’t Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Accordingly, the Borough has met its burden of proving that no bonding records exist in its possession, custody, or control. *See Hodges*, 29 A.3d at 1192.

However, the Request sought oaths of office, but the Borough has not responded to this portion of the Request. As there is no evidence regarding the existence of oaths of office, the Borough has not met its burden in this respect. *See id.*

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted in part, denied in part** and **dismissed as moot in part**, and within thirty days, the Borough is required to provide any oaths of office that may exist, or, if none exist, an affidavit or attestation affirming their nonexistence. 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 Northampton 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.⁴ 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 23, 2024

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

Delivered via E-File Portal to: Jessica Hoffman, Annette Lacko and Michael Corriere, Esq.

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).