



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**ANTHONY SMITH,
Requester**

v.

**FORTY-FORT BOROUGH,
Respondent**

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: Docket No: AP 2026-1140
: (Consolidated appeal of OOR Dkt. Nos.
: 2026-1143, 2026-1144, 2026-1145, and
: 2026-1146)
:

FACTUAL BACKGROUND

On March 2, 2026, Anthony Smith (“Requester”) submitted five requests (“Request” or “Requests”) to Forty-Fort Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the public announcement, agenda and minutes for the last three meetings of:

1. The Fire and Police Committee
2. The Code Enforcement Committee
3. The Department of Public Works Committee
4. The Finance Committee
5. The Recreation Committee[.]

On March 6, 2026, the Borough denied the Requests, arguing that the Borough is not in possession, custody, or control of any responsive records to the Requests.

On March 23, 2026, the Requester filed five appeals to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On March 26, 2026, the Borough submitted five attestations of Bonnie Arnone, the Agency Open Records Officer for the Borough, reiterating its grounds for denial (“Arnone Attestations”). The Borough claims that all the records sought do not exist and are not in the Borough’s possession, custody, or control.

Requester has also submitted numerous statements, a March 23, 2026 demand letter his counsel sent the Borough, and articles regarding his position that the records should exist and that the Borough is in violation of the Pennsylvania Sunshine Act (“Sunshine Act”) 65 P.S. §§ 701-716.

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

¹ The appeals were docketed as OOR Dkt. Nos. AP-2026-1140, 2026-1143, 2026-1144, 2026-1145. 2026-1146. Because they involve the same agency, requester and issues, the appeals were consolidated into OOR Dkt. 2026-1140. See 65 P.S. § 1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

(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 OOR lacks jurisdiction over claims of Sunshine Act violations

Several of the submissions provided during the appeal by the Requester related to his claim that the Committees are public bodies subject to the requirements of the Sunshine Act. The Requester claims that the Borough's statements that no quorum of the Borough Council is present during Committee meetings and no voting or official action takes place is incorrect and that the Committee is acting in violation of the Sunshine Act. The Requester also submitted a copy of a demand letter by an attorney representing the Requester in connection with the Requester's allegations of Sunshine Act violations, sent to another attorney that appears to be counsel for the Borough. The letter explains that the Requester has filed an appeal with the OOR and states "[t]he Office of Open Records will issue its determination on May 13, 2026. I expect the OOR will confirm what the plain language of the statute and the extensive case law already makes clear." The letter goes on to outline the actions the Requester is demanding of the Borough, upon an OOR finding that the Committee has violated the Sunshine Act.

Although the OOR is responsible for providing annual trainings on the Sunshine Act, *see* 65 P.S. § 67.1310(a)(3), it does not have the authority to adjudicate claims that the Sunshine Act has been violated. *See* 65 Pa.C.S. § 715 ("The Commonwealth Court shall have original jurisdiction of actions involving State agencies and the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this chapter by injunction or other remedy deemed appropriate by the court"). Therefore, any such claims are beyond the purview of the RTKL. Accordingly, the instant appeal is dismissed in part because the OOR lacks jurisdiction over the Requester's claims of alleged Sunshine Act violations.

2. The Borough proved that no responsive records exist

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 identified 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 all 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).

Ms. Arnone attests in all five of her attestations that a search was conducted and that no responsive records exist in the Borough’s possession, custody or control.² *See Arnone Attestations ¶ 6.* Ms. Arnone further attests that Borough Council “committees are comprised of only three (3) council members who are responsible for gathering pertinent information to bring back to council for their review.” *See ¶ 4.* Ms. Arnone also attests that the Borough Council consists of seven (7)

² 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 Borough has acted in bad faith or that the requested records exist, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. 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)).

members and four (4) members are needed to make a quorum and therefore, these committees have no ability to vote on or pass any legislation. *Id.* Therefore, based on the evidence provided, the Borough has met its burden of proof that it does not possess the records sought in the Request. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

Requester believes these records *should* exist but does not present any evidence that records responsive to this specific request do actually exist. In fact, due to his accusations that the Borough is violating the Sunshine Act, he infers these records do not exist. The OOR makes no determinations as to whether additional records should exist, as our inquiry is limited to only whether records are “in existence and in possession of the ... agency at the time of the right-to-know request.” *Moore v. Off. of Open Records*, 992 A.3d 907, 909 (Pa. Commw. Ct. 2010); *see also* 65 P.S. § 67.705. Furthermore, under Section 705 of the RTKL, “an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 § P.S. § 67.705.

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed for lack of jurisdiction in part**, and the Borough 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 to the Luzerne County Court of Common Pleas. 65 P.S. § 67. 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.³ 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: April 14, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Anthony Smith, Bonnie Arnone, AORO

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