

and/or the following entities:

- Tioga Boar Hunting Preserve Inc.

- o President: Michael T. Gee
- o Vice President: Mark T. Gee
- o Secretary: Chase Gee
- o Treasurer: Derek T. Gee
- o Member: Mark E. Gee
- o Member: Scott Gee
- o Member: Derek Gee

- Gee Brothers Land Holdings, LLC.

- o Member: Michael T. Gee
- o Mark E. Gee o Scott Gee
- o Carman Gee
- o Carl Gee

Specifically, but without limitation, this Request seeks any and all applications for permits (including but not limited to Regulated Hunting Ground Permits pursuant to 34 Pa. Code § 2928), as well as any and all documents relating to the [Commission]'s involvement, consideration, grant, or denial of any such permits.

Responsive documents will include, but are not limited to communications and correspondence, applications, permits, certifications, evidence of payment, policies, procedures, audits, reviews, protocols, manuals, guides, maps, and schematics.

Responsive records include those created since January 1,2009 through the present.

Please provide a response to this Request in the time set forth under the [RTKL]. If the [Commission] intends to assess any charges in excess of \$100.00 in connection with the fulfillment of this Request, please so advise in advance. Records can be provided electronically via electronic mail to the undersigned, and I am happy to make reasonable arrangement (such as a document link or upload solution) in the event electronic transmission is not otherwise feasible for the [Commission].

On March 12, 2026, the Commission denied the Request, stating that the records do not exist within the Commission's possession, custody or control. On April 2, 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 Commission to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 14, 2026, the Commission submitted a position statement and attestations made under the penalty of unsworn falsification to authorities¹ from Zachary Fahnstock (“Fahnstock Attestation”),² the Commission’s Open Records Officer (“AORO”), and Chad Eyler (“Eyler Attestation”), the Commission’s Chief of Special Permits Enforcement Division, reiterating its grounds for denial that no records responsive to the Request exist in its possession, custody or control. The Requester did not make any submissions during the appeal.

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

¹ 18 Pa.C.S. § 4904.

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 Commission has acted in bad faith or that [the requested] records exist, “the averments in [the attestations] 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)).

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).

Additionally, “[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). 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 (Pa. Commw. Ct. 2022) (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 this instance, the Commission’s evidence, which was authored by the Commission’s AORO and the Chief of Special Permits Enforcement Division, who are familiar with the records of the Commission, confirm that after a good faith search for responsive records, no records exist in its possession, custody or control. *See Fahnstock Attestation*, ¶¶ 1, 3; *Eyler Attestation*, ¶¶ 1, 3. The Commission’s evidence describes with detail the search it employed to determine whether it possesses responsive records and identifies the officials or personnel with which it inquired about the Request. The Requester has not provided any evidence to question the veracity of the Commission’s assertions. *See Mahon*, 283 A.3d at 936 (concluding that, in the absence of countervailing evidence, an agency may satisfy its burden of proving a record does not exist by submitting “either an unsworn attestation by the person who searched for the record or a sworn

affidavit of nonexistence of the record”). Therefore, based on the evidence provided, the Commission has met its burden of proof that it does not possess responsive records sought in the Request. *See Hodges*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *Campbell*, 268 A.3d 502 (Pa. Commw. Ct. 2021).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Commission 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 Commonwealth Court. 65 P.S. § 67.1301(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 17, 2026

/s/ Damian J. DeStefano

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Samuel Hornak; Zachary Fahnstock, AORO

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