

On March 31, 2026,¹ the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Requester clarified on appeal that he only sought final actions of the DAO of the discharge for these individuals. The OOR invited both parties to supplement the record and directed the DAO to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 13, 2026, the DAO submitted a position statement reiterating its grounds for denial. The DAO claims that after conducting a good faith search for responsive records to the Request, no responsive records could be found. In support of its position, the DAO submitted the affidavit of Thomas Gaeta, Esquire, an Assistant District Attorney with the DAO and their Agency Open Records Officer.

LEGAL ANALYSIS

The DAO 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 DAO 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 While the OOR received the appeal on March 31, 2026, the envelope containing the appeal is postmarked by SCI-Frackville on March 27, 2026. Under the “prisoner mailbox rule,” a document is deemed filed on the date the prisoner delivers it to prison authorities for mailing. *Commonwealth v. Jones*, 549 Pa. 58, 700 A.2d 423, 426 (Pa. 1997). Therefore, the appeal was timely filed.

1. The DAO proved responsive records of the Request are not in their possession, custody or control

The DAO asserts that a good faith search was conducted by Attorney Gaeta, and that no records responsive to the request are in their possession, custody, or control. 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).

The Gaeta Attestation states that upon receipt of this Request, Attorney Gaeta contacted the Human Resources Department and requested employment records for the three former Assistant District Attorneys. Gaeta Attestation ¶¶ 6-7. The Gaeta Attestation further states:

7. The Human Resources Department provided me with a spreadsheet summarizing the employment history of each of the former Assistant District Attorneys which indicated that none had ever been demoted. While the records indicated all three

had separated from the DAO, they did not reflect that the separations resulted from disciplinary action.

Id. As such, no responsive records to the Request exist, as Attorney Gaeta confirmed no demotion or discharge of these individuals occurred.

In the absence of any evidence that the DAO has acted in bad faith or that the requested records exist, “the averments in [the attestation] 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)). Therefore, based upon the evidence provided, the DAO has met its burden of proof that it does not possess records responsive to the Request. *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**, and the DAO 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 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 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.² 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 20, 2026

/s/ Julie Sodl

APPEALS OFFICER

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

JULIE SODL

Sent via E-File Portal to: Thomas Gaeta, Esquire
Sent via U.S. Mail to: James Everett AS-0363