



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
SHANDA KELSCH,	:
Requester	:
	:
v.	: Docket No: AP 2026-1067
	:
FRANKLIN AREA SCHOOL	:
DISTRICT,	:
Respondent	:

FACTUAL BACKGROUND

On February 16, 2026, Shanda Kelsch (“Requester”) submitted a request (“Request”) to the Franklin Area School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Any and all agreements, contracts, participation agreements, membership documents, intergovernmental agreements, or trust agreements between the Franklin Area School District and any insurance consortium, risk pool, or self-insured trust, including but not limited to the School Districts Insurance Consortium (SDIC), Pennsylvania Consortium for Schools (PICS), or any workers’ compensation or liability insurance pool.

On March 17, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the District denied the Request as insufficiently specific because it failed to state a timeframe. *See* 65 P.S. § 67.703.

On March 19, 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 District to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On March 31, 2026, the District submitted a position statement and provided a responsive health insurance benefit agreement. The District asserted that additional responsive records do not exist in the District's possession, custody, or control. Additionally, the District submitted an attestation made under the penalty of perjury, pursuant to 18 Pa.C.S.A. § 4904, by Dr. Eugene Thomas ("Thomas Attestation"), the District's Superintendent and Open Records Officer. The Thomas Attestation describes the District's search for responsive records and attests that additional responsive records do not exist in the District's possession, custody, or control.

On March 31, 2026, the Requester submitted a statement, arguing that the record provided by the District is only partially responsive to the Request, and the District ignored additional categories of responsive records. The Requester further states that her Request is not limited to records pertaining to health insurance benefits, but also includes liability insurance, workers' compensation, and risk pooling arrangements.

On April 9, 2026, the OOR requested additional information from both parties. On the same date, the Requester submitted the thirty-day extension notification sent by the District to extend its time to respond to the Request. Additionally, on April 13, 2026, the District submitted a supplemental attestation written by Dr. Thomas ("Supplemental Thomas Attestation"), affirming that the District's search was not limited to records pertaining to health insurance, but would have identified all types of responsive records sought in the Request.

LEGAL ANALYSIS

The District 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 District 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 record provided is moot

During the appeal, the District provided a responsive service agreement for the Northwestern Region Employee Benefit Trust for health insurance benefits to the Requester and the OOR portal. *See* Thomas Attestation, ¶ 5. As such, the appeal as it relates to this record 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).

2. The District demonstrated that additional responsive records do not exist within the District’s possession, custody or control

The District argues that it does not have additional responsive records in its 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 record[.]” 65 P.S. § 67.901. The RTKL does not define the term “good faith effort.” However, 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).

The Thomas Attestation states that Dr. Thomas has been the District's Superintendent since July 1, 2022, and he is familiar with the records of the District. Thomas Attestation, ¶¶ 2-3. Additionally, Dr. Thomas attests that he conducted a thorough search for responsive records, which included a search for electronic records, and consulted with the Business Manager of the District. *Id.*, ¶¶ 4-5. As a result of its search, the District identified one responsive record and provided it to the Requester. *Id.*, ¶¶ 5-6. The Thomas Attestation further states that the District has provided the Requester with all responsive records in its possession, custody, and control. *Id.* Although the Requester argues that the District's search was too narrow and did not include a search for responsive records other than those pertaining to healthcare, the District provided evidence to establish that its search did, indeed, encompass all of the categories of records identified in the Request. Supplemental Thomas Attestation, ¶¶ 3-6.

Therefore, based upon the evidence provided, the District has met its burden of proof that responsive records do not exist in its possession, custody, or control. *See Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (“[t]he burden of proving a record does not

exist ... is placed on the agency responding to the right-to-know request”); *Pa. Dep’t of Health v. Mahon*, 283 A.3d 929 (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).

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the District 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 Venango 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. 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.¹ 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>.

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: April 20, 2026

/s/ Daneen L. Miller-Smith

Daneen L. Miller-Smith, Esq.
Appeals Officer

Sent via OOR portal to:

Shanda Kelsch
Dr. Eugene Thomas, Superintendent, AORO
Jacob Fleming, Esq.