

- Storm sewer or culvert infrastructure intersecting or discharging beneath railroad property in the Wilkinsburg area;
- The interface between municipal storm or sanitary sewers and existing culverts on railroad right-of-way.

If Sewer Notebook No. 785 cannot be located, please identify:

- the departments or repositories searched,
- the approximate time period in which the notebook would have been created,
- and whether the notebook was transferred, archived, or destroyed pursuant to a records retention schedule.

B. Conveyance, Acceptance, or Transfer Records

Please produce any records evidencing that the [City] (or its predecessor departments) accepted, assumed ownership of, or was conveyed responsibility for any of the following infrastructure:

- A 48-inch storm sewer / culvert historically conveying Nine Mile Run beneath railroad property;
- An 8-foot storm sewer / culvert constructed beneath railroad property in the early 20th century;
- Any storm sewer infrastructure conveying Nine Mile Run in the vicinity of Division Street / Hill Avenue and the former PRR corridor.

Requested records include, but are not limited to:

- Deeds, easements, or conveyance instruments;
- Resolutions, ordinances, or acceptance documents;
- Inter-agency agreements or correspondence documenting acceptance or transfer;
- Records of formal abandonment, retirement, or reassignment of responsibility.

This portion of the request concerns formal acceptance or conveyance only. General mapping or historic surveys are not requested unless they expressly evidence acceptance, conveyance, or ownership.

Certification if No Records Exist

If the City possesses no records responsive to any part of this request, please provide a written certification that no such records exist within the City's possession, custody, or control. Timeframe January 1, 1900 to present.

On March 2, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the City denied the Request, stating that responsive records do not exist within the City's possession, custody or control. The City also recommended that the Requester file a request with a separate agency, the Pittsburgh Sewer and Water Authority, as potential custodians of the records sought and provided that agency's Open Records Officer's ("AORO") contact information.

On March 3, 2026, the Requester appealed 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 City to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On March 13, 2026, the City submitted a position statement and an attestation made under the penalty of unsworn falsification to authorities² from Cade Richmond (“Richmond Attestation”),³ the City’s Open Records Officer (“AORO”), reiterating its grounds for denial that records responsive to the Request do not 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.

¹ The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

² 18 Pa.C.S. § 4904.

³ 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 City 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 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)).

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).

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 appeal, the City's evidence, which was authored by the City's AORO, who is familiar with the City's records, confirms that after a good faith search for responsive records, no records exist in its possession, custody or control. *See Richmond Attestation*, ¶ 4. The City's evidence describes the search it employed to determine whether it possesses responsive records and identifies the officials or personnel with which it inquired about the Request. *See Richmond Attestation*, ¶ 2-5. The Requester has not provided any evidence to question the veracity of the City'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 City 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 City 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 Allegheny 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.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 OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 24, 2026

/s/ Damian J. DeStefano

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Andrew Fitchwell; Cade Richmond, AORO

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