



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

JOHN TRIVELPIECE,  
Requester

v.

BRIAR CREEK BOROUGH,  
Respondent

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**Docket No: AP 2026-1284**  
**(Consolidated with OOR Dkt.**  
**Nos. AP 2026-1285 and AP 2026-1286)**

On February 10, 2026, John Trivelpiece (“Requester”) submitted three requests (“Requests”) to Briar Creek Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

### Request 1

[D]ates of approval for Libra Holdings at [a specified location] for the start of a storage business and approved items that can be stored. Date ranges 2023-2024.

### Request 2

...[A]pproval date given to Smith Realty to start an office at [a specified location for] 2021-2022....

### Request 3

Any documents regarding a permit or paperwork on building demolitions on [a specified property for] 2023-2024.

On March 17, 2026, following a thirty-day extension, 65 P.S. § 67.902(b), the Borough denied the Requests, stating that the records do not exist within its possession, custody or control.<sup>1</sup> The Borough also argues that Requests 1 and 2 ask questions rather than seek records.

On March 30, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denials and stating grounds for disclosure.<sup>2</sup> 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).

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. 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 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

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<sup>1</sup> Pursuant to Section 903 of the RTKL, an agency’s response denying access to records is required to include “[t]he procedure to appeal the denial of access under this act.” *See* 65 P.S. § 67.903(5). Here, the Borough did not include the appeal information for the OOR in its response. As a result, the Department’s response failed to comply with Section 903 of the RTKL. However, the appeal was timely filed.

<sup>2</sup> The appeals were docketed as OOR Dkts. AP 2026-1284 through AP 2026-1286. Because the appeals involve the same parties and similar records, the appeals are hereby consolidated into the above-captioned docket, OOR Dkt. AP 2026-1284.

O.O.R.D. LEXIS 750; *see also* *Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

On April 7, 2026, the Borough submitted three attestations of its Open Records Officer, Carol Kieser (“Kieser Attestations”), who is familiar with the Borough records and who personally conducted the Borough’s search for records responsive to the Requests.<sup>3</sup> *See* Kieser Attestations, ¶¶ 1-2. The Kieser Attestations each affirm that a search was conducted and that no records responsive to the Requests exist within the Borough’s possession, custody or control.<sup>4</sup> *See* Kieser Attestations, ¶¶ 3-5. Further the Kieser Attestations confirms that “all Borough records [were reviewed], including planning and zoning records” and that, as part of its search, the Borough consulted with its Zoning Officer. *See* Kieser Attestations, ¶ 3. Moreover, no evidence has been presented to contradict the Kieser Attestations or to show that records responsive to the Request do, in fact, exist. The OOR makes no determinations as to whether records should exist, as our inquiry is limited to whether records are “in existence and in possession of the...agency at the time of the right-to-know request.”<sup>5</sup> *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705.

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<sup>3</sup> The Requester argues that “agencies are required to interpret [RTKL] requests in good faith” and that, for Request 1, “[t]he Borough could have requested clarification rather than denying outright.” The Borough argues that it used its discretion to make a reasonable interpretation of Request 1, “include[ing] in its response that ‘there is not storage building operating out of the property in question.’” *See Spatz v. City of Reading*, OOR Dkt. AP 2013-0867, 2013 PA O.O.R.D. LEXIS 513 (An agency is permitted to make a reasonable interpretation of the meaning of a request for records.) Based on the plain language of Request 1, the interpretation used by the Township when searching for responsive records was reasonable. *See Pa. State Police v. Off. of Open Records*, 995 A.2d 515 (Pa. Commw. Ct. 2010).

<sup>4</sup> 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)).

<sup>5</sup> However, in its position statements submitted on April 6, 2026, the Borough stated that, based on the information provided by the Requester on appeal concerning Requests 1 and 2, the Borough’s Code Enforcement Officer is investigating whether the specified properties are in violation of any Borough Code provisions.

Accordingly, based on the evidence provided, the Borough has met its burden of proof that it does not possess the records sought in the Requests.<sup>6</sup> *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022) (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”).

For the foregoing reasons, the appeal is **denied**, 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 or petition for review to the Columbia 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 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.<sup>7</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: April 30, 2026**

*/s/ Erika Similo*

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ERIKA SIMILO  
APPEALS OFFICER

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<sup>6</sup> Since the Borough demonstrated that the requested records do not exist, the OOR need not address the Borough's alternate grounds for denial. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

<sup>7</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Sent via OOR portal to: John Trivelpiece  
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