

3. The date of the imagery, measurement, or dataset used to determine the impervious-surface square footage for each property, including the source (e.g., aerial imagery, GIS layer, parcel measurement file, or third-party contractor data).

4. The specific name of the document, GIS layer, or dataset used to determine the impervious-surface measurements (for example: “Stormwater_Impervious_2021_Final.shp” or equivalent), including any associated metadata or file description.

On March 16, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Authority granted the Request, and provided records.

On March 16, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the Authority’s final response and stating grounds for disclosure. The Requester asserts that the records provided are not complete and that information in the records is conflicting and contradictory.

The appeal did not include a full copy of the Request. On March 18, 2026, the OOR notified the Requester that the document was required to cure the deficiency and directed the Requester to file a complete copy of the Request by April 1, 2026, pursuant to 65 P.S. § 67.1303(b). On March 19, 2026, the Requester submitted a copy of the Request and the OOR invited both parties to supplement the record and directed the Authority to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

Also, on March 19, 2026, the Requester submitted a statement in support of the appeal. The statement addresses a March 18, 2026 supplemental response issued by the Authority that included additional records. The Requester claims that the supplemental materials do not resolve the deficiencies he asserted in the appeal and he also claims that the Authority has not conducted a good faith search for records. The Requester asserts that the Authority is attempting to reframe the Request and should be required to submit a sworn attestation to support its position.

On April 3, 2026, the Authority submitted a position statement arguing that all responsive records have been provided to the Requester.¹ In support of its position, the Authority submitted the duly sworn affidavit of Barbara O’Neill, the Authority’s Open Records Officer (“AORO”), who affirms that the Authority has provided all responsive records in its possession, custody and control, (“O’Neill Affidavit”).

On April 3, 2026, the Requester submitted a rebuttal statement, noting that the Authority’s submissions were untimely and only provided after receiving an inquiry from the OOR. The Requester further argues that the records are incomplete, that the Authority’s search was “defective” as indicated by the fact that the Authority only contacted its third party vendor after the appeal was filed and, further, that the Authority misstates the scope of the Request. Finally, the Requester disputes the sufficiency of the Authority’s evidence.

On April 14, 2026, the OOR directed the Authority to provide supplemental evidence addressing whether its “third party professional” had been notified of the pendency of the appeal and to address the Requester’s claims that the Rinex files and other electronic files provided by the Authority are inaccessible, as well as the raw LiDAR and Rinex metadata. On April 22, 2026, the Authority submitted a supplemental Affidavit from Barbara O’Neill (“Supplemental O’Neill Affidavit”), along with exhibits consisting of an email from its third-party contractor, Ryan

¹ On April 1, 2026, the OOR issued correspondence to the Authority, inquiring whether it intended to participate on appeal, as the appeal record had closed on March 30, 2026, but would be reopened until April 3, 2026. On April 2, 2026 the Authority’s solicitor filed an Entry of Appearance and on April 3, 2026, filed a position statement on behalf of the Authority. The statement included an unexecuted affidavit from Barbara O’Neill because, due to office closings for the Easter holiday weekend, Ms. O’Neill was not available to sign the affidavit. However, an executed version of the affidavit was submitted on April 7, 2026. While the Requester objected to the late submissions, all were considered to further develop the record. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

Weinsteigner of RAW4D, LLC and an invoice from RAW4D for the costs of geospatial imaging services provided to the Authority.²

That same day, the Requester filed a response to the Authority’s supplemental submission, asserting that the data records should be provided in accordance with Section 506(d) of the RTKL, 65 P.S. § 67.506(d).

LEGAL ANALYSIS

The Authority 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 Authority 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. The Authority provided records during the appeal

Upon receipt of the appeal, the Authority used the additional information provided by the Requester to further understand the Request and it conducted a supplemental search by contacting “its third-party professionals to supply the original files related to the aerial images/impervious surface calculations at issue in addition to the resulting images and calculations the Authority already provided.” In a March 18, 2026, correspondence the Authority references as a

² Ms. O’Neill confirmed that RAW4D, LLC was notified of the pendency of the instant appeal. *See* Supplemental O’Neill Attestation, ¶2.

supplemental response, it provided the additional records obtained that included the underlying metadata by way of a Sharepoint file link. In addition, the Authority provided the following:

- The stormwater fee schedule of rates and applicable tier classifications. Of note, this schedule is a document that has been publicly accessible through the Authority website for several months.
- Marked up versions of the stormwater bill for each of your properties, which reflects the initial impervious surface calculation for your properties.
- The flyover images for your two (2) properties.

Finally, the Authority's correspondence included an explanation as to how the fees were calculated. Accordingly, the appeal is moot as to the records provided with the March 18, 2026 supplemental response that was issued during the pendency of the appeal. *See Chester Water Auth. v. Pa. Dep't of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records and, thus, "the controversy has been mooted").

2. The Authority conducted a good faith search and provided all records within its possession, custody and control

The Authority argues that all responsive records within its possession, custody and control have been provided to the Requester and, pursuant to Section 705 of the RTKL, it is not required to create a record. 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 Authority submitted the O'Neill Affidavits in support of its position. AORO O'Neill attests the following regarding the search for records:

7. By way of e-mail dated March 16, 2026, the Authority provided a response to Requester, which included all items within the possession of the Authority ("Preliminary Response")

8. The Preliminary Response included the specific flyover images obtained by the Authority's third-party professionals, with each image detailing:

- a. The subject property,
- b. Illustrating the property boundaries,
- c. Identifying and measuring the existing impervious surfaces,
- d. Identifying the applicable stormwater fee tier pursuant to the Authority's published rate schedule,
- e. The date of the aerial flyover, and
- f. The manner of calculation of impervious surface.

9. The Authority also included an as-built plan for one of the subject properties requested by Requester that was under construction at the time of the subject flyover. The plan included exact impervious surface information for the parcel that was used by the Authority for calculation of the subject stormwater fee.

10. No part of Requester's Request was denied. The Authority provided all records that it believed were responsive to the Request....

12. Following its review of Requester's appeal, the Authority contacted its third-party professionals to determine if there exists any additional underlying data or records that would be responsive to the Request in addition to the records provided to Requester.

13. The Authority, through its duly appointed Solicitor, provided a supplemental response to Requester with an explanatory Letter dated March 18, 2026 (“Supplemental Response”)....

14. Within the Supplemental Response, the Authority provided an electronic link to a Sharepoint file supplied by the Authority’s third-party professionals that includes the underlying metadata related to the flyover aerials and impervious calculations in the form that it exists in the vendor’s records. The Authority learned from its vendor, RAW4D LLC that the records exist in proprietary ‘Rinex’ files that are purportedly only accessible with specific software/equipment.

15. In addition to the raw data/metadata underlying the subject flyover aerials upon which the impervious surface calculations were made, as requested by Requester, the Supplemental Response further provided a publicly available stormwater rate schedule, annotated bills for Requester’s properties that explained his stormwater fee, and additional flyover images of Requester’s properties....

16. While not required under the Right to Know Law (“RTKL”), the Supplemental Response also sought to explain some of the alleged ‘inconsistencies’ decried within Requester’s Appeal. The Supplemental Response also indicated that all responsive underlying data, metadata, records, aerial images, and stormwater fee data had been supplied to Requester within the March 16, 2026 and March 18, 2026 correspondences and further confirmed that no additional records were in the possession of the Authority....

17. The Authority believed that its Initial Response contained all responsive records and learned based upon the Appeal that Appellant sought further records, which the Authority promptly provided within its Supplemental Response.

18. In my capacity as Open Records Officer for the Authority, I have reviewed the Request and investigated Authority records to prepare the records provided within the Preliminary Response and the Supplemental Response.

19. I contacted the Authority’s third-party professionals involved in the collection of the requested records and calculation of the referenced stormwater fees and communicated the substance of the Request to all third-party professionals who the Authority retained as part of the Project.

20. I can confirm that the Authority provided to Requester all responsive documents within the Authority’s possession as related to the Request.

21. I can confirm that the Authority provided to Requester all responsive documents within the possession of the Authority’s third-party professionals as related to the Request.

22. The Authority is not in possession of any responsive records related to:

- a. Calculation sheets, formulas or internal records related to the stormwater fee beyond the records provided
- b. ERU Assignments for the subject properties
- c. Additional metadata or underlying records
- d. Additional 'measurement files'
- e. Alleged discrepancies identified within the Appeal.

23. No additional records exist within the possession of the Authority or its representatives that are responsive to the Request.

The Requester argues that the Authority has not discharged its duty to respond to the Request because both the Authority and the Requester are unable to access the Rinex and LiDAR files. Regarding this issue, the Authority provided the Supplemental O'Neill Affidavit and a copy of an email from Ryan Weinstein, owner of RAW4D and a copy of the invoice from RAW4D related to the Upper Southampton Township aerial and LiDAR scan services. The Weinstein email was provided in response to the Authority's inquiry related to the OOR's request for supplemental evidence and it states:

The raw files (about 200 gigs) are proprietary and require specialized manufacturer software to process and extract the data. LiDAR files rely on dedicated software by the manufacture (approximately \$15k), while the specific RINEX files obtained must be converted using software included with the UAV package (approximate total \$120k).

See, Supplemental O'Neill Affidavit, ¶ 4; Exh. A. Additionally, the Supplemental O'Neill states that, as indicated by the information provided by Mr. Weinstein, the "Municipal Authority has no ability to extract the data found in the files described above in paragraph." *Id.*, ¶¶ 4-5. Ms. O'Neill further attests:

the Municipal Authority does not have **control** over the data files described in paragraph 3 above because the services that were provided by RAW4D and that are associated with the Exhibit B invoice did **not** include providing the Authority with the raw data that is found in the 23R file extensions/Rinex files. Rather, RAW4D was contracted to provide to the Authority and to the Township the images and certain information on those images which have already been provided to the Requester. Mr. Weinstein of RAW4D has been informed that the Authority would be making this statement regarding **control** to the Office of Open Records in this

supplemental Affidavit. Therefore, no additional records that are responsive to the Request exist within the custody or control of the Authority. *See*, ¶¶ 6-7.³

Section 705 of the RTKL provides that “an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705. However, Section 506(d)(1) of the RTKL states that:

A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this action, shall be considered a public record of the agency for purposes of this act.

65 P.S. § 67.506(d)(1). In *Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, the Commonwealth Court explained that records “in the possession of a party with whom an agency has contracted to perform a governmental function on behalf of the agency” are presumptively public records subject to public access, “so long as the record (a) directly relates to the governmental function and (b) is not exempt under the RTKL.” 13 A.3d 1025, 1039 (Pa. Commw. Ct. 2011); *see also* 65 P.S. § 67.305(a).

In this matter, the Authority has proven that it does not possess the raw data. In addition, the O’Neill Affidavit demonstrates that the Authority’s contract with RAW4D was to provide land images for use in the Upper Southampton Township stormwater improvement project, not for RAW4D’s proprietary systems that it used to scan the relevant properties and provide the Authority and the Township with the land images under the contract. The land images are the

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 Borough 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)).

records related to the contract that the Authority and Township used to calculate fees to fund the stormwater improvement project. Put simply, the Authority only possesses and controls the land images that were produced from RAW4D's aerial and LiDAR scan and such records were provided to the Requester.

The Requester asserts that the Authority did not search in good faith because the contractor was contacted after the final response was issued and an appeal was filed. However, the actions taken by the Authority based upon a further explanation of what records were being sought that was contained in the appeal document to search for additional records and further explain the response were entirely appropriate. Therefore, based on the evidence provided, the Authority has met its burden of proof that it does not possess any additional responsive records. *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 in part** and **dismissed as moot in part**, and the Authority 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 Bucks 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>.

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

FINAL DETERMINATION ISSUED AND MAILED: May 1, 2026

/s/ Kelly C. Isenberg

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Sent via OOR E-File Portal: Len Sheppard; Bryce McGuigan, Esq.; Barbara O'Neill, AORO