



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

<b>IN THE MATTER OF</b>	:
	:
<b>ANNABELLE KRAUSE AND CAPSTONE,</b>	:
<b>Requester</b>	:
	:
<b>v.</b>	:
	:
	:
<b>PENNSYLVANIA DEPARTMENT OF</b>	:
<b>LABOR &amp; INDUSTRY,</b>	:
<b>Respondent</b>	:

**Docket No: AP 2026-1607**

On April 17, 2026, Annabelle Kraus and Capstone (collectively “Requester”) submitted a request (“Request”) to the Pennsylvania Department of Labor & Industry (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to RFP 6100063211, including the bid submissions and scoring information. On April 21, 2026, the Department denied the Request, stating that the records do not exist within the Department possession, custody or control.

On April 21, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure, asserting that it was the Department’s RFP and, therefore, records should exist. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this 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 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).

On May 1, 2026, the Department submitted a statement made under the penalty of perjury from Lori Micheals, the Department’s Procurement Specialist for the Procurement Contracts and Property Management Division, who attests that a search was conducted and that no responsive records exist in the Department’s possession, custody or control.<sup>1</sup> Ms. Micheals further attests:

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<sup>1</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 Department 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 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)).

7. After conducting a good faith search of the Procurement Division's files and inquiring with relevant personnel, I determined that there exist no relevant responsive records relating to these items of the request within the Department's possession, custody, or control. I advised the legal team to refer requester to The Department of General Services (DGS) Bureau of Procurement, which would have all the records of the bids received.

In addition, the Department's position statement indicates that response letter should have included a referral to DGS. Therefore, based on the evidence provided, the Department has met its burden of proof that it does not possess the records sought in the Request. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **denied**, and the Department 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 Commonwealth Court. 65 P.S. § 67.1301(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.<sup>2</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: May 6, 2026**

*/s/ Kelly C. Isenberg*

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KELLY C. ISENBERG  
DEPUTY CHIEF COUNSEL

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

Sent via OOR E-file Portal: Annabelle Krause (via email only);  
Carly Bellini, Esq. (via email only);  
Maria Gray, AORO (via email only)