



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

<p>IN THE MATTER OF</p> <p>NICHOLAS GRAHAM, Requester</p> <p>v.</p> <p>HORSHAM TOWNSHIP, Respondent</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Docket No: AP 2026-0938</p> <p>Consolidated Appeal of OOR Dkt. Nos.</p> <p>AP 2026-0938 and AP 2026-0939</p>
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FACTUAL BACKGROUND

On March 6, 2026, Nicholas Graham (“Requester”) submitted two separate requests (collectively the “Request”) to Horsham Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[1.] ...Oak Ridge Development (PAC460587)–Lot 7 landscape punch[]list disposition and Dec[ember] 2025-present site visit/inspection records...concern[ing] the Oak Ridge development (1001 County Line Road) and is limited to landscape tree/shrub punch[]list/disposition and site visit/inspection records relevant to Lot 7 [address omitted].

[a.] The [R]equester has a copy of the Pre-Maintenance Punch[]list dated October 8, 2025 ([Gilmore & Associates] Project No. 20-02024) and is not requesting re-production of that punch[]list document itself, except to the extent any transmittal emails/letters or attachments were not previously provided. This category seeks records created in connection with or subsequent to that review that address the disposition of landscape tree/shrub punch[]list items (including Lot 7 tree and shrub items) for Lot 7 [address omitted]–including any punch[]list revisions, updates, re-inspection results, closure or disposition communications, sign-off or

completion confirmations, field reports, and emails or other communications (including transmittal communications) reflecting that any Lot 7 landscape tree/shrub item was revised, substituted, closed, waived, accepted, or otherwise disposed of, whether or not labeled as a “punch[]list” record, from October 8, 2025 through the date the Township completes its search. This includes any development-wide punch[]list tracker, spreadsheet, or correspondence that references Lot 7 [address omitted] landscape tree/shrub items.

...

For the period December 1, 2025 through the date the Township completes its search:

[b.] Records evidencing or memorializing any Township or Township-consultant site visit, inspection, meeting, or field review relating to landscape trees/shrubs at or directly adjacent to Lot 7 [address omitted], including field notes, inspection logs, field reports, photographs, and related attachments.

[c.] Scheduling/attendance records for any such visit (e.g., calendar entries, meeting invites, work orders, sign-in sheets, appointment logs), including any entries reflecting December 30, 2025, January 6, 2026, or January 16, 2026 activity at or directly adjacent to Lot 7.

[d.] Communications (including emails with attachments) between [] the Township and any Township consultant, and/or [] the Township/consultants and Hallmark Building Group/Hallmark Homes Group [Hallmark Groups] and/or Bickel’s (or related representatives), that reference Lot 7 landscape trees/shrubs, the December 30/January 6 visit, the January 16 activity, “checking” trees, ribboned/tagged trees, or determinations that trees “passed,” including references to burlap (including “ball and burlap”), twine, wire basket, root ball, planting depth, staking, or mulch/volcano mulching.

...

[e.] Records sufficient to identify the Township staff member(s) and/or Township consultant(s) who participated in, attended, or were scheduled to attend any Lot 7 site visit/meeting/inspection at or directly adjacent to Lot 7 on December 30, 2025 and/or January 6, 2026 (name, employer/firm, role), including any communications confirming attendance.

[2.] ...[C]opies of the records identified below. This [Item] concerns the Oak Ridge development (1001 County Line Road) and is limited to permit closeout/termination and regulatory correspondence records related to NPDES

Permit PAC460587. This request is distinct from and does not seek records already produced in response to my [RTKL] request submitted July 1, 2025, which addressed development approvals, bonus lots, design waivers, and preservation conditions...[r]elevant time period: January 1, 2024 through the date the Township completes its search for responsive records. Without limiting the scope of this request, responsive records may include those referencing: “PAC460587,” “PAG-02,” “Oak Ridge,” “1001 County Line Road,” “Notice of Termination” or “NOT,” “NOT inspection,” “NOT package,” “termination inspection,” “permit termination,” “termination,” “closeout” or “close-out” or “close out,” “final inspection,” “permanent stabilization,” “deficiencies” or “open items,” “PCSM,” “BMP,” and “Gilmore & Associates.”

...

[a.] Records of correspondence (including emails, email threads, and letter transmittals, with attachments) between [the Township] (Township staff and Township consultants acting on Page 2 of 3 the Township’s behalf) and the Montgomery County Conservation District [(“MCCD”)] that reference PAC460587, Oak Ridge, permit inspections, NOT/permit closeout/termination, final inspection scheduling, items/deficiencies, permanent stabilization, or PCSM/BMP conformance, from January 1, 2024 through the date the Township completes its search.

[b.] Records of correspondence (including emails, email threads, and letter transmittals, with attachments) between [the Township] (Township staff and Township consultants acting on the Township’s behalf) and the Pennsylvania Department of Environmental Protection [(“PADEP”)] that reference PAC460587, Oak Ridge, permit inspections, NOT/permit closeout/termination, final inspection scheduling, items/deficiencies, permanent stabilization, or PCSM/BMP conformance, from January 1, 2024 through the date the Township completes its search.

...

[c.] Records of correspondence (including emails, email threads, and letter transmittals, with attachments) between [the Township] and/or Township consultants acting on the Township’s behalf, and [Hallmark Groups] (or its agents/contractors), that reference NOT/permit closeout/termination, the NOT package, final inspection scheduling, or related closeout conditions (including any discussion of maintenance bond/financial security, security reduction, or release timing in connection with NOT/closeout), from January 1, 2024 through the date the Township completes its search.¹

¹ The Items have been numbered by the OOR for purposes of clarity.

On March 9, 2026, the Township granted the Request. Further, the Township claims that the Requester is the recipient on all correspondence, including emails, and as such, the Requester already possesses all responsive correspondence.

On March 12, 2026, the Requester filed two separate appeals with the Office of Open Records (“OOR”), challenging the Township’s response.² Specifically, the Requester claims that the Township’s argument that he possesses the responsive records is not an adequate response and the Township’s search did not include inquiries with its consultants. The OOR invited both parties to supplement the record and directed the Township to notify the OOR if any third parties have a direct interest in the appeals. 65 P.S. § 67.1101(c). The OOR consolidated the two appeals, *sua sponte*, on March 16, 2026.³

On March 24 2026, in support of its position, the Township submitted an attestation made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by William T. Gildea-Walker (“Gildea-Walker Attestation”), the Township’s Agency Open Records Officer (“AORO”). The Township asserts that no additional responsive records exist in the Township’s possession, custody or control.

On March 24, 2026, the Requester submitted a position statement, reiterating the arguments made at the time of the appeal.

At the request of the OOR, on March 31, 2026, the Township submitted a position statement, providing clarification regarding the Township’s search for records responsive to the

² The Requester granted the OOR a thirty-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).”).

³ The two appeals were docketed as OOR Dkts. AP 2026-0938 and AP 2026-0939. As the appeals involved similar requests and records, as well as the same agency and Requester, the appeals were consolidated into OOR Dkt. AP 2026-0938 *See* 65 P.S. § 67.1101(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”).

Request. Additionally, the Township provided the responsive emails and correspondence sent to or from the Requester, referenced in the Township’s final response.

On April 2, 2026, also at the request of the OOR, the Township submitted a second attestation made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by William T. Gildea-Walker (“Gildea-Walker Second Attestation”). The Gildea-Walker Second Attestation provided additional details regarding the Township’s search for records responsive to the Request.

On April 2, 2026, the Requester submitted a second position statement, claiming the Township is required to explain the absence of records⁴ and that the Township is required to inquire with Hallmark Groups and Bickel for responsive records, even if the entities are not Township consultants.⁵

LEGAL ANALYSIS

The Township 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 Township 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

⁴ Under the RTKL, a request must seek records, rather than answers to questions. *Walker v. Pa. Ins. Dep’t*, No. 1485 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 425 at *16 (Pa. Commw. Ct. 2012) (“The RTKL is not a forum for the public to demand answers to specifically posed questions to either a Commonwealth or local agency. In fact, there is no provision in the RTKL that requires an agency to respond to questions posed in a request.”); *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *14 (Pa. Commw. Ct. 2012) (noting that the portion of a request “set forth as a question” did not “trigger a response”); *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (“The [RTKL] did not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens access to existing public records”). Thus, an agency need not “explain” the absence of records and the OOR does not have the authority to order an agency to do so.

⁵ The evidentiary record originally closed in this appeal on March 24, 2026; however, submission extensions were provided to both parties through April 8, 2026. *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”).

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)). 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 records provided during the appeal is moot

During the pendency of the appeal, the Township provided approximately 102 pages of responsive emails and correspondence via the OOR’s submission portal to the Requester. *See* Township position statement; *see also* Gildea-Walker Second Attestation ¶ 4. As such, the appeal as to the records provided to the Requester during the pendency of the appeal is dismissed as moot. *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 Township has demonstrated that no additional responsive records exist

The Township asserts that additional records responsive to the Request do not exist in the Township’s 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. 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 O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Here, the Request seeks records related to a specified property regarding a punch list related to landscaping and the close out of a permit. In support of the Township's argument that it does not possess additional responsive records, the Gildea-Walker Attestation indicates, in relevant part, as follows:

3. Upon receipt of the [R]equest, I conducted a thorough examination of files in the possession, custody and control of the [Township] for records responsive to the [R]equest underlying this appeal, specifically...[t]he parcel file for the property, all subdivision and Land Development records were searched as well as Zoning Hearing Board files to verify whether any zoning relief was involved. ...

4. After conducting a good faith search of the [Township]'s files and inquiring with relevant [Township] personnel, I identified all records within the [Township]'s possession, custody or control that are responsive to the request and provided them to the [R]equester...[a]fter lengthy discussions and research with the Building/Codes and Community Development Departments[,] I was provided with any/all documents that the Township has on file pertaining to [the Requester]'s [R]equest[] and responded accordingly on March 9, 2026 via email.

In further support, the Gildea-Walker Second Attestation provides the following:

4. Upon receipt of the additional request for clarification regarding emails referenced in Gildea-Walker [A]ttestation, I have conducted a thorough examination of all emails, and they have all been provided to [the Requester] and the OOR through the portal on March 31, 2026.

5. ...[Item 1] was seeking records concerning Oak Ridge Lot 7 Landscape punch list disposition and related December 2025 - present site visit/inspection matters[,]

which again Township Staff [] Jean Weiss (Executive Assistant), Mike Stanton (Director of Codes and Community Development), Kelsey Harris (Asst. Director of Codes and Community Development), Bill Walker (Township Manager) and Gilmore & Associates[,] Inc.[,] ha[ve] conducted a good faith search for records which include[d] [] email accounts, project files, and shared drive parcel file in response to the underlying appeal.

In [the Requester]’s consolidated supplement filing, it eluded that the Township intentionally did not provide the October 31, 2025 Gilmore & Associates Memorandum with a prior [RTKL] request, in which there is no record of a prior [RTKL] request asking for such records. This record was not covered under the [Item 1] as it was prior to the request date of December 2025 [to] present, it was merely provided as a courtesy to [the Requester] as he continued to reference the October 8, 2025 punch list memorandum as the most recent which it clearly was not.

6. [Item 2] Oak Ridge Development-Permit Closeout and Regulatory Correspondence pertaining to PAC460587[,] which is a National Pollutant Discharge Elimination System (NPDES) Permit applied to and issued by [PADEP]. Again [the Requester] contradicted himself on his [R]equest as he asks for records of January 1, 2024 through the date of completeness, when he had already received all requested records prior to July 1, 2025 in response to his July 1, 2025 [RTKL] request. [The Requester] was provided all additional records as per his request from July 1, 2025 to present as per [Item 2] referenced above. If [the Requester] would like to know if there is correspondence either in possession, custody, or control by the PADEP or [MCCD] pertaining to this project then it is his right to contact each agency directly with a request.

Under the RTKL, a sworn affidavit or statement 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 Township has acted in bad faith, “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)).

Lastly, the Township’s position statement explains:

As part of our records search, Gilmore & Associates, Inc.[,] (Township Engineer) w[as] contacted for their support in locating documents requested by [the Requester]. As for [Hallmark Groups] (Developer) and/or Bickel’s (Developer’s Consultant) neither company is directly associated with [the Township], meaning

they are not a paid Township Consultant. Mr. Shinton (Director of Community Planning & Development–[the Township]), Ms. Harris (Asst. Director Community Planning & Development –[the Township]) and Mr. Walker (Township Manager–[the Township]) have been through their email servers to provide me with all correspondence with Gilmore & Associates, [Hallmark Groups] as well as [the Requester].⁶

The Township’s attestations are authored by the Township’s AORO, an individual with knowledge of the Township’s records. The Township has demonstrated that its AORO conducted two good faith searches, which included a search of Township emails, the property parcel file, shared drive files, all subdivision and land development records, the Zoning Hearing Board files and inquiries with Gilmore & Associates, the Township Engineer. Gildea-Walker Attestation ¶ 3; Gildea-Walker Second Attestation ¶¶ 4, 5; Township position statement. Thus, based on the evidence provided, the Department has demonstrated that it does not possess additional records responsive to the Request. There has been no sufficient evidence provided that otherwise contradicts the statements offered by the Township in the attestations submitted. *See Pa. Dep’t of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the Township has met its burden of proof that additional records responsive to the Request do not exist.⁷ *Hodges*, 29 A.3d at 1192.

While the Township’s position statement is not verified or sworn, the Requester does not dispute that Hallmark Building Group or Bickel’s are not Township consultants or contracted by the Township. Rather, the Requester claims that the Township is required to obtain responsive records from these entities in response to the Request.

⁶ While the Township’s position statement is not verified or sworn, the Requester does not dispute that Hallmark Building Group or Bickel’s are not Township consultants or contracted by the Township. Rather, the Requester claims that the Township is required to obtain responsive records from these entities regardless of the relationship between the Township and these entities.

⁷ While the OOR understands that the Requester feels additional responsive records should exist, the OOR makes no determination as to whether records *should* exist, as our inquiry is limited to only whether or not records are “in existence and in possession of the ... agency at the time of the right-to-know request.” *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705.

Under the RTKL, two groups of records are accessible to requesters: records in an agency's actual or constructive possession reached directly under Section 901 of the RTKL, and records in the possession of third parties that are indirectly accessible through Section 506(d) of the RTKL. 65 P.S. § 67.506(d); *see also Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014), *aff'd* 124 A.3d 1214.

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).

A key requirement of Section 506(d) is that the agency contracts with the third party from whom records are sought. *Dental Benefit Providers, Inc. v. Eiseman*, 124 A.3d 1214, 1223 (Pa. 2015) (stating that Section 506(d)(1) requires an actual contract with a third party in possession of the records). The RTKL requires a written contract to exist before Section 506(d) can apply; an implied contract or a relationship wherein a third party performs some traditional governmental function without inducement is not sufficient. *See Appeal of Hadley*, 83 A.3d 1101, 1110 (Pa. Commw. Ct. 2014) ("[the r]equester represents that the [agency] delegated certain economic

development functions to the [third party], including tourism and industrial recruitment. However, [the r]equester points to no contractual relationship”).

In this matter, the Township has demonstrated that no contract exists between it and Hallmark Groups and Bickel’s. The Requester has not provided evidence of the existence of a contract or disputed the Township’s position that a contract between it and either of these entities exists. Therefore, the first element of Section 506(d) has not been proven and the Township is not required to obtain records from Hallmark Groups or Bickel’s.

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Township 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 Montgomery 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; 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.⁸ 65 P.S. § 67.1303. 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: May 6, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

⁸ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Sent via portal only to: Nicholas Graham; William T. Walker