



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

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**GUEDIA SEABRON,
Requester**

v.

: Docket No: AP 2026-1129

**MOUNT POCONO BOROUGH,
Respondent**

FACTUAL BACKGROUND

On February 13, 2026, Guedia Seabron (“Requester”) submitted a request (“Request”) to Mount Pocono Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the following:¹

[Item 1.] Any records identifying the legal status of Megargel Lane (public, private, dedicated, accepted or otherwise classified);

[Item 2.] Any Borough resolutions, ordinances, or motions concerning acceptance, maintenance, or discontinuation of maintenance of Megargel Lane;

[Item 3.] Any recorded agreements, maintenance agreements, development agreements, easements, or right-of-way documents involving Megargel Lane;

[Item 4.] Any subdivision or land development plans referencing Megargel Lane;

[Item 5.] Any documentation reflecting when snow and ice removal services began and/or ceased, and the basis for that decision; [and]

¹ On February 11, 2026 at 8:05 p.m., the Requester submitted an email request to the Borough’s Assessment and Zoning Department for the same records sought in the Request; however, on February 12, 2026, she was directed to seek those records by submitting a formal RTKL request to the Borough’s Administrative Assistant and Agency Open Records Officer (“AORO”), Destiny Santiago. *See* Requester Appeal, pp. 17-19.

[Item 6.] Any correspondence or internal memoranda related to the Borough's responsibility (or lack thereof) for maintenance of Megargel Lane.

On March 20, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Borough partially granted the Request ("Final Response"), providing various responsive records, while also partially denying the Request, asserting that the Borough is not in possession of any record that indicates that Megargel Lane was ever accepted as a Borough road. In addition, the Borough stated that after a search of the Monroe County Recorder's Office, the Borough found no evidence of a Deed of Dedication being filed for Megargel Lane, and that it is not in possession of any maps and land development plans laying out Megargel Lane.²

On March 23, 2026, the Requester appealed to the Office of Open Records ("OOR"),³ arguing, in part, that the Borough acted in bad faith and that it failed to disclose "Ordinance No. 3 of 2013, various maps, emails, and official correspondence regarding Megargel Lane[.]"⁴ 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).

From March 25 to 26, 2026, in response to an inquiry from the OOR, the Requester filed ten submissions, which included copies of the Request, the Final Response, a link to a Ring Camera video, various communications about Megargel Lane and witness statements, alleging violations

² Although the Final Response only referenced the Requester's RTKL request dated February 19, 2026, which seeks most of the same records as the instant Request, on April 9, 2026, the Borough filed the verified correspondence of Borough Solicitor James V. Fareri, Esq. ("Fareri Attestation"), who attests that "[t]he March 20, 2026 [Final] [R]esponse ... was meant to respond to the then-outstanding RTK request dated February 13 and February 19, 2026."

³ Although the appeal was submitted electronically on Saturday, March 21, 2026, it was not received by the OOR until the next business day, or Monday, March 23, 2026.

⁴ The Requester also argued that the Borough's February 18, 2026 thirty-day extension notice ("Extension Notice") was deficient and that it failed to timely respond to the Request. However, the OOR dismissed the Requester's prior appeal involving the same Request as premature, finding that the Borough "timely invoked a thirty-day extension ... on February 18, 2026[.]" and that under 65 P.S. § 67.902(b), it "had until March 25, 2026 to respond to the Request" because the Borough was closed for business on February 16, 2026, for the President's Day holiday. *Seabron v. Mount Pocono Borough*, OOR Dkt. AP 2026-1050, 2026 PA O.O.R.D. LEXIS 1363. As such, the Borough's issuance of the March 20, 2026 Final Response was timely. See 65 P.S. § 67.902(b)(2). To the extent the Requester seeks to challenge the Final Determination issued in OOR Dkt. AP 2026-1050, she was advised of the process for appealing that Final Determination, and the OOR has no authority to reopen that matter at the instant docket.

of civil rights and the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101 *et seq.*

On March 31, 2026, the Requester filed six more submissions, renewing her bad faith argument and further asserting, in part, that disclosure of the requested records is in the public interest because they concern roadway maintenance, emergency access and public safety affecting residents, including elderly and disabled individuals.

On April 3, 2026, the OOR informed the parties that it had not received a submission in support of the Borough’s position and provided the Borough additional time until April 9, 2026, to supplement the record. In response, that same day, the Borough made three submissions, which included copies of the Final Response and the disclosed records, and that pertained, in part, to the Requester’s subsequent RTKL requests.

On April 7 and 8, 2026, the Requester filed six submissions related, in part, to the maintenance history of Megargel Lane.

On April 9, 2026, in response to the OOR’s April 6, 2026 inquiry, the Borough made four submissions, which included, among other things, the Fareri Attestation.⁵

In response, that same day, the Requester made seventeen submissions, some of which are duplicative and pertained, in part, to a separate RTKL request, past communications about Megargel Lane and the Requester’s ADA complaints with the U.S. Department of Justice and the Pennsylvania Human Relations Commission.

On April 9, 2026, the OOR also directed the Borough to submit supplemental evidence by April 14, 2026, clarifying its position on appeal, providing a detailed description of its search for

⁵ The Fareri Attestation is made subject to penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

responsive records and indicating whether the disclosed records are the only responsive records that exist.

On April 10, 2026, upon agreement of the Requester, the OOR extended the deadline for the issuance of the Final Determination in this matter to May 15, 2026.⁶ In addition, the OOR reiterated that the appeal record would remain open until April 14, 2026, for the Borough to supplement the record in accordance with the OOR's April 9, 2026 inquiry. That same day, the Requester made two additional submissions.

On April 15, 2026, the Requester made a final submission, asserting, in part, that the Borough failed to respond to the OOR's inquiry.⁷ To date, the Borough has not further supplemented the record.^{8,9}

LEGAL ANALYSIS

The Borough 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 Borough is required to demonstrate, “by a preponderance of the

⁶ *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)”).

⁷ As noted above, the Requester has made various claims on appeal of ADA and civil rights violations, that the Borough owns Megargel Lane or has an obligation to maintain it, and that the Borough failed to respond to the Requester's communications and inquiries dating back to May 2024. However, all such issues are outside the scope of the appeal and the purview of the OOR. As such, they will not be further addressed in this Final Determination.

⁸ Despite accessing the appeal docket via the OOR's e-File Portal on multiple occasions on and after April 15, 2026, the Borough did not further supplement the record in accordance with the OOR's April 9, 2026 inquiry or seek additional time to do so.

⁹ Throughout this appeal, the parties filed submissions and arguments regarding the Requester's subsequent RTKL requests dated February 19, 2026, March 22, 2026 and March 26, 2026. However, those requests are not at issue in this matter, as the Requester specifically stated in her appeal filing that the appeal only concerns “one of two separate Right-to-Know requests submitted to the Borough ... on February 13, 2026[,]” i.e. the instant Request. *See* Requester Appeal, p. 1. Therefore, those three requests will not be further addressed in this Final Determination. However, we note that the request dated February 19, 2026, was at issue in the appeal docketed at OOR Dkt. AP 2026-1051, which was dismissed on April 20, 2026 as premature. *See Seabron v. Mount Pocono Borough*, OOR Dkt. AP 2026-1051, 2026 PA O.O.R.D. LEXIS 1364. Additionally, the request dated March 22, 2026, appears to be at issue in the separate matter pending before the OOR at AP 2026-1691.

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)). 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) (citing 65 P.S. § 67.708).

1. The Borough failed to demonstrate that no additional responsive records exist

In response to a request for records, “... an agency shall make a good faith effort to determine ... whether 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 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) (*Uniontown Newspapers I*), *aff’d*, 243 A.3d 19 (Pa. 2020) (*Uniontown Newspapers II*). 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).

Moreover, in *Pa. Dep't of Health v. Mahon*, the Commonwealth Court discussed the evidence required to establish the absence of records, quoting its previous decision in *Hodges v. Pa. Dep't of Health*, which held that an agency “may satisfy its burden of proof ... with either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record.” 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (quoting *Hodges*, 29 A.3d at 1192). The Court reasoned that “[i]t is questionable to what degree additional detail and explanation are necessary to establish the nonexistence of a record rather than its exemption from disclosure,” and that “[i]n the absence of any competent evidence that an agency acted in bad faith or that the agency records exist, the averments in such affidavits [of non-existence] should be accepted as true.” *Mahon*, 283 A.3d at 936 (citing *Smith Butz, LLC v. Pa. Dep't of Env't Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016)).

As noted above, the Borough disclosed several records to the Requester with the Final Response, which included the following: (1) an undated letter that was purportedly sent to Borough Residents in August 2023, indicating that certain private and unimproved roads would no longer be maintained by the Borough, including Megargel Lane; (2) a March 2024 Borough email chain, indicating that Megargel Lane was not a Borough road; (3) a list of roads/rights-of-way in the Borough and the number of signs related to such roads; (4) a February 26, 2026 internal memorandum prepared by the Borough Zoning Officer, addressing the classification of Megargel Lane as a private roadway; (5) the May 7, 2024 Borough Council Meeting Minutes; and (6) various records and deeds pertaining to the Requester's property from the Monroe County Recorder's Office and/or the Assessor's Offices, which indicate that Megargel Lane was initially referred to

as a “proposed street” and was later referred to as a “right-of-way” (collectively, the “Disclosed Records”).¹⁰

On appeal, the Borough submitted the Fareri Attestation, which states that “[i]t is the Borough’s position that Megargel Lane is a private right of way which was never accepted by the Borough and under law, is not the responsibility of the Borough.]” Fareri Attestation, pp. 1-2. The attestation further indicates, in part, that “this legal issue cannot be settled by RTK[L] requests or any decision of the [OOR][,.]” and that Solicitor Fareri was “requesting permission from the Borough to initiate a declaratory judgment act to allow the court . . . in Monroe County to determine the status of Megargel Lane.” *Id.* at p. 2. Despite the OOR directing the Borough to provide additional factual detail demonstrating that a good faith search was conducted and that other than the Disclosed Records, no responsive records exist, the Borough did not provide such evidence on appeal.

As such, the OOR is constrained to find that the Borough failed to establish, by a preponderance of the evidence, that no additional responsive records exist within its possession, custody or control.¹¹ *See Mack v. Pa. Dep’t of Corr.*, No. 699 C.D. 2022, 2023 Pa. Commw. Unpub. LEXIS 393, *5 (Pa. Commw. Ct., Jul. 26, 2023) (reiterating that “[a] good faith response - either to produce records or assert an exemption - cannot occur absent a good faith search . . . ”) (quoting *Uniontown Newspapers II*), *see also Gerber v. Monroe Cnty. Dist. Attorney’s Off.*, OOR

¹⁰ Although the Requester argues that she has not received any of the responsive records via mail, she stated on the Request form that she sought electronic copies of records, and she filed copies of the Disclosed Records with the appeal filing. *See* Request, p. 2; *see also* Requester Appeal, pp. 20-72. Therefore, because the Borough provided the Disclosed Records to the Requester in an electronic medium, as requested, it had no obligation under the RTKL to also mail those records to the Requester. *See* 65 P.S. § 67.701 (“A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists”).

¹¹ The OOR makes no determination as to whether additional responsive 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 v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

Dkt. AP 2025-0150, 2025 PA O.O.R.D. LEXIS 368 (finding that the agency’s attestation did not provide sufficient factual detail showing that it conducted an adequate search for responsive records). Absent the Borough providing a sufficient evidentiary basis that no additional responsive records exist or that they are not publicly accessible under the RTKL, the OOR will order disclosure of responsive public records. *See Crist v. Derry Twp.*, OOR Dkt. AP 2022-2064, 2022 PA O.O.R.D. LEXIS 2386.

Accordingly, the Borough is directed to conduct a good faith search for any additional responsive records and to provide them to the Requester. To the extent that additional responsive records do not exist, the Borough is required to provide an affidavit or attestation describing the search for such records and affirming their non-existence. *See* 65 P.S. § 67.705 (“When responding to a request for access, an agency shall not be required to create a record which does not currently exist ...”).

2. The OOR declines to make a finding of bad faith

The Requester argues that the Borough acted in bad faith in “handling public records,” withholding additional responsive documents, failing to timely respond to the Request and engaging in repeated delays, despite expiration of statutory deadlines. While the OOR may make a finding of bad faith, only a court may impose related penalties. *See* 65 P.S. §§ 67.1304(a), 67.1305. Under the RTKL, a finding of bad faith may be appropriate where an agency refuses to comply with its statutory duties. *See Uniontown Newspapers I*, 185 A.3d at 1171-74 (bad faith involves failing to perform a good faith search and review of records to ascertain if the requested material exists or if any exclusion applies prior to denial of access); *see also Off. of the Dist. Att’y. of Phila. v. Bagwell*, 155 A.3d 1119, 1140-41 (Pa. Commw. Ct. 2017) (a finding of bad faith was warranted where the agency based a denial on the identity of the requester, refused to provide a

legal rationale for denial and did not perform a good faith search). However, such a finding is typically reserved only for an egregious or blatant violation of the RTKL.

Here, contrary to the Requester's arguments, the Borough issued a timely thirty-day extension notice and Final Response to the Request, and it participated on appeal. Although the Borough failed to submit additional evidence, demonstrating that a good faith search was conducted and that no additional responsive records exist, as directed by the OOR, such does not rise to the level of bad faith. Therefore, in the absence of additional facts, the OOR declines to make a finding of bad faith in this matter.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Borough is required to conduct a good faith search for any additional responsive records and to provide them to the Requester within thirty days, or, in the alternative, a sworn affidavit or a statement made under the penalty of perjury demonstrating that no such records exist. 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 Monroe 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.¹² 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>.

¹² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: May 11, 2026

/s/ Megan Burns

MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Guedia Seabron; Lori Noonan; Destiny Santiago; and James Fareri, Esq.