

On April 28, 2026, Francis J. Catania, Esquire, on behalf of the Township, submitted a position statement reiterating its grounds for denial and also asserting the appeal is procedurally deficient. In support of its position, the Township submitted the sworn affidavit of Joseph P. Possenti, Jr., the Agency Open Records Officer (“AORO”) for the Township (“Possenti Affidavit”).

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 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 appeal is sufficient under Section 1101(a) of the RTKL

As a threshold matter, the Township argues that the appeal is deficient under Section 1101 of the RTKL because of procedural deficiencies. *See* 65 P.S. § 67.1101(a)(1). First, the Township asserts that Attorney Schnee’s grounds for appeal was vague and fails to meet the OOR requirements for an appeal. Section 1101(a)(1) requires requesters to “state the grounds upon which the requester asserts that the record is a public record...and...address any grounds stated by the agency for...denying the request.”*Id.* A general statement “that the records are public records that ‘do not qualify for any exemptions under [S]ection 708, are not protected by privilege, and

are not exempted under any Federal or State law or regulation,' is sufficient" to satisfy the requirements of Section 1101(a)(1). *Barnett v. Pa. Dep't of Public Welf.*, 71 A.3d 399, 406 (Pa. Commw. Ct. 2013). However, the OOR and the courts have held that failure to comply with Section 1101(a)(1) renders an appeal deficient. *See Padgett v. Pa. State Police*, 73 A.3d 644, 647 (Pa. Commw. Ct. 2013); *Pa. Dep't of Corr. v. Office of Open Records*, 18 A.3d 429 (Pa. Commw. Ct. 2011).

which The Township asserts that the appeal does not address the basis for denial or why the requested records are public records under the RTKL. However, in this appeal, the Requester appealed using the OOR's standard appeal form, which provides that the signature of the Requester constitutes a statement that the requested records are public records that exist in the possession of the agency and challenges the denial, partial denial, or deemed denial of any portion of the Request. *See Barnett v. Pa. Dep't of Public Welf.*, 71 A.3d 399, 406 (Pa. Commw. Ct. 2013). The OOR has found that this statement is sufficient to satisfy a requester's burden under Section 1101(a). *See, e.g., Ciavaglia and The Buck Cnty. Courier Times v. Bucks Cnty. Dist. Att'y Off.*, OOR Dkt. AP 2024-1901, 2024 PA O.O.R.D. LEXIS 2305. Therefore, the appeal is sufficient, and the OOR may reach the merits of the appeal. Further, the appeal letter states that the Requester "respectfully asserts that the requested records are public records and that the requested records exist in the Township possession, custody or control."

The Township also asserts that the appeal is deficient in that Requester failed to include the Township's March 26, 2026 email to Requester in which the meeting minutes were provided and asserts that the email negates the need for filing the instant appeal. The OOR requires the Requester to provide a copy of the agency's response and any extensions invoked.¹ Here,

¹ *See* OOR Procedural Guidelines, § III(A)(b) <https://www.openrecords.pa.gov/Appeals/ProceduralGuidelines.cfm> revised March 30, 2026 (last visited on May 4, 2026).

Requester provided the Township's February 24, 2026 correspondence invoking a thirty day extension and the March 26, 2026 final response that denied the Request, the reasons for the denial, as well as Requester's appellate rights. The final response also referenced that it was enclosing the Township's meeting minutes as an alternative responsive record. The email correspondence with the meeting minutes attached is unnecessary for the purposes of this appeal. Furthermore, the final response by the Township references the production of the meeting minutes, so this alternative offer for responsive records was disclosed on appeal. For these reasons, the appeal is sufficient.

2. The Township has proven that responsive records are not in their 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 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).

AORO Possenti states that the Township does not make or keep audio and written transcripts of its meetings. Possenti Affidavit ¶ 8. Instead, the Township officials take notes during the meetings and then create meeting minutes. *Id.* The meeting minutes are the only records generated that contain the discussions that took place during the February 16, 2026 Board of Commissioners Public Meeting, and they were provided to Requester, even though the record was not created until after the Request was made. *Id.*

In the absence of any evidence that the Township has acted in bad faith or that the requested records exist, “the averments in [the affidavit] 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)). Therefore, based upon the evidence provided, the Township has met its burden of proof that it does not possess responsive audio or written transcript 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**, 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 Delaware 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.² All documents or communications

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

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 15, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Dominica Nickson
 J. Chadwick Schnee, Esq.
 Francis J. Catania, Esq.
 Joseph P. Possenti, Jr., AORO