



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
LARRY MOORE and BABST CALLAND,	:
Requester	:
	:
v.	:
	:
	:
	:
SOUTH STRABANE TOWNSHIP,	:
Respondent	:

Docket No: AP 2026-1582
Consolidated Appeal of OOR Dkt. Nos.
AP 2026-1582, AP 2026-1583, AP 2026-
1584, AP 2026-1585 and AP 2026-1586

FACTUAL BACKGROUND

On March 4, 2026, Larry Moore and Babst Calland (collectively “Requester”) submitted five separate requests (collectively the “Request”) to South Strabane Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[1.] All letters, emails, text messages, instant messages, social media messages and other documents sent to or received by (a) any member of the [Township] Board of Supervisors, (b) any member of the Township Planning Commission, (c) the Township solicitor and any employee or representative of his law firm, (d) the Township manager, and (e) the Township zoning officer, to or from “Protect PT” or agents thereof, including but not limited to Ms. Gillian Graber, regarding the Township’s regulation of data centers from January 1, 2025 to the date of this [R]equest. This [R]equest specifically seeks that the Township conduct a keyword search of its electronic records from January 1, 2025 to the date of this [R]equest for any records that contain the following search terms “Protect PT” or “Gillian Graber”.

[2.] All letters, emails, text messages, instant messages, social media messages and other documents sent to or received by (a) any member of the [Township] Board of Supervisors, (b) any member of the Township Planning Commission, (c) the

Township solicitor and any employee or representative of his law firm, (d) the Township manager, and (e) the Township zoning officer, to or from the “Clean Air Council” or agents thereof, regarding the Township’s regulation of data centers from January 1, 2025 to the date of this [R]equest. This [R]equest specifically seeks that the Township conduct a keyword search of its electronic records from January 1, 2025 to the date of this [R]equest for any records that contain the following search term “Clean Air Council”.

[3.] All letters, emails, text messages, instant messages, social media messages and other documents sent to or received by (a) any member of the [Township] Board of Supervisors, (b) any member of the Township Planning Commission, (c) the Township solicitor and any employee or representative of his law firm, (d) the Township manager, and (e) the Township zoning officer, to or from the “Center for Coalfield Justice” or agents thereof, including but not limited to Ms. Jodi Borello and Ms. Sarah Martik, regarding the Township’s regulation of data centers from January 1, 2025 to the date of this [R]equest. This [R]equest specifically seeks that the Township conduct a keyword search of its electronic records from January 1, 2025 to the date of this [R]equest for any records that contain the following search terms “Center for Coalfield Justice” or “Jodi Borello” or “Sarah Martik”.

[4.] All letters, emails, text messages, instant messages, social media messages and other documents sent to or received by (a) any member of the [Township] Board of Supervisors, (b) any member of the Township Planning Commission, (c) the Township solicitor and any employee or representative of his law firm, (d) the Township manager, and (e) the Township zoning officer, to or from the “League of Women Voters of Washington County” or agents thereof, including but not limited to Ms. Antoinette Fitch, regarding the Township’s regulation of data centers from January 1, 2025 to the date of this [R]equest. This [R]equest specifically seeks that the Township conduct a keyword search of its electronic records from January 1, 2025 to the date of this [R]equest for any records that contain the following search terms “League of Women Voters of Washington County” or “Antoinette Fitch”.

[5.] All letters, emails, text messages, instant messages, social media messages and other documents sent to or received by (a) any member of the [Township] Board of Supervisors, (b) any member of the Township Planning Commission, (c) the Township solicitor and any employee or representative of his law firm, (d) the Township manager, and (e) the Township zoning officer, to or from the “PennFuture” or agents thereof, including but not limited to Mr. Nicholas Bartel, regarding the Township’s regulation of data centers from January 1, 2025 to the date of this [R]equest. This [R]equest specifically seeks that the Township conduct a keyword search of its electronic records from January 1, 2025 to the date of this [R]equest for any records that contain the following search terms “PennFuture” or “Nicholas Bartel”.¹

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

On March 30, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Township partially granted the Request and provided records responsive to Items 3 through 5. The Township denied Items 1 and 2, claiming responsive records do not exist in the Township’s possession, custody or control. In support of its position for Items 1 and 2, the Township submitted attestations made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by: Russell Grego (“Grego First Attestation” and “Grego Second Attestation”), a member of the Township’s Board of Supervisors; George Rowand (“Rowand First Attestation” and “Rowand Second Attestation”), Chairman of the Township’s Board of Supervisors; Zach Morgan (“Morgan First Attestation” and “Morgan Second Attestation”), a member of the Township’s Board of Supervisors; K. Robert Weber (“Weber First Attestation” and “Weber Second Attestation”), a member of the Township’s Board of Supervisors; and Jeffrey Bull (“Bull First Attestation” and “Bull Second Attestation”), a member of the Township’s Board of Supervisors.

On April 20, 2026, the Requester filed five separate appeals with the Office of Open Records (“OOR”), challenging the Township’s response.² Specifically, the Requester claims that the Township did not conduct a thorough and good faith search for responsive records. 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 five appeals, *sua sponte*, on April 22, 2026.³

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 five appeals were docketed as OOR Dkts. AP 2026-1582, AP 2026-1583, AP 2026-1584, AP 2026-1585 and AP 2026-1586. As the appeals involved similar requests and records, as well as the same agency and Requester, the appeals were consolidated into OOR Dkt. AP 2026-1582. *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”).

On May 1, 2026, in support of its position, the Township submitted a position statement, authored by its solicitor, Charlotte E. Karnes, Esq. (“Karnes Statement”),⁴ reiterating its grounds for denial of the Request. The Township further asserts that no additional records responsive to Items 1 and 2 exist in the Township’s possession, custody or control.

On May 1, 2026, the Requester submitted a position statement, reiterating the arguments made at the time of the appeal.

On May 7, 2026, the Requester submitted correspondence, claiming that additional responsive records are believed to exist in the possession of the Township.

On May 8, 2026, at the request of the OOR, the Township submitted an attestation made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by both Charlotte E. Karnes, Esq. and Peter Stefansky⁵ (“Karnes-Stefansky Attestation”), providing clarification regarding the Township’s search for records responsive to the Request.

On May 11, 2026, the Requester submitted correspondence, asserting that the Township did not perform an adequate inquiry with its solicitor for records responsive to the Request.

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, also authored by both Charlotte E. Karnes, Esq. and Peter Stefansky (“Karnes-Stefansky Second Attestation”). The Karnes-Stefansky Second Attestation provided additional details regarding the Township’s search for records responsive to the Request.⁶

⁴ The Karnes Statement was verified to be true and correct subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities. *See* Karnes Statement p. 73.

⁵ Mr. Stefansky is the Township’s Agency Open Records Officer (“AORO”). *See* Karnes-Stefansky Attestation ¶ 1.

⁶ The evidentiary record originally closed in this appeal on May 1, 2026; however, all submissions have been considered herein. *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”).

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)). 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).

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 to or from "Protect PT," "Clean Air Council," "Center for Coalfield Justice," "League of Women Voters of Washington County," and "PennFuture" related to the Township's regulation of data centers over a specified timeframe. In support of the Township's argument that it does not possess additional responsive records, the Karnes-Stefansky Attestation indicates, in relevant part, as follows:

3. Upon receipt of the [R]equest, I contacted the officer of the Solicitor for [the Township] to inquire as to the subject [R]equest. Accordingly, I was advised to conduct and subsequently conducted a thorough examination of files in the possession, custody and control of the [Township] for records responsive to the request underlying this appeal. Specifically, [the Township's] physical files, electronic files, and servers were investigated, and a key word search was conducted, as requested per the referenced [Items], when applicable. Additionally, each of the Township Supervisors, members of the Township Planning Commission, the Township Solicitor's Office, the Township Zoning Officer were advised as to the [R]equest and were asked to provide any responsive records within their possession. More specifically, the aforementioned individuals were advised to review any physical and electronic files within their possession and further conduct the key word searches as indicated in the subject [Items]. Following, the aforementioned were advised to provide any and all documentation and/or correspondence regarding the same.

4. As stated, I have inquired with relevant [Township] personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession. Notably, the [] Township personnel provided email correspondence that was located following a search of "Center for Coalfield Justice", "Jodi Borello" and "Sarah Martik" such records were provided to the Requester. Additionally, an email correspondence which was shared among the Board of Supervisors and the Planning Commission & Zoning Director was located following a key word search for "PennFuture" and "Nicholas Bartel" such records were provided to the Requester. Further, an email correspondence which was shared among the Board of Supervisors and the Planning Commission & Zoning Director was located following a search for records regarding "League of Women Voters of Washington County" and "Antoinette Fitch", such records were provided to the Requester.

5. 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 [R]equest were identified and provided to the requester herewith. Despite the [Township]'s good faith efforts, the [Items] seeking records relative to "Protect PT/Gillian Graber" and the "Clean Air Council" were not located and thus were determined to not be within the possession, custody, or control of the Township. Accordingly, to support this attestation, [attestations] of the [Township] Board of Supervisors were executed and provided to the Requester.

In further support, the Karnes-Stefansky Second Attestation provides the following:

3. Upon receipt of the [R]equest, I contacted the officer of the Solicitor for [the Township] to inquire as to the subject [R]equest. Accordingly, I was advised to conduct and subsequently conducted a thorough examination of files in the possession, custody and control of the [Township] for records responsive to the request underlying this appeal. Specifically, [] Township physical files, electronic files (including emails, instant and text messages, and any other correspondence/documentation relative and responsive to the [R]equest otherwise stored on Township owned devices and personal devices of Township personnel), and servers were investigated, and a key word search was conducted, as requested per the referenced [Items] when applicable. Additionally, each of the Township Supervisors, members of the Township Planning Commission, the Township Solicitor's Office, and the Township Zoning Officer were advised as to the [R]equest and were asked to provide any responsive records within their possession. Again, the aforementioned individuals were advised to review any physical and electronic files, as stated above, within their possession and further conduct the key word searches as indicated in the subject [Items]. Following, the aforementioned were advised to provide any and all documentation and/or correspondence regarding the same.

Lastly, as noted in the Karnes Statement, "additional records relative to the [Items] simply do not exist." Karnes Statement p. 10.

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 and 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)).

The Township's attestations are authored by the Township's AORO and solicitor, individuals with knowledge of the Township's records. The Township has demonstrated that its AORO conducted a good faith search, which included a search of the Township's physical and electronic files, the Township's server and the personal devices of Township personnel. Karnes-Stefansky Attestation ¶ 3; Karnes-Stefansky Second Attestation ¶ 3. Further, the Township directed its Board of Supervisors, Solicitor's Office, the Planning Commission and the Zoning Officer to conduct a search for responsive records, which included the keywords contained in each Item of the Request. Karnes-Stefansky Attestation ¶¶ 4, 5. While the Requester claims additional records exist and the Solicitor's office did not search for responsive records, based on the Township's inquiries, the Solicitor's office was a part of the Township's search for responsive records and additional records do not exist, as all parties were directed to produce records responsive to the Request. Thus, based on the evidence provided, the Township 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 and statement 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.

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

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

mailing date of this Final Determination, any party may appeal to the Washington 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: June 4, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent via portal only to: Larry Moore; Anna Jewart, Esq; Charlotte Karnes, Esq; Peter Stefansky, AORO

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.

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