



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ROBERT STIPKOVIC,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2026-1344
	:	
NEW STANTON BOROUGH,	:	
Respondent	:	

FACTUAL BACKGROUND

On March 6, 2026, Robert Stipkovic (“Requester”) emailed a request (“Request”) to the New Stanton Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking certified copies of all code enforcement complaints, investigations, or inspections related to signage in the Borough from January 1, 2012 to March 6, 2026.

On April 2, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Borough granted the Request and provided the Requester with copies of zoning ordinances, planning and code materials, code enforcement reports relating to illegal signage, signage complaints, sign-related documents, meeting minutes, and other records with various references to signage.

On April 3, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the completeness of the records provided.¹ The OOR invited both parties to

¹ The Requester granted the OOR an 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).”)

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).

On April 16, 2026, the Requester and the Borough provided submissions. On April 27, 2026, the OOR sought clarification from the parties as the parties' submissions in this appeal related to a separate request submitted by the Requester to the Borough on March 6, 2026 which is not the subject of this appeal. On May 5, 2026, the OOR sent a deficiency notice to the Requester as it appeared that the appeal submitted by the Requester did not include the necessary documentation as it related to this specific Request and agency response.

On May 7, 2026, the Requester submitted documentation curing this deficiency and clarifying the scope of this appeal. Specifically, the Requester argues that the Borough should have also produced complaint intake records, signage complaint logs, investigative files, notes, photographs, correspondence, and reports, enforcement tracking records, inspection databases, and comprehensive signage enforcement records from 2012 through 2026. On May 12, 2026, the Borough submitted a position statement reiterating that it provided all records responsive to the Request and arguing that while the Requester seeks additional records he believes should exist, the Borough does not possess such records. In support of its position, the Borough submitted the affidavit of Anita Hoffman, the Borough Manager and Open Records Officer ("Hoffman Affidavit"). The Borough also argues that the appeal is moot as to certification of records because on April 16, 2026, the Borough provided the Requester with a certification that the Borough provided the Requester with records responsive to the Request.

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 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 Borough proved that no additional responsive records exist

The Borough asserts that no additional records responsive to the Request exist within its possession, custody or control. The Requester asserts that additional responsive records should exist and specifically argues that the Borough failed to submit detailed evidence that it conducted a good faith search. 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 all code enforcement complaints, investigations, or inspections for signage from 2012 until March 6, 2026. The Borough provided certain records reflecting signage complaints, code enforcement reports, planning commission minutes, and conditional use request for a sign that the Borough received over prior years. The Borough argues that no additional records responsive to the Request exists in its possession, custody, or control. In support of the Borough's argument that it does not possess additional records, the Hoffman Affidavit states, in relevant part, as follows:

To conduct a good-faith search for documents in the Borough's custody, control, and possession that were responsive to [the Request] regarding sign code enforcement complaints, investigations, or inspections related to signage in the Borough, I and Borough Secretary Kristen Conway (who are the custodians of the Borough's sign-related records) examined paper files in the Borough's office, as well as electronic files stored in the Borough's computer systems and email accounts associated with the Borough. The date range of the documents [the Requester] sought in his request is January 1, 2012 through the present (being March 6, 2026, the date of his request). This search resulted in responsive records that were produced to [the Requester] on April 2, 2026.

See Hoffman Affidavit p. 1.² The Borough's affidavit is authored by the Borough Manager who states that she and the Borough Secretary have knowledge of the agency's records, conducted a search of the Borough's paper and electronic files and email accounts, and determined that no additional records exist. The Requester argues that the Request specifically sought internal materials used to interpret, apply, and enforce signage ordinances and the Borough produced none. The Requester asserts additional records should exist based upon the argument that government

² 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 the Borough has acted in bad faith, "the averments in [the affidavits] 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)).

agencies should have additional records relating to code enforcement signage complaints, investigations, and inspections; notwithstanding, the record reflects that the Borough conducted a search for responsive records and no additional records exist. No sufficient evidence has been provided that demonstrates that the Borough does maintain additional records relating to signage complaints, investigation, or inspections outside of the records already provided in response to the Request.³ See *Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the Borough has met its burden of proof that no additional records responsive to the Request exist. *Hodges*, 29 A.3d at 1192.

2. The Borough failed to properly certify the responsive records

Under the RTKL, “[i]f an agency’s response grants a request for access, the agency shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees....” 65 P.S. § 67.904. Further, “a ‘certified copy’ of a responsive record ... is more than simply the agency’s records officer’s attestation that he or she has made a true and correct copy.... Instead, it verifies the authenticity of the document for purposes of admitting the record as evidence during pending or future litigation.” *Phila. Dist. Attorney’s Off. v. Cwiek*, 169 A.3d 711, 716 (Pa. Commw. Ct. 2017) (citing *Butler v. Dauphin Cnty. Dist. Attorney’s Off.*, 163 A.3d 1139, 1145 (Pa. Commw. Ct. 2017)). Under the RTKL, an agency may impose “reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.” 65 P.S. § 67.1307(c). Certification of a record by an agency is a statement that the records provided are a correct and accurate copy of the record in the agency’s

³ The OOR makes no determination as to whether additional responsive records *should* exist, only that the Borough demonstrated that it does not possess additional records of code enforcement complaints, investigations, or inspections for signage from 2012 until March 6, 2026. See, e.g., *Troupe v. Borough of Punxsutawney*, OOR Dkt. AP 2010-0743, 2010 PA O.O.R.D. LEXIS 731 (“While ... evidence may establish that a [record] should exist, the OOR lacks jurisdiction to rule on the propriety of the lack of such [record] -- the OOR may only determine whether a responsive record does, in fact, exist”); *Moore*, 992 A.2d at 909 (noting that the 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.”).

possession and does not require the agency to be able to attest to the accuracy of the contents of that record. *Butler*, 163 A.3d at 1145. The Borough certified that it provided to the Requester the records responsive to the Request. This does not meet the definition of certification as contemplated by Section 904 of the RTKL. Accordingly, the Borough is directed to provide a proper certification of the records provided in response to the Request.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Borough is required to provide certified copies of all responsive records within thirty days. 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 Westmoreland 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.⁴ 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 5, 2026

/s/ Catherine R. Hecker

CATHERINE R. HECKER
APPEALS OFFICER

Sent via portal to: Robert Stipkovic
Anita Hoffman
Alexander Brown, Esq.

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).