



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>GREGG J. WANCIAK,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP 2026-2132</b>
	:	
<b>PENNSYLVANIA DEPARTMENT OF</b>	:	
<b>STATE,</b>	:	
<b>Respondent</b>	:	

On May 18, 2026, Gregg J. Wanciak (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of State (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking bond information and oath of office documentation “associated with the office of Secretary of the Commonwealth of Pennsylvania. On May 22, 2026, the Department denied the Request, stating that the requested records do not exist within the Department’s possession, custody or control.

On May 29, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

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).

On June 9, 2026, the Department submitted a position statement and the declaration, made subject to the penalties set forth in 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), from Janelle Hawthorne (“Hawthorne Declaration”),<sup>1</sup> the Department’s Open Records Officer, who affirms that the Department provided the Requester with the responsive oath of office during the appeal<sup>2</sup> and that the Department does not possess any other records responsive

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<sup>1</sup> Under the RTKL, a statement made under the penalty of perjury 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 Department has acted in bad faith or that additional responsive records exist, “the averments in [the Hawthorne Declaration] 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)).

<sup>2</sup> The Hawthorne Declaration confirms that, after reviewing the Requester’s appeal letter, the Department’s staff performed a second search for records and located the oath of office for Al Schmidt, Secretary of the State of the Commonwealth... and provided a copy of the oath to the Requester. Hawthorne Declaration, ¶ 9. Therefore, insofar as the appeal pertains to the oath of office provided to the Requester, it 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”).

to the Request. Hawthorne Declaration, ¶¶ 9-10, 12. The Hawthorne Declaration explains that “the Secretary, as a head of a Commonwealth agency, is not required to hold a bond because the Commonwealth is self-insured so there are no bond records on file with the Departments.” *Id.* at ¶ 6. Additionally, during her search, Open Records Officer Hawthorne inquired of the Department’s Bureau of Notaries, Commissions, and Legislation, as the Department bureau must likely to possess responsive bond records, as well as the Pennsylvania Department of General Services, a separate Commonwealth agency, which confirmed that it did not have any responsive bond records on file. Hawthorne Declaration, ¶¶ 4, 10.

In this case, the Hawthorne Declaration is authored by the Department’s Open Records Officer, who, in addition to explaining why the Department would not possess the requested bond records, conducted a search for responsive records and determined that no such records exist. *See* 71 P.S. § 79 (Adm. Code § 219). Furthermore, the Requester did not submit any evidence to undermine the credibility of the Hawthorne Declaration. *See Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (finding that, in the absence of countervailing evidence establishing that the agency acted in bad faith or that the requested records exist, averments of nonexistence should be accepted as true). Accordingly, the Department has met its burden of proving that no additional responsive records exist within its possession, custody or control. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (“[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request”); *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry).

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Department 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 or petition for review to the Commonwealth Court. 65 P.S. § 67.1301(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.<sup>3</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: 10 June 2026**

*/s/ Joshua T. Young*

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JOSHUA T. YOUNG  
SENIOR DEPUTY CHIEF COUNSEL

Sent via OOR e-file portal to: Gregg J. Wanciak;  
Jason McMurry, Esq.;  
Janelle Hawthorne, AORO

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