



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

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**STEPHEN WHITEHEAD,
Requester**

v.

: Docket No: AP 2026-1944

**QUAKERTOWN BOROUGH,
Respondent**

On May 11, 2026, Stephen Whitehead (“Requester”) submitted a request (“Request”) to Quakertown Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

1. All GPS, Automatic Vehicle Location (AVL), telematics, or other location-tracking data for any ... Borough Police Department vehicle (marked or unmarked) equipped with GPS/AVL or telematics systems on February 20, 2026 between 7:00 a.m. and 2:00 p.m., including any reports, logs, maps, or data exports showing vehicle location, speed, or route.
2. Any records reflecting the assignment of vehicles to Borough Manager / Police Chief Scott McElree on February 20, 2026, and any GPS/AVL data specifically for the vehicle he was operating that day.

On May 15, 2026, the Township denied the Request, arguing Section 708(b)(2) of the RTKL exempts records, the disclosure of which would be reasonably likely to jeopardize or threaten public safety or the physical security of a public resource, *see* 65 P.S. §§ 67.708(b)(2)-(3), and that it is not required to create a record that does not exist.

On the same day, 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 Township to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On May 26, 2026, the Township submitted a position statement, arguing that no responsive records exist. In support, the Township submitted a statement made under the penalties of unsworn falsification to authorities by its Open Records Officer (“AORO”), Joanna Meisner (“Meisner Attestation”).

On the same day, the Requester submitted a position statement, arguing, among other things, that the Borough did not conduct a good faith search and that it contradicts itself by asserting exemptions and then arguing that responsive records do not exist.

In response to a request for records, an agency is required to “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” as used in Section 901 of the RTKL, in *Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections*, 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 Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

“The 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). An attestation by the individual who searched for responsive records is sufficient to meet an agency’s burden of proving the nonexistence of a record. *Id.*

The Meisner Attestation provides that as the AORO for the Borough, AORO Meisner is familiar with the Borough’s records and that her office searched for any public records responsive to the Request that might be in the Borough’s possession. Meisner Attestation, ¶¶ 2, 5. AORO Meisner affirms that she found no records responsive to the Request and affirms that the Borough did not create or maintain any responsive records. *Id.*, ¶¶ 6-7. She concludes that, to the best of her knowledge, information and belief, the requested records do not exist. *Id.*, ¶ 9.

The Requester argues that the records should exist and it is hard to believe that they do not. However, the OOR makes no determinations as to whether additional 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*, 992 A.2d at 909; *see also* 65 P.S. § 67.705. As to the Requester’s argument that the Borough contradicts itself, the OOR notes that the Borough’s initial response did not acknowledge that records exist; only that they would be exempt if they did and that the Borough is not required to create a record that does not exist. Therefore, the evidence that records do not exist is not inconsistent with the Borough’s initial response.

The Requester has provided no evidence that records do, in fact, exist or otherwise causing the OOR to question the credibility of the Meisner Attestation. *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 records exist, averments of nonexistence should be accepted as true); *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). Accordingly, the Borough has met its burden of proving that it conducted a search reasonably likely to identify responsive records and that no records exist in its possession, custody, or control. *See Hodges*, 29 A.3d at 1192.

For the foregoing reasons, the appeal is **denied**, and the Borough 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 Bucks 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 Section 1303 of the RTKL, 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.¹ 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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 11, 2026

/s/ Blake Eilers
Blake Eilers, Esq.
Senior Appeals Officer

Delivered via e-file portal to: Stephen Whitehead; Michael A. Tuosto, Esq.; Joanna Meisner

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).