



On May 18, 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 the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On May 29, 2026, the Department submitted a position statement, reiterating its basis for denial of the Request. In support of its position, the Department submitted an attestation made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by Adam Shanabrook (“Shanabrook Attestation”), the Department’s Agency Open Records Officer (“AORO”) in the Bureau of Office Services.

On May 29, 2026, the Requester submitted a position statement, claiming that responsive records exist and that by concealing the responsive records, the Department has acted in bad faith. In support of the Requester’s position, the Requester submitted a quoted email within his position statement, an unsigned letter authored by Barry G. Hoffman<sup>2</sup> and the Department’s Publication 83.

### **LEGAL ANALYSIS**

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 Department 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 factfinder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa.*

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<sup>2</sup> Mr. Hoffman appears to be employed by the Department within Engineering District 8; however, this has not been confirmed by the Department.

*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).

### **1. The Department has demonstrated that responsive records do not exist**

The Department asserts that records responsive to the Request do not exist in the Department’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 any Department record that defines a bank easement and describes the Department’s duties, rights and privileges surrounding bank easements. In support of the

Department's position that responsive records do not exist, the Department relies upon the Shanabrook Attestation. The Shanabrook Attestation is authored by the Department's AORO, an individual with knowledge of the Department's records. The Department has demonstrated that its AORO conducted two good faith searches, which included two inquiries with the Department's Special Assistant to the Deputy Secretary for Highway Administration, Daryl R. St. Clair. Shanabrook Attestation ¶¶ 4, 8, 9.<sup>3</sup> Further, Mr. St. Clair explained to the AORO that he is not familiar with the term "bank easement" and is not aware that the term is used by the Department. Shanabrook Attestation ¶ 7. While the Requester asserts that the email typed into his position statement, Mr. Hoffman's correspondence and Publication 83 support that responsive records exist, none of those documents use or contain the term "bank easement." Thus, based on the evidence provided, the Department has demonstrated that it does not possess records responsive to the Request. There has been no sufficient evidence provided that otherwise contradicts the statements offered by the Department in the attestation submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the Department has met its burden of proof that records responsive to the Request do not exist.<sup>4</sup> *Hodges*, 29 A.3d at 1192.

## **2. The OOR declines to make a finding of bad faith**

The Requester argues that the Department has acted in bad faith by failing to provide

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<sup>3</sup> Under the RTKL, a sworn affidavit or 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 responsive records exist, "the averments in the [attestation] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. 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>4</sup> While the OOR understands that the Requester feels additional responsive records should exist based upon his submissions, the OOR makes no determination as to whether 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.

responsive records. While the OOR may make findings of bad faith, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a). Under the RTKL, a finding of bad faith is appropriate where an agency refuses to comply with its statutory duties under the RTKL. *Uniontown Newspapers*, 243 A.3d at 28-29; *California Univ. of Pa. v. Bradshaw*, 210 A.3d 1134 (Pa. Commw. Unpub. 2021), *appeal denied*, 2019 PA LEXIS (Pa. 2019); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017).

In the instant matter, the OOR declines to make a finding of bad faith. The Department responded to the Request and has participated on appeal, and the OOR has no reason to make such a finding.

### CONCLUSION

For the foregoing reasons, the appeal is **denied**, 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 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 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.<sup>5</sup> 65 P.S. § 67.1303. 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 OOR website at: <http://openrecords.pa.gov>.

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

**FINAL DETERMINATION ISSUED AND MAILED: June 12, 2026**

*/s/ Bandy L. Jarosz*

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APPEALS OFFICER

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