



On March 25, 2026, the Township invoked a thirty-day extension to respond.<sup>2</sup> *See* 65 P.S. § 67.902(b). Later the same day, Kevin Van Horn, the Township’s Zoning Officer, responded that “it may be beneficial to amend the [Request] to include ‘116 Keswick Avenue, 2200 Melo and any previous lots or IDs at their respective locations.’” Accordingly, the Requester submitted a second amendment on April 1, 2026, seeking:

[A]ny ... records referring or relating to the subject matter of the dedication or requirement of parking spaces on the adjacent property at 116 Keswick Avenue to or for the benefit or use of 112/114 Keswick Ave., Glenside, PA 19038, or their Related Designations. As further explanation ..., we have attached to this [R]equest excerpt of transcripts of hearings before the Abington [ZHB] on April 16, 1990 and May 12, 1998, pertaining to zoning variances sought by Robert Langdon on 116 Keswick Ave. and referring to prior proceedings before the ZHB and code enforcement appearing to result in the dedication of two or three parking spaces on 116 Keswick to or for the benefit of the use at 112/114 Keswick. ... We have provided all the excerpts here to facilitate your identification of the relevant portion. We have highlighted the most relevant portions in blue highlight to further assist you in identifying the relevant records now sought. The highlighted experts reference the dedication of two or three parking spaces at 116 Keswick to 112/114 Keswick, and the ZHB chairman and code enforcement officers both reference records of prior proceedings in which the dedication or requirement of those parking spaces was addressed and apparently enacted.

On April 2, 2026, the Township confirmed receipt of the second amendment.<sup>3</sup> On April 27, 2026, the Township’s RTK Assistant emailed the Requester, noting that Mr. Van Horn had not located any further information.<sup>4</sup>

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

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<sup>2</sup> In the letter invoking an extension, the Township included the language set forth in the amendment.

<sup>3</sup> Although the second amendment was submitted after the Township had invoked an extension to respond to the Request as amended, it is evident from the Township’s final response that the Township considered this second amendment to be part of the Request.

<sup>4</sup> The Township’s response included none of the information an agency’s response is required to contain. *See* 65 P.S. § 67.903.

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 29, 2026, the Township submitted a position statement, verified under the penalty of unsworn falsification to authorities, 18 Pa.C.S. § 4904, by Nicole L.M. Feight, Esq., Assistant Solicitor.

The Requester notes on appeal that the Township did not provide evidence of a good faith search. 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).

Here, the Township’s verified position statement describes in detail its several searches for responsive records. The searches were conducted Mr. Van Horn, the Township’s Zoning Officer, who is the Township employee most familiar with the requested materials and the locations where

they would be maintained. Although Mr. Van Horn was not employed with the Township during the timeframe of the records sought, he is involved in every zoning matter that comes before the Township. Mr. Van Horn searched the Township's zoning-related records for the properties identified or implicated by the Request and amendments, including 2200 Menlo Avenue, 124 Keswick Avenue, 116 Keswick Avenue and 112/114 Keswick Avenue, including searching both the Township's electronic records and older paper files maintained in the Township's basement file room. While the search did not locate any responsive records aside from those already produced, it did locate records related to Use and Occupancy permits for 114 Keswick Avenue from 2007. Although these records were determined to be nonresponsive based on their date and the fact that they do not contain any information about parking spaces or earlier zoning proceedings, they were since been provided to Requester. Mr. Van Horn also reviewed records maintained by the County Recorder of Deeds and Board of Assessment, as well as Township plot plans for all of Keswick Avenue, but did not locate any responsive information. In conclusion, the Township affirms that no additional responsive records exist within the Township's possession, custody, or control.

“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 Requester objects in his appeal that the denial was not issued by the Township's Open Records Officer and contained none of the information that Section 903 of the RTKL requires a denial to include. *See* 65 P.S. § 67.903. However, the Township acknowledges that the denial was deficient, but as the Requester was able to timely appeal the Township's denial, he was not

prejudiced by the shortcomings of the denial. The Requester also argues that the transcripts previously produced by the Township mention earlier proceedings.

However, the fact that the transcripts mention proceedings from 35 years ago does not establish that additional records exist. The Township has presented evidence describing detailed searches that were reasonably calculated to locate responsive records. Indeed, the Township even exceeded the scope of its obligations by searching for responsive records that might exist in the possession of the County.

As the Requester has presented no evidence that records do, in fact, exist, and the OOR has no reason to question the veracity of the evidence, the Township has met its burden of proving that no other records exist in its possession, custody or control. *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 agency 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), *appeal granted in part*, 280 A.3d 870, *aff'd*, No. 71 MAP 2022, No. 72 MAP 2022, 2024 Pa. LEXIS 1087 (Feb. 21, 2024) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, which is tantamount to a "more likely than not" inquiry).

For the foregoing reasons, the Requester's 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 mailing date of this Final Determination, any party may appeal to the Montgomery 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, 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.<sup>5</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: June 15, 2026**

*/s/ Blake Eilers*

Blake Eilers, Esq.

Senior Appeals Officer

Delivered via OOR E-file Appeal Portal to: Robert Eyre, Esq.; Tara Wehmeyer; Travis Hunsberger, Esq.; Nicole Feight, Esq.

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