



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

:

**MATTHEW VAN BIBBER,  
Requester**

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:

**v.**

**: Docket No: AP 2026-1352**

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**PENNSYLVANIA DEPARTMENT OF  
STATE,  
Respondent**

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## **FACTUAL BACKGROUND**

On February 9, 2026, Matthew Van Bibber (“Requester”) filed a request (“Request”) with the Pennsylvania Department of State (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking: “copies of email communications (including attachments), reports, and results for the 2020 Risk Limit Audit (RLA) for/that contain Allegheny County. If they are directly in user’s mailbox, or current storage, I asked that they be pulled from the IT archive/backup.”

On March 19, 2026, after invoking a thirty-day extension to respond, *see* 65 P.S. § 67.902(b), the Department produced responsive records, stating that it redacted personal email addresses and phone numbers based on RTKL exemptions, *see* 65 P.S. §§ 67.708(b)(1)(ii), 708(b)(6)(i)(A), and the constitutional right to privacy. It informed the Requester that public information regarding Risk Limiting Audits was available on the Department’s website.

On April 6, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the partial denial and stating grounds for disclosure.<sup>1</sup> Specifically, the Requester argues that the Department did not produce records that had been provided to various media outlets. 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 April 8, 2026, the Requester submitted a number of news articles and emails as evidence of records that had been provided to media outlets.

On May 4, 2026, the Department provided copies of two reports from the RLA that had been provided to the Department. The Department argued that the production of these reports rendered the appeal moot, and to the extent the Requester sought additional records, the Request is insufficiently specific. *See* 65 P.S. § 67.703. In support, the Department submitted statements made under the penalty of unsworn falsification to authorities, 18 Pa.C.S. § 4904, by Sindhu Ramachandran (“Ramachandran Attestation”), Elections Systems Strategist in the Bureau of Elections, and by Janelle Hawthorne (“Hawthorne Attestation”), Open Records Officer (“AORO”).

On the next day, the Requester submitted a response to the Department’s submission, arguing that the appeal is not moot, additional records exist and the Request is insufficiently specific.

### **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

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<sup>1</sup> The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

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. 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 appeal is moot in part**

The Department provided additional records on appeal. Accordingly, the appeal is moot as to those records. *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”).

**2. The Department conducted a good faith search for records and no other records exist that are responsive to the Request as reasonably interpreted by the Department**

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).

AORO Hawthorne attests that the Department had to make presumptions and used its best guesses as to what records were being requested based on the general information provided in the Request.<sup>2</sup> Hawthorne Attestation, ¶ 4. AORO Hawthorne forwarded the Request to the Department's Bureau of Elections, specifically Sindhu Ramachandran, Election Systems Strategist, who would likely possess responsive records. *Id.*, ¶ 5. After learning about the RLA process from Ms. Ramachandran, AORO Hawthorne was directed by the Department's staff to where the public information regarding RLAs and the reports from the previous RLAs could be found on the Department's website. *Id.*; *see also* Ramachandran Attestation. AORO Hawthorne also learned that the Department uses VotingWorks, a third party, to perform the RLA using VotingWorks' audit program, and that the counties submit their audit ballot manifests and tally sheet tabulations directly to VotingWorks' audit program, not to the Department. *Id.*, ¶ 6. Ms. Ramachandran further explained that the Department oversees the administration of the RLA, so it sends reminders to the counties, provides guidance and training materials to the counties on the process for conducting the RLA, and helps facilitate communications between counties and VotingWorks when questions or issues may arise. *Id.*, ¶ 7.

Ms. Hawthorne searched the email accounts of the Department's Bureau of Elections staff members and found ten emails with three attachments, totaling over 75 pages of records, regarding

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<sup>2</sup> Under the RTKL, an affidavit or statement made under 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

the 2020 RLA pilot related to Allegheny County. *Id.*, ¶ 8. There were no email communications or records showing that Allegheny County submitted their audit ballot manifest or audit tally sheet to the Department. *Id.* Accordingly, AORO Hawthorne provided responsive emails to the Requester and directed him to the Department's website. *Id.*, ¶ 10.

On appeal, the Requester cites a number of news articles reflecting that the Department provided records, such as the full list of audited ballots with news outlets. He suggests that these were responsive to his Request and should have been produced by the Department. However, a requester may not modify or expand upon a request on appeal. *See McKelvey v. Off. of the Att'y Gen.*, 172 A.3d 122, 127 (Pa. Commw. Ct. 2017); *Smith Butz, LLC v. Pa. Dep't of Env't Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016). Therefore, the OOR's review on appeal is confined to the Request as originally written, and any modification or explanation of the Request on appeal will not be considered.

Notwithstanding the foregoing, however, based on the Requester's statements on appeal and a subsequent, more detailed request filed by the Requester, AORO Hawthorne performed another search email search for any additional responsive email communication records and records regarding the 2020 Risk Limiting Audit related to Allegheny County, including the 2020 General Election Risk Limiting Audit Reports. *Id.*, ¶ 14. This second search located the two reports that the Department provided on appeal, but it did not find any tally tabulation sheets, ballot manifests, reports or results for only Allegheny County for the RLA pilot for the November 2020 election. *Id.* Based on information from the appeal, she reached out to Department staff, including the Press Office, to check if the reports were the reports that were provided in response to any media inquiry, and Department staff confirmed that the reports were provided in response to a media inquiry from Spotlight PA and also to the Pennsylvania Legislature. *Id.*, 15.

Here, it is evident that the Requester intended the Request to be interpreted much more broadly than the Department actually interpreted it. When a request is subject to multiple interpretations, the agency's interpretation must be reasonably based on the text of the request and, if necessary, the context of the request. *See Dunbar v. Pa. Office of Att'y Gen.*, No. 670 C.D. 2023, 2024 Pa. Commw. Unpub. LEXIS 494, \*6 (Pa. Commw. Ct. 2024) (citing *In re Melamed*, 287 A.3d 491, 499 n.15 (Pa. Commw. Ct. 2022) (internal citations omitted)).

Here, the Hawthorne Attestation explains why the Department interpreted the Request the way it did; describes her search for responsive records, which included inquiring with the Bureau most likely to possess responsive records; and on the basis of her inquiry and email search, directed the Requester to the Department's website and provided responsive emails that she located. Because the Hawthorne Attestation sets forth a detailed description of a search reasonably designed to discover responsive records and explains why other records were not initially located, the OOR concludes that the Department's interpretation was reasonable.

Furthermore, notwithstanding the fact that a request cannot be modified on appeal, AORO Hawthorne describes how she nevertheless reconsidered the Request in light of the Requester's statements on appeal and subsequent request and conducted a second search for responsive records. Finally, AORO Hawthorne attests that, to the best of her knowledge, information and belief, there are no additional responsive records on file with the Department. *Id.*, 17.

"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.*

Despite the Requester’s arguments and references to records that were provided to news outlets, the Department has explained in detail the search it conducted and confirmed that no other records responsive to the Request as reasonably interpreted exist. Accordingly, it has met its burden of proof. *See Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (holding that, when there is evidence that a record does not exist, “[i]t is questionable to what degree additional detail and explanation are necessary....”); *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).

### CONCLUSION

For the foregoing reasons, the Requester’s 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 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, 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>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>.

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

**FINAL DETERMINATION ISSUED AND MAILED: June 17, 2026**

/s/ Blake Eilers

Blake Eilers, Esq.

Senior Appeals Officer

Delivered via OOR E-file Appeal Portal to: Matthew Van Bibber; Janelle Hawthorne