



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

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| IN THE MATTER OF | : |
| | : |
| BARBARA MICHALSKI, | : |
| Requester | : |
| | : |
| v. | : |
| | : |
| | : |
| PENNSYLVANIA DEPARTMENT OF | : |
| CORRECTIONS, | : |
| Respondent | : |

Docket No: AP 2026-2063

On April 22, 2026, Barbara Michalski (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Corrections (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, in relevant part, “agenda and meeting minutes (including attachments) for any meeting between the PA DOC and ViaPath for any meeting between June 2025 and the date of this request.”¹

On May 20, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department denied Item 1 of the Request, arguing that the responsive records reflect internal, predecisional deliberations, 65 P.S. § 67.708(b)(10)(i)(A).

On May 27, 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

¹ The Request included a section that is not at issue in this appeal.

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).

On June 8, 2026, the Department submitted a position statement explaining that it had initially misinterpreted the Request, and that no responsive records exist in the Department's possession, custody or control.² In support of its position, the Department submitted a statement made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, from Kimberly Grant, the Department's Deputy Open Records Officer ("Grant Attestation").³

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

² The Department is permitted to assert a new basis for denying access on appeal to the OOR. *See Levy v. Senate of Pa.*, 65 A.3d 361, 382 (Pa. 2013).

³ 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 the requested records exist, "the averments in [the Grant Attestation] 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)).

O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In this matter, Grant attests that, after reviewing the appeal, a new search for responsive meeting minutes and agendas was conducted and that no responsive records exist in the Department's possession, custody or control. *See* Grant Attestation, ¶¶ 9-10. Therefore, based on the evidence provided, the Department has met its burden of proof that it does not possess the records sought in the Request. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

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 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.⁴ 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 17, 2026

/s/ Josh Macel

JOSH MACEL
APPEALS OFFICER

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Sent via Appeals Portal to: Barbara Michalski; Andrew Filkosky (AORO); Joseph Gavazzi, Esq.