



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
CHRISTOPHER REED and C H R CORP.	:	
D/B/A RUTTER’S,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2026-1055
	:	
PENNSYLVANIA LIQUOR CONTROL	:	
BOARD,	:	
Respondent	:	

FACTUAL BACKGROUND

On January 15, 2026, Christopher Reed, Esq. and C H R Corp. d/b/a Rutter’s (collectively, “Requester”) submitted a request (“Request”) to the Pennsylvania Liquor Control Board (“Board” or “LCB”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Any and all records of written, whether digital or physical, and/or verbal communications from any member of the public as referenced in the PLCB’s Advance Notice of Final Form Rulemaking for Distilleries submitted to the Independent Regulatory Review Commission on January 14, 2026, on page 2 in which the PLCB (as shown in the included highlighted excerpt from the PLCB’s submission) states ‘[t]he Board has received inquiries from members of the public who wish to mix drinks, bottle them and sell them under the guise of a distillery license, though they will not be otherwise engaged in the activities of a distillery, as defined in the Liquor Code.’

On February 25, 2026, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b)(2), the Board purported to grant the Request, providing some responsive records and

directing the Requester to its publicly available website for other responsive records. *See* 65 P.S. § 67.704.

On March 18, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Board to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On March 30, 2026, the Board submitted a position statement, wherein additional responsive records were provided. The Board also asserts that all responsive records have now been provided to the Requester. In support, the Board submitted the attestation of Norina Foster, Esq. (“Foster Attestation”), the Board’s Assistant Counsel.

LEGAL ANALYSIS

The Board 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 Board 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 fact-finder ... 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 In the appeal, the Requester granted the OOR an additional thirty days to issue this Final Determination. *See* 65 P.S. § 67.1101(b)(1).

1. The appeal is partially moot

During the pendency of the appeal, the Board provided additional responsive records. As such, the appeal is partially moot. *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. Additional responsive records were provided to the Requester

The Requester contends that the Board “failed to produce or identify any responsive documents....” 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).

In this instance, the Foster Attestation² indicates, in relevant part, as follows:

² Under the RTKL, an attestation is generally competent evidence to sustain an agency’s burden of proof. *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

4. On November 26, 2024, I attended a meeting pertaining to the comments received from [the Independent Regulatory Review Commission (“IRRC”)] in response to the proposed distillery regulations. Tisha Albert, Director of Regulatory Affairs for the PLCB, attended that meeting and, to the best of my recollection, stated that the PLCB’s Bureau of Licensing had received inquiries from the public, as well as attorneys, asking whether they could mix drinks, bottle and sell them under the guise of a distillery license, though they would not otherwise be engaged in the activities of a distillery.
5. Also present at that meeting was Jason Worley, Chief Counsel for the PLCB. As I recall, Mr. Worley concurred with Ms. Albert’s statement, stating that the Office of Chief Counsel had dealt with this issue in several Advisory Opinions.
6. I am also aware that in August and September of 2024, CHR Corp. d/b/a Rutter’s, whom [the Requester] represents, filed with the PLCB a total of 64 applications for new limited distillery licenses for use at its convenience and gas store locations across the Commonwealth, as well as an application for an importer license and a single, shared Board-approved location in York County.
7. I am also aware that, at [the Requester’s] request, representatives of the PLCB met with [the Requester] and other representatives of Rutter’s on September 26, 2024 to verbally discuss the applications for limited distillery licenses that had been filed by Rutter’s as well as Rutter’s plans for operating under such licenses.
8. An administrative hearing was also held regarding Rutter’s applications on May 7 and May 30, 2025.
9. Following such hearing, the PLCB’s three-member Board voted to refuse the applications and issued an opinion and order in support of that decision.
10. Based on my recollection of the statements of Ms. Albert and Mr. Worley, as well as the Board’s opinion and order regarding Rutter’s applications, I wrote the following sentence in the ANFR for Distilleries: “The Board has received inquiries from members of the public who wish to mix drinks, bottle them and sell them under the guise of a distillery license, though they will not be otherwise engaged in the activities of a distillery, as defined in the Liquor Code.”
11. As a result of the RTKL request filed by [the Requester] that was logged as

907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the Board acted in bad faith, “the averments in [the 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)).

- RTKL 26-09, I reached out to Ms. Albert to ask her about my recollection of her statement, and whether she had any documents that would be responsive to RTKL 26-09. Ms. Albert advised that most of the inquiries she received were telephone or in-person conversations, and that the only documentation she was aware of had already been submitted to [the Requester], in response to his RTKL request that had been logged as RTKL 25-25 (and which concerned Rutter’s applications for limited distillery licenses and the conversations that followed).
12. Because RTKL 25-25 pertained to Rutter’s applications for limited distillery licenses and the conversations that followed, Ms. Albert and I assumed that [the Requester] would realize that he, himself, was one of the members of the public making inquiries about mixing drinks, bottling them and selling them under the guise of a distillery license without otherwise being engaged in the activities of a distillery, as defined in the Liquor Code.
 13. In preparing the final response to RTKL 26-09, I also spoke with Mr. Worley about the Advisory Opinions he referred to in the November 2024 meeting. We determined that, because [the Requester] could access the Advisory Opinions on the PLCB’s website, it would be sufficient for the response to RTKL 26-09 to include reference to the PLCB’s searchable database of Advisory Opinions available on its public website. This determination was also made because [the Requester] himself had introduced many of these Advisory Opinions as exhibits during the administrative hearing that was held regarding Rutter’s applications for limited distillery licenses in 2025 and therefore appeared to be well aware of the existence of such database and how to use it. The PLCB also construed [the Requester’s] [R]equest as essentially asking the PLCB to conduct legal research for him, which is not required of agencies under the RTKL.
 14. After receiving the PLCB’s Final Response to RTKL 26-09, [the Requester] submitted a request “to have all responsive records indicated in your response to RTKL 26-09 as being available on the PLCB’s website by searching through the Advisory Opinions database converted to paper and provided in printed form within five (5) days of the date of this request.” (Exhibit 4 – Appeal Documents at 17). Five paper copies of Advisory Opinions were provided to [the Requester] in accordance with his request, as examples of the many Advisory Opinions available through the searchable database on the PLCB’s public website.
 15. On appeal, [the Requester] now states that he does not want the Advisory Opinions that were provided to him, but that he wants the inquiries that resulted in the Advisory Opinions.
 16. I searched through the Office of Chief Counsel’s e-mail resource account

and found four of the five inquiries, which are attached to this Affidavit as Exhibit A. I was not able to locate the inquiry that resulted in Advisory Opinion No. 18-065. With that said, it is worth emphasizing that the Advisory Opinions themselves are records of those inquiries, which is why the PLCB determined them to be responsive to [the Requester's] initial request in this matter.

Here, the Foster Attestation is authored by an individual who has knowledge of whether any responsive records exist and who attests that additional records were located and provided to the Requester. The Foster Attestation describes who was asked to conduct searches and the results of those searches. Moreover, the Requester has not submitted legal argument or evidence to undermine the assertions made in the Board's attestation.

Therefore, based on the evidence provided, the Board has met its burden of proof that all records responsive to the Request were provided to the Requester. *See Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (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) (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).

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Board 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.³ 65 P.S. § 67.1303. 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 OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 17, 2026

/s/ Magdalene C. Zeppos-Brown
MAGDALENE C. ZEPPOS-BROWN, ESQ.
DEPUTY CHIEF COUNSEL

Sent to: Christopher Reed, Esq. (via OOR e-file portal only);
Kyle Shemory, AORO (via OOR e-file portal only); and
Jason Worley, Esq. (via OOR e-file portal only)

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