

- Any records of court filings, docket entries, or judgments resulting from any enforcement action.

The timeframe for the Request is from March 18, 2026 to the submission of the Request. On May 12, 2026, the Borough denied the Request, stating that the records do not exist within the Borough's possession, custody or control. The Borough's response was supported by the Attestation of David Berger ("Berger Attestation"), the Borough's Open Records Officer ("AORO"), that was made subject to the penalties set forth in 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.¹

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 Requester asserts that the Borough's "blanket denial" is improper as an individual response to each Item of the Request is required. The Requester further seeks a finding of bad faith, asserting that the Borough has engaged in "a pattern of deficient responses."² The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

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

¹ The Berger Attestation was also notarized.

² The Requester also explains the reason why he submitted the Request and what information he seeks to obtain. However, the RTKL must be construed without regard to the identity of the requester. *Advancement Project v. Pa. Dep't of Transp.*, 60 A.3d 891 (Pa. Commw. Ct. 2013); *see also DiMartino v. Pa. State Police*, No. 340 C.D. 2011, 2011 Pa. Commw. Unpub. LEXIS 787 at *18-19 (Pa. Commw. Ct. 2011).

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

On June 8, 2026, the Borough submitted a position statement reiterating that no responsive records exist and stating that it was relying on the Berger Attestation on appeal. The Borough also argues that it is not required to provide an individual response to each Item of the Request and disputes that it has acted in bad faith.

AORO Berger attests that a search was conducted of the Borough's records and that no responsive records exist in the Borough's possession, custody or control.³ The Berger Attestation further provides that AORO Berger "reviewed and/or directed the review of: a. Borough property filed maintained for the property located at 702 S. Bergen Street; b. Borough zoning and code enforcement records where zoning permits, variance documentation, and related applications would ordinarily be maintained; and c. Emails of Borough personnel responsible for receiving and responding to citizen complaints including, but not limited to the Borough Manager, the Borough's Zoning Officer, and Borough Council." *See*, ¶ 3a-c. The Berger Attestation also states that

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 Borough has acted in bad faith or that the requested records exist, "the averments in [the statement] 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)).

inquires were made with “individuals involved with zoning administration, permitting, and code enforcement functions.” *Id.*, ¶ 4.

Based on the Borough’s evidence, it has demonstrated that a search was conducted and inquiries were made with the relevant Borough departments and personnel, in order to identify potentially responsive records. While the Requester claims that records should exist, 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. Therefore, based on the evidence provided, the Borough 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).

In addition, the Requester asserts that the Borough improperly responded to the Request with” a blanket statement that ‘the records requested are not within the Borough’s possession, custody, or control’ [and it] – does not answer the questions ... [of] whether any correspondence to initiate action ever existed. It does not tell me, for each specific category, whether records exist or do not exist.” Section 901 of the RTKL does not require that an agency specifically outline what records do not exist if no responsive records are identified. 65 P.S. § 67.901. Furthermore, an agency is not required to answer questions posed as RTKL request, as it is only required to provide public records. *See Walker v. Pa. Ins. Dep’t*, No. 1485 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 425 at 16 (Pa. Commw. Ct. 2012); *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *14 (Pa. Commw. Ct. 2012).

For the foregoing reasons, the appeal is **denied**, and the Borough 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 Lehigh 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 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 23, 2026

/s/ Kelly C. Isenberg

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