



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**LIZ THOMPSON,  
Requester**

**v.**

**BOROUGH OF HELLERTOWN,  
Respondent**

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**Docket No: AP 2026-2085**

### **FACTUAL BACKGROUND**

On April 28, 2026 and on May 1, 2026 , Liz Thompson (“Requester”) submitted requests (“Requests”) to the Borough of Hellertown (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, both seeking:

1. Compensatory Time Payout Approvals–Named Individuals[.] Records sufficient to identify the individual(s) who reviewed, verified, approved, and/or authorized compensatory time payouts for:
  - Kris Russo
  - Robert Shupp
  - Cathy Hartranft

For each individual, responsive records include those sufficient to identify:

- a. The person(s) who approved or authorized the payout
- b. The person(s) who performed any required review or verification
- c. The person(s) who performed any required review or verification

Timeframe: December 31, 2019 through the date of the response.

2. ...Decision-Makers for the non-payment of compensation for Liz Thompson during 2025. Records sufficient to identify the individual(s) who made or approved any decision to withhold, deny, or not issue payment to Liz Thompson.
3. Scope Limitation—This [R]equest does not seek payroll records, pay registers, or records that merely reflect that a payment occurred, or did not. This [R]equest is limited to records sufficient to identify the individual(s) responsible for decision-making, review, approval, authorization, or denial of the payments described above.
4. Clarification—Not a Duplicate Request. This [R]equest is not duplicative of prior requests. Prior requests sought payroll or payment records, or policies. This [R]equest seeks records sufficient to identify the individual(s) responsible for decision-making and authorization.
5. Certification of Non-Existence. If the agency asserts that no responsive records exist, the response must:
  - a. State that no records exist for the specific category requested
  - b. Identify the position or office responsible for the functions described.
  - c. State whether such decisions are made without the creation of any records....

On May 14, 2026, following a thirty-day extension, 65 P.S. § 67.902(b), the Borough purportedly granted the Requests.<sup>1</sup>

On May 27, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the Borough’s response as incomplete and non-responsive, and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On June 1, 2026, the Requester submitted copies of records provided by the Borough.

On June 8, 2026, the Borough submitted a position statement arguing that it provided all records responsive to the Request and that no additional responsive records exist within its possession, custody or control. The Borough also submitted additional responsive records. *See*

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<sup>1</sup> In response to the Request, the Borough provided 371 pages of records.

Borough Exhibit 1. In support of its position, the Borough submitted the attestation of its Open Records Officer, Cathy Hartranft (“Hartranft Attestation”), which describes the Borough’s search for records responsive to the appeal and affirms that all records were provided to the Requester either in response to the Request or on appeal.

On that same day, the Requester provided a statement in support of the appeal.

### **LEGAL ANALYSIS**

The Borough is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local 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 Borough 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)). Likewise, “[t]he 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).

#### **1. The appeal is moot in part**

During the appeal, the Borough provided additional records responsive to the Requests. *See* Hartranft Attestation, ¶ 17; Borough Exhibit 1. Accordingly, the appeal is dismissed as moot as to the records provided. *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”); *Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. 2019).

**2. The Borough demonstrated that no additional records responsive to the Request exist**

The Borough argues that it provided all records responsive to the Requests either in its response or on appeal and that no additional responsive records exist within its possession, custody or control. The Requester argues, in sum, that the Borough’s response is incomplete and that additional responsive records should exist.

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 support of the Borough’s position, the Hartranft Attestation—which is authored by the Borough’s Open Records Officer who is familiar with Borough Records and who personally

conducted the search—describes, in detail, the Borough’s search, stating that all likely custodians of responsive records were contacted. *See* Hartranft Attestation, ¶¶ 3-8. Additionally, the Hartranft Attestation affirms that the Borough provided all responsive records located by its search, even those that were already provided to the Requester in response to previous requests and that the records provided during the appeal were invertedly omitted from the Borough’s initial production. *See* Hartranft Attestation, ¶¶ 8-17, 21-23. Further, the Hartranft Attestation shows that some of the responsive timesheets do not contain signatures, that “[o]nce the former chief was discovered to have been committing crimes and removed from his position in 2023, ...[the] records] in his possession, could no longer be found after he left,” and that the Borough does not possess certain requested records. *See* Hartranft Attestation, ¶¶ 15-22. Finally, the Hartranft Attestation confirms that the Borough does not possess any additional records responsive to the Requests and that “[a]ll records in the Borough’s possession have been provided.” *See* Hartranft Attestation, ¶¶ 22-23. Moreover, no evidence has been presented to contradict the Hartranft Attestation or to show that additional records responsive to the Request do, in fact, exist. Rather, the Requester’s argument is, in sum, that responsive documents should exist, and the OOR makes no determinations as to whether records should exist, as our inquiry is limited to whether 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, the Requester’s unsworn statements are insufficient to call into question the Borough’s attestation.

Accordingly, based on the evidence presented, the Borough has demonstrated that all records responsive to the Requests have been provided to the Requester and that no additional responsive records exist within its possession, custody or control. *See Hodges*, 29 A.3d at 1192; *see also 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 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 to the Northampton 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.<sup>2</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 OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: June 25, 2026**

*/s/ Erika Similo*

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APPEALS OFFICER  
ERIKA SIMILO

Sent via OOR portal to:      Liz Thompson  
   Michael F. Corriere, Esq.  
   Cathy Hartranft

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<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).