

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF

**ADAM HORSKY,
Requester**

v.

**COVINGTON TOWNSHIP,
Respondent**

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Docket No: AP 2026-2279

FACTUAL BACKGROUND

On June 3, 2026, Adam Horsky (“Requester”) submitted a request (“Request”) to Covington Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

The 4-1-25 BOS Monthly Minutes have under New Business titled: “Flat Rate Business Privilege/Mercantile Tax” Chairwoman Kearney provided documentation to the board. I request copies and/or to see said documentation.

On June 10, 2026, the Township denied the Request, arguing that the records were exempt as internal, predecisional deliberation under Section 708(b)(10)(i)(A) of the RTKL. 65 P.S. § 708(b)(10)(i)(A).

On June 10, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to

supplement the record and directed the Township to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On June 30, 2026, the Township submitted the attestation made under penalty of perjury¹ of William J. Willson (“Willson Attestation”), the agency open records officer (“AORO”). On July 1, 2026, the OOR requested clarification of the position of the Township. Specifically, clarification was requested as to whether the Township was asserting that responsive records were not in its possession, custody or control. The Requester also submitted a statement on July 1, 2026, noting that the Township was now asserting a new explanation for its denial of his Request.²

On July 2, 2026, the Township submitted a statement made under penalty of perjury in response to this inquiry, describing the records as consisting of notes that the Township considers work product and are not kept as permanent records (“Willson Supplemental Attestation”).³

LEGAL ANALYSIS

The Township 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 Township 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

¹ 18 Pa. C.S. § 4904.

² In the context of RTKL appeals, the Pennsylvania Supreme Court has previously held that agencies are permitted to raise new grounds on appeal to the OOR, regardless of whether they were raised in the agency’s response. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013); *McClintock v. Coatesville Area Sch. Dist.*, 74 A.3d 378 (Pa. Commw. Ct. 2012). As a result, the Township was permitted to raise exemptions for the first time during the appeal.

³ While the Township originally denied the Request under Section 708(b)(10) of the RTKL, this argument is abandoned on appeal.

(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)).

The Requester seeks documentation that was provided to the Township's Board of Supervisors during its monthly meeting on April 1, 2025. The Township asserts that no responsive records exist in their possession, custody or control. In response to a request for records, "...an agency shall make a good faith effort to determine...whether 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 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).

AORO Willson averred that he is familiar with the records of the Township. Willson Attestation ¶ 2. He indicated that the requested records are notes that the secretary distributes to the supervisors concerning issues the board may be looking into. Willson Supplemental

Attestation. AORO Willson contacted the secretary and these notes are not included in any meeting “documents” such as meeting minutes and neither are they kept as “permanent records.” *Id.*⁴

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 PSP has acted in bad faith or that additional responsive records exist, “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)). Based upon the evidence presented, the Township has proven by a preponderance of the evidence that no responsive records exist in the Township’s possession, custody or control. *See* 65 P.S. § 67.708(a).

In *Pennsylvania Department of Health v. Mahon*, the Commonwealth Court discussed the evidence required to establish the absence of records, quoting its previous decision in *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011), which held that an agency “may satisfy its burden of proof ... with either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record.” *Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) quoting 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *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). It should be noted, however, that

⁴ AORO Willson also indicates, however, that all meeting agendas, minutes, treasurer’s reports, and miscellaneous records can be found at the Township’s public website. *See* <https://covingtontp.org/document-category/meetings/> (last visited July 7, 2026).

the holding of the Commonwealth Court in *Mahon* does not appear to establish a bright-line rule. 283 A.3d at 936.

In this matter, the Requester has not submitted countervailing evidence to dispute AORO Willson's attestations. While the Township's evidence could be more detailed, the search was conducted by the likely custodian of the records and an explanation was provided as to why those records are not be kept in their normal course of business. The evidence submitted by the Township establishes that the requirements of a good faith search were satisfied and it has proven by a preponderance of the evidence that no responsive records exist within the Township's possession, custody or control. *See Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Township 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 Lackawanna 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.⁵ 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: July 7, 2026

/s/ Julie Sodl

APPEALS OFFICER

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

JULIE SODL

Sent via E-File Portal to: Adam Horsky
William Willson, AORO