



FINAL DETERMINATION

IN THE MATTER OF

**EDWARD KIRBY,
Requester**

v.

**PENNSYLVANIA DEPARTMENT OF
HEALTH,
Respondent**

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Docket No.: AP 2026-1845

FACTUAL BACKGROUND

On April 11, 2026, Edward Kirby (“Requester”) emailed a request (“Request”) to the Pennsylvania Department of Health (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. A copy of Form HD002181 (“Request to Amend the Medical Information on a Death Record Certified by a Coroner or Medical Examiner”) filed by the Philadelphia Medical Examiner’s Office regarding the death of [specified individual] (Date of Death: January 23, 2014). This request specifically seeks any such form used to effectuate an amendment to the Manner of Death (e.g., from ‘Accidental’ to ‘Undetermined’) and/or any amendment to the Cause of Death for Philadelphia MEO Case # 14-00370.
2. Any and all documentary evidence, supplemental investigations, or expert reports (including but not limited to reports, “advisements,” or correspondence from Dr. Timothy Rohrig) submitted by Dr. Samuel Gulino, or any agent of the Philadelphia Medical Examiner’s Office, to the Bureau of Vital Statistics to substantiate the aforementioned amendment for MEO Case # 14-00370.¹

¹ The Request was emailed to the Department on April 11, 2026 and was submitted in two parts—a blank RTKL Request form accompanied by a document containing the substance of the Request. The Department received the

The Department did not receive the attachment submitted with the Requester's April 11, 2026 until May 7, 2026 after subsequent communications with the Requester. On May 8, 2026, the Department denied the Request, stating that records responsive to Part 1 of the Request are exempt from public disclosure under the Pennsylvania Vital Statistics Law ("VSL") and that records responsive to Part 2 of the Request do not exist.

On May 8, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.² The OOR invited both parties to supplement the record and directed the Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On May 20, 2026, the Department submitted a position statement arguing that the Form HD002181 responsive to Part 1 of the Request is a vital statistics record and is not a public record under the RTKL. The Department further argues that no records responsive to Part 2 of the Request exist in the Department's possession, custody, or control. In support of its position, the Department submitted the attestations of Lisa Moore, the Director and State Registrar of the Bureau of Health Statistics and Registries with the Department ("Moore Attestation") and Danica Hoppes, the Open Records Officer ("AORO") for the Department ("Hoppes Attestation"). On May 20, 2026, the Requester submitted argument that the Form HD002181 is an administrative record and not exempt under the VSL and that records responsive to Part 2 of the Request must exist in light of Department regulations.

Requester's email on April 13, 2026 and opened the blank RTKL Request form, but did not open the document containing the substance of the Request. Accordingly, the Department did not process the blank RTKL Request form as a RTKL Request. Only after subsequent communications with the Requester where the Department was made aware of the additional document, did the Department receive and process the substance of the Request.

² The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).")

LEGAL ANALYSIS

The Department 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 Department 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 factfinder ... 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. The Department proved that records responsive to Part 1 of the Request are exempt from public access under the Vital Statistics Law

The Department argues that the records requested in Part 1 of the Request are confidential vital statistics records under Sections 105 and 801 of the VSL. Section 801 of the VSL provides:

The vital statistics records of the department and of local registrars shall not be open to public inspection except as authorized by the provisions of this act and the regulations of the Advisory Health Board. Neither the department nor local registrars shall issue copies of or disclose any vital statistics record or part thereof created under the provisions of this or prior acts except in compliance with the provisions of this act and the regulations of the Advisory Health Board. When one hundred five (105) years have elapsed after the date of birth or fifty (50) years have elapsed after the date of death, the records shall become public records. To ensure the proper safekeeping of original birth records after one hundred five (105) years and death records after fifty (50) years the records shall be maintained by the State Archives.

35 P.S. § 450.801. Section 105 of the VSL defines “vital statistics” as including, “the registration, preparation, transcription, collection, compilation, analysis and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status and data incidental thereto.” 35 P.S. § 450.105.

The Moore Attestation states in relevant part:

4. The Department is the agency responsible for the administration and enforcement of the VSL. 35 P.S. § 450.201(1).
5. This includes, among other things, "...the registration, preparation, transcription, collection, compilation, analysis and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status and data incidental thereto." . . .
6. In addition, the Department is required to maintain a statewide system of vital statistics and serve as the custodian of all vital statistics files and records "collected, created or compiled" under the provisions of the VSL. 35 P.S. §§ 450.201(2)-(3).
7. Pursuant to its authority under the VSL, the Department prescribes all forms required by the VSL, as well as forms necessary for "...collecting, transcribing, compiling and preserving vital statistics" (Vital Records Forms). 35 P.S. §§ 450.204, 450.501.
8. Vital Records Forms are vital statistics records of the Department, access to which is governed by the provisions of the VSL. . . .
10. The VSL requires that sudden or violent deaths, and deaths involving suspicious circumstances – i.e., deaths that are not the result of natural causes – be referred to the coroner for investigation. 35 P.S. §§ 450.502(2), 450.503.
11. When an investigation or examination is necessary, the cause or manner of death may not be known or available as of the date a certificate of death must be registered with the Department. 35 P.S. § 450.501 (requiring, in relevant part, that a certificate of death be filed within four (4) business days after finding a dead body).
12. As a result, upon completion of an investigation or autopsy, an amendment to the "medical information" portion of a registered death record may be necessary.
13. If such an amendment is necessary, it is a medical examiner's responsibility to conduct the required investigation and supply any necessary data required by the VSL, including medical certification, and provide the appropriate form and/or information to the Department. 35 P.S. §§ 450.502(2), 450.503.
14. BHSR collects the amendment form/information and confirms that the required medical certification has been provided.
15. Where a death was originally registered electronically, the specified change(s) would be made within the Electronic Death Registration System (EDRS).
16. If a death was originally registered on paper, the medical examiner must submit Form HD002181, a Request to Amend the Medical Information on a Death Record Certified by a Coroner or Medical Examiner.
17. Regardless of the method of submission, the responsible medical examiner is required to certify that, in their opinion, the amended medical information, whether it be the time, place, date, cause or manner of death, is accurate.
18. Relevant to this appeal, the request seeks a copy of Vital Records Form HD002181 "filed by the Philadelphia Medical Examiner's Office" for a

- named individual whose date of death was January 23, 2014.
19. Amendment forms are considered part of a death record and contain death information for individuals who died in the Commonwealth. 35 P.S. § 450.502.
 20. This may include such things as the decedent's age, sex, race, date of death, parental information, and, if married, the name of the spouse, as well as information on circumstances and cause of death, and final disposition.
 21. Any such amendment would therefore be part of a vital statistics record that is not subject to public disclosure until "...fifty (50) years have elapsed after the date of death..." a timeframe which, based on the information contained in the request, has not yet come to pass. 35 P.S. § 450.801.

See Moore Attestation ¶¶ 4-21.³ The evidence submitted by the Department demonstrates that the completed Form HD002181 sought in Part 1 of this Request and is a record relating to the registration, compilation, analysis and preservation of data pertaining deaths and as such is confidential under the VSL.

2. The Department proved that no records responsive to Part 2 of the Request exist in the Department's possession, custody, or control

The Department argues that it conducted a good faith search for records responsive to Part 2 of the Request and that no such records exist in the Department's possession, custody, or control. The Department further argues that even if such records did exist, they would be exempt from public access under the VSL. The Requester argues that records responsive to Part 2 of the Request must exist based on the Requester's interpretation of Department regulations relating to amendments or corrections made to a death certificate.

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.

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 records exist, "the averments in [the statement] 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)).

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

The Hoppes Attestation states:

7. As part of my good faith search for records, I identified the Department personnel to whom the request should be directed.
8. Because the Request identified BHSR and implicated vital statistics records, I circulated the request in its entirety to Lisa Moore, the Director of BHSR & State Registrar, seeking her input regarding the nature of the records requested and whether the Department had responsive records in its possession, custody, or control. . . .
10. With respect to Item 2, Director Moore informed me that medical certification is the responsibility of the medical certifier, not the Department.
11. She explained that BHSR’s role is to collect reporting and amendment forms and not to adjudicate medical certifications or substantiate their investigatory findings to the Department.
12. Director Moore advised me that the Department did not have records responsive to Item 2 in its possession, custody, or control.
13. Consistent with the information provided by Director Moore, a review of Form HD002181 reflects a section for “Certification by a Coroner or Medical Examiner” which states that The medical information on the death record described in Part 1 [Death Record to be Amended] is being amended based on

an examination and/or investigation that showed, in my opinion, that the death occurred at the time, date and/or place, and/or due to the cause(s) and manner stated in Part 2 [Information to be Amended].”

14. The form contains fields for the following:
 - Name of Certifier
 - Title
 - License Number
 - Address
 - City
 - State
 - Zip Code
 - Signature of certifier
 - Date of signature.
15. There is nothing on the form to suggest that any additional documentation must be provided with the amendment form.
16. For these reasons, I have no basis to believe that the Department has responsive records in its possession, custody, or control.

See Hoppes Attestation ¶¶ 7-16. The Moore Attestation further states that the Department does not possess “substantiating” information from the Philadelphia Medical Examiner’s Office and that there is no requirement that a medical examiner submit underlying evidence to the Department to support an amendment to a death record. See Moore Attestation ¶¶ 23-25. The Department’s position is that the only record responsive to Part 2 of the Request is the Form HD002181 sought in Part 1 of the Request that was filed by the Philadelphia Medical Examiner’s Office. The Requester argues that the Department regulations require that additional documentation is necessary and the Department states that the Form HD002181 contains the necessary fields to comply with Department regulations pertaining to the amendments or corrections to a death certificate. Whether the Form HD002181 contains the requisite information and certifications to comply with the Pennsylvania Department of Health regulations is outside the jurisdiction of the OOR. The Department submitted evidence that it inquired of the relevant records custodians and that the only record responsive to the Request is the Form HD002181. Based on the evidence submitted, the Department proved that it conducted a good faith search and that no additional

public records responsive to Part 2 of the Request exist in the Department's possession, custody, or control.

CONCLUSION

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 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 OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: July 9, 2026

/s/ Catherine R. Hecker

CATHERINE R. HECKER
APPEALS OFFICER

Sent via portal to: Edward Kirby
Danica Hoppes
Sandra Adams, Esq.

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