



FINAL DETERMINATION

IN THE MATTER OF	:
	:
DARWIN LEUBA,	:
Requester	:
	:
v.	: Docket No: AP 2026-2411
	:
EAST FRANKLIN TOWNSHIP,	:
Respondent	:

FACTUAL BACKGROUND

On May 29, 2026,¹ Darwin Leuba (“Requester”) submitted a request (“Request”) to East Franklin Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

All available email metadata (limited to subject, sender address, all recipient addresses, including “to,” “cc,” and “bcc” fields, and date/time) for communications exchanged between any member of the [Township] Police Department [(“Department”)] and any email address ending in @hsi.dhs.gov, @ice.dhs.gov, or @dhs.gov, during the period January 20, 2025 – May 26, 2026.

¹ While the Request was submitted on May 26, 2026, the Request was received by the Township on May 29, 2026. *See* Township final response.

On May 29, 2026, the Township denied the Request, arguing that no responsive records existed in their possession, custody or control and directed Requester to contact the ICE² Office of Public Affairs for records relating to that office. The Township also provided a copy of a signed MOA 287(g) Task Force Agreement.

On June 18, 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 25, 2026, the Township submitted an attestation made under penalty of perjury³ authored by Police Chief Jason Hufhand (“Hufhand Attestation”), which was also provided to the Requester in the Township’s original response on May 29, 2026.

On June 30, 2026, the Requester submitted a position statement, challenging the search performed by the Township and asserting that responsive records should exist based upon the existence of the MOA.

On July 1, 2026, the OOR sought additional details regarding the Township’s search for responsive records. On July 9, 2026, the Township submitted a supplemental attestation authored by Chief Hufhand (“Hufhand Supplemental Attestation”), made under penalty of perjury,⁴ providing additional details regarding the Township’s search for responsive records.

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

² U.S. Immigration and Customs Enforcement.

³ 18 Pa. C.S. § 4904.

⁴ 18 Pa. C.S. § 4904.

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 (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).

The Township asserts that no responsive records exist in its 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).

Here, Police Chief Hufhand averred that he is familiar with the records of the Township's Police Department and has knowledge as to the possible locations of all the Department's records. Hufhand Attestation. Chief Hufhand is the only staff member in the Department that has access to emails or records. Hufhand Supplemental Attestation ¶ 7. A thorough examination of the Department's files was conducted and no responsive records to the Request were discovered. Hufhand Attestation. Specifically, Chief Hufhand searched for emails on his computer and the laptop in the police vehicle, as well as filing cabinets for any printouts of emails. Hufhand Supplemental Attestation ¶¶ 1, 3. No responsive emails were found, including any email submitting the signed MOA. *Id.* ¶ 2. Chief Hufhand indicates that not all emails are saved and there is no "backup system" for these records. *Id.* ¶¶ 2, 4. Chief Hufhand also provided information to the Requester so that the Requester could potentially request records from ICE as an alternative solution. Hufhand Attestation.

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 Township has acted in bad faith or that responsive records exist, "the averments in [the attestations] 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)). There has been no sufficient evidence provided that otherwise contradicts the statements offered by the Township in the attestations submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct.

2022). Therefore, based on the evidence provided, the Township has met its burden of proof that records responsive to the Request do not exist in the Township's possession, custody or control.⁵ *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 Armstrong 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.⁶ 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 14, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Darwin Leuba
Carla Scholl, AORO

⁵ 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.

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).