

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF

**BRENT SMITH,
Requester**

v.

**MAHONING TOWNSHIP,
Respondent**

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Docket No: AP 2026-2368

FACTUAL BACKGROUND

On May 26, 2026, Brent Smith (“Requester”) submitted a request (“Request”) to Mahoning Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Fulton Bank, 1113 Bloom Road, Danville, Pennsylvania 17821

APN: 6-35-2-251

-Open building or fire code violations

-Date of last fire safety inspection

-Copy of Occupancy Permit

-Compliance with local zoning ordinance (conforming use?)

-Files pertaining to storage tanks, wells, septic systems

-HAZMAT response incidents, other environmental hazards

On June 1, 2026, the Township denied the Request, arguing that there are no responsive records in the Township’s possession, custody or control.

On June 16, 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 23, 2026, the Township submitted a position statement reiterating its grounds for denial. On that same date, the OOR requested the Township provide an affidavit or attestation to verify the facts contained within the position statement. On July 2, 2026, the Township submitted the attestation made under penalty of perjury¹ authored by Ken Houck (“Houck Attestation”), the Treasurer and Agency Open Records Officer (“AORO”) of the Township.

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 (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 Township proved no records exist in its possession, custody or control

¹ 18 Pa.C.S. § 4904.

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, AORO Houck attests that all building, zoning, accessibility, and flood permits along with any violations are issued through the Township’s third-party Zoning Office. Houck Attestation ¶ 3. AORO Houck inquired with personnel from the Zoning Office, including Jim Dragano and Dean VonBlohn, who confirmed with AORO Houck directly that no responsive records to this Request exist. *Id.* at ¶¶ 4-5.

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 additional responsive records exist, “the averments in [the attestation] 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)). 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). 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).

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 Montour 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.² 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

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

JULIE SODL

Sent via E-File Portal to: Brent Smith
 Kenneth Houck
 Jonathan DeWald, Esq.