



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ROBERT BENNEY,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-2762
	:	
PHILADELPHIA COUNTY DISTRICT	:	
ATTORNEY'S OFFICE,	:	
Respondent	:	

FACTUAL BACKGROUND

On May 11, 2026,¹ Robert Benney (“Requester”), an inmate at SCI-Fayette, submitted a request (“Request”) to the Philadelphia County District Attorney’s Office (“DAO”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

Pursuant to the [RTKL], [Requester] seeks access to information concerning the activities of public officials. [...]

Specifically, Request[e]r seeks access to any information regarding the [DAO’s] decision to disclose, release, or make accessible files related to homicide cases (“H-file”).

[Background information omitted for brevity]

Note: This is not a request for files.

[Additional background information omitted for brevity]

1. Disclose the reasoning behind the decision to release or make H-files accessible;

¹ The Request is dated April 20, 2026; however, it was received by the Office on May 11, 2026.

2. Disclose whether H-files are or can be released or obtained by the public or only to limited personnel;
3. If released to a limited class of personnel, disclose who that may include;
4. Disclose the procedure or practice a person with an H-file has to go through to obtain it;
5. Disclose whether the releasing of a file is limited to persons who have an H-file;
6. Disclose whether a person other than an “H,” could obtain their file (i.e. robbery, drugs etc.);
7. If so, disclose the procedure a person has to go through to obtain these files[;]
8. If not, disclose why a person convicted with an H-file case may have a mechanism for obtaining potential evidence of police or prosecutorial misconduct, but a similarly situated person convicted who has a case other than an H-file case, does not.

On May 18, 2026, the DAO invoked a thirty-day extension to respond; however, as the DAO did not respond within the extension period, the Request was deemed denied on June 17, 2026. *See* 65 P.S. § 67.902(b)(2). On July 7, 2026,² the Requester appealed to the Office of Open Records (“OOR”), providing reasons for disclosure.³ Specifically, the Requester argues that the Request “does not ask questions but seeks generally the methods concerning the DAO’s reasoning, practice, policy, and/or procedure, whether written or implied and regularly followed, on releasing certain criminal files.” The OOR invited both parties to supplement the record and directed the DAO to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On July 22, 2026, the DAO submitted a position statement, arguing that the Request is insufficiently specific, 65 P.S. § 67.703, and, “[b]ecause it appears that the Requester may have sought records setting forth the DAO’s policies regarding access to homicide investigation files

² The appeal was received by the OOR on July 9, 2026; however, it was postmarked July 7, 2026. Therefore, pursuant to the “prisoner mailbox rule,” the appeal is considered filed as of July 7, 2026. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

³ 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).”).

during post-conviction proceedings, “the DAO made a good faith effort to determine whether the DAO had any responsive records.” In support of its position, the DAO submitted the attestation, made pursuant to 18 Pa.C.S. § 4904, from Thomas Gaeta, Esq. (“Gaeta Attestation”), the DAO’s Open Records Officer (“AORO”) and an attorney in the DAO’s Civil Litigation Unit.

On July 27, 2026, the Requester submitted a position statement,⁴ asking the OOR “to proceed with the appeal.” On September 1, 2026, the OOR received a “Notice” from the Requester.

LEGAL ANALYSIS

The DAO 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 DAO 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)).

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. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections*, 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

⁴ The position statement is dated July 17, 2026 and was received by the OOR on July 27, 2026.

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).

In support of the DAO's position, the DAO submitted the attestation of its AORO, who is responsible for processing RTKL requests filed with the DAO. Gaeta Attestation, ¶ 2. Attorney Gaeta, who previously served as an Assistant District Attorney in the DAO's Conviction and Integrity and Post-Conviction Relief Act Units and handled dozens of homicide cases during post-conviction review, is familiar with homicide investigation files. *Id.* at ¶ 5. Attorney Gaeta explains that homicide investigation files, commonly referred to as "H-files," are generated in homicide investigations by the Philadelphia Police Department ("PPD") and contain all records pertaining to a homicide investigation and that homicide investigators generally share their homicide investigation files with the DAO prior to and during homicide trials. *Id.* at ¶¶ 6-7. However, the homicide files themselves are kept and maintained by the PPD, "though the PPD generally provides the DAO with access upon request in post-conviction proceedings." *Id.* at ¶ 7. With that background, Attorney Gaeta asserts that he interpreted the Request as "seeking written policies of the DAO pertaining to providing defendants with access to homicide investigation files in post-conviction proceedings [and] from [his] time litigating post-conviction homicide cases as an ADA

in the CIU and the PCRA units that no such policy documents exist.” *Id.* at ¶ 9.⁵ Moreover, no evidence has been presented to contradict the Gaeta Attestation or show that records responsive to the Request do, in fact, exist. 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. Accordingly, the DAO has sufficiently demonstrated that it responsive records to the Request do not exist in its possession, custody or control. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied**, and the DAO 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 Philadelphia 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 as per Section 1303 of the RTKL, 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated 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 website at: <http://openrecords.pa.gov>.

⁵ The DAO argues that it used its discretion to make a reasonable interpretation of the Request as seeking written policies pertaining to providing defendants with access to homicide investigation files. *See Spatz v. City of Reading*, OOR Dkt. AP 2013-0867, 2013 PA O.O.R.D. LEXIS 513 (An agency is permitted to make a reasonable interpretation of the meaning of a request for records). Based on the plain language of the Request and, noting that the Requester specifically did not seek the H-files themselves, the interpretation used by the DAO when searching for responsive records was reasonable. *See Pa. State Police v. Off. of Open Records*, 995 A.2d 515 (Pa. Commw. Ct. 2010).

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

FINAL DETERMINATION ISSUED AND MAILED: September 3, 2026

/s/ Lyle Hartranft

Lyle Hartranft, Esq.

Appeals Officer

Sent to: Robert Benney, JB4701 (via First-Class Mail only)
Thomas Gaeta, Esq., AORO (via portal only)
Armand Avila, Esq. (via portal only)