

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF :
 :
CARLENE SEILHAMER, :
Requester :
 :
v. : **Docket No: AP 2026-3249**
 :
SHIPPENSBURG COMMUNITY :
PARK AND RECREATION AUTHORITY, :
Respondent :

FACTUAL BACKGROUND

On July 31, 2026, Carlene Seilhamer (“Requester”) submitted a request (“Request”) to the Shippensburg Community Park and Recreation Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. Current [Authority] Bylaws and all amendments from January 1, 2021, to present.
2. Approved Board meeting minutes from January 1, 2021, to present.
3. Approved annual operating budgets for 2021-2026.
4. Annual financial statements, audits, or year-end financial reports for 2021–2025.
5. Current job description, employment agreement (if applicable), salary, and employer-paid benefits for the Parks & Recreation Director.
6. Board-approved policies or resolutions delegating authority to the Director regarding youth sports, coach selection, player placement, roster assignments, and program administration.

7. Board-approved policies, resolutions, or meeting minutes adopting the current participant Code of Conduct, registration terms, team assignment policies, and social media/public statement policies.

8. Existing records showing annual revenue and expenses for the Suburban Baseball and Softball program from 2021 to present.

9. Current and historical fee schedules for Suburban Baseball and Softball registration and athletic field rentals.

As the Requester did not receive the Borough's response within five business days of the Request, the Requester filed an appeal with the Office of Open Records ("OOR") on August 10, 2026,¹ claiming that the Request was deemed denied. *See* 65 P.S. § 67.901. The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On August 20, 2026, the Borough submitted a response to the Request, providing responsive records for Items 1 through 5, and 9 of the Request. The Borough claims responsive records for Items 6, 7, and portions of Item 9 of the Request are not within the possession, custody or control of the Borough. In support of its position, the Borough submitted the attestation made under the penalty of perjury² authored by Brendan Burke ("Burke Attestation"), the Authority's Agency Open Records Officer ("AORO").

On August 26, 2026, the OOR requested the Requester to indicate any remaining issues she wished to pursue on appeal. To date, no response has been submitted.³

LEGAL ANALYSIS

¹ The appeal was submitted to the OOR E-File Portal on August 9, 2026, but was accepted and filed on August 10, 2026, due to the submission occurring on a Sunday.

² 18 Pa. C.S. § 4904.

³ The Requester accessed the OOR E-File Portal on August 27, 2026, indicating she reviewed the OOR's correspondence.

The Authority 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 Authority 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. Responsive records were provided on appeal

On appeal, the Authority provided access to records, including the Authority’s Bylaws, board meeting minutes, annual operating budgets, annual financial records, the Parks and Recreation Director Position Description and the Director’s November 16, 2022 Employment Agreement, annual income and expense records for the Suburban Baseball and Softball programs, and current and historical Suburban Baseball and Softball registration fees. Therefore, the appeal is dismissed as moot as to the records provided. *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records and, thus, “the controversy has been mooted”).

1. The Authority proved additional responsive records are not within the possession, custody or control of the Authority

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. 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 Burke Attestation indicates that upon receipt of this appeal, AORO Burke conducted a thorough, good faith search for records responsive to each Item of the Request, which included searching the paper and electronic records where responsive records would be reasonably likely to be located, and relevant personnel familiar with the records were consulted. Burke Attestation ¶¶ 5-6. AORO Burke further attests that all responsive records within the possession, custody and control of the Authority have been provided to the Requester. *Id.* ¶¶ 7-11, 14-15. However, certain records do not exist, including responsive records to Items 6 and 7 of the Request, and a portion of Item 9 of the Request, as the Authority does not have registration fee records for the years 2022 or 2023. *Id.* at ¶¶ 12-13, 16.

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 Authority 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)). Therefore, based on the evidence provided as well as the lack of evidence to the contrary, the Authority has met its burden of proof that it does not possess additional records responsive to the Request. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Authority 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 Franklin 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.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: September 8, 2026

/s/ Julie Sodl

APPEALS OFFICER

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

JULIE SODL

Sent via E-File Portal to: Carlene Seilhamer
Brendan Burke, AORO
E. Max Bell, Esq.