



FINAL DETERMINATION

IN THE MATTER OF	:
	:
SAMUEL SULKOSKY,	:
Requester	:
	:
v.	: Docket No: AP 2026-3506
	:
CITY OF HARRISBURG,	:
Respondent	:

On July 17, 2026, Samuel Sulkosky (“Requester”) submitted a request (“Request”) to the City of Harrisburg (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Emails and documents including all attachments to these emails sent by the City Clerk’s Office or City Council Office. This document mentions Gloria Martin Roberts, Director of Building and Housing. In this document, it refers to Gloria Martin Roberts as a three-time retiree. This document may have been the City Council’s response to the Mayor’s veto of budget amendments for the 2025 budget or the 2026 budget. This period is from 10/01/2024 until 01/01/2026.

On August 24, 2026, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b), the City denied the Request, stating that the records do not exist within the City’s possession, custody or control.

Later on August 24, 2026, the Requester filed an appeal with 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 City to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

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).

On September 3, 2026, the City submitted a position statement and attestation, made subject to the penalties set forth in 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), from Janice Hendler (“Hendler Attestation”), the City’s Open Records Officer, who attests that a search was conducted and that no responsive records exist in the City’s possession, custody or control.¹ *Hendler Attestation*, ¶¶ 6-7. More specifically, the Hendler Attestation

¹ 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 City has acted in bad faith or that the requested records exist, “the averments in [the Hendler Attestation] should be accepted as true.”

affirms that Open Records Officer Hendler contacted the City's IT Support team ("IT") about the Request, which conducted a good faith search of documents in their possession, including the emails of all City Council members, employees of the City Clerk's office, the current Business Administrator, the former Business Administrator (the Requester), and the Mayor. *Id.* at ¶¶ 4-5. As a result of this search, IT located 490 emails, which were reviewed and determined to not be responsive to the Request. *Id.* at ¶ 6. Therefore, based on the evidence provided, and the fact that the Requester has not submitted evidence to undermine the Hendler Attestation, the City has met its burden of proof that it does not possess the records sought in the Request.² *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (concluding that, in the absence of countervailing evidence establishing that the agency acted in bad faith or that the requested records exist, averments of nonexistence should be accepted as true).

For the foregoing reasons, the appeal is **denied**, and the City 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 or petition for review to the Dauphin 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

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)).

² In an unsworn statement attached to his appeal form, the Requester states that he, as the former Business Administrator/Chief of Staff for the City, has personal knowledge of the existence of the document he seeks in the Request. However, despite this claim and the fact that the Requester directed the City to two potential locations the record may exist, the City submitted competent evidence from its Open Records Officer, who consulted with IT, concerning the search for records. In fact, the Hendler Attestation specifically notes that IT searched the emails associated with the Requester's account, as well as the various City officials who would possess the record and located no such record. Insofar as the Requester alleges that the record *should* exist, such a determination is outside the purview of the OOR; instead, the OOR must determine whether a record does, in fact, exist within the possession, custody or control of the agency. *See Gorol v. Forest Hills Borough*, OOR Dkt. AP 2019-0329, 2019 PA O.O.R.D. LEXIS 427.

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.³ 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>.

FINAL DETERMINATION ISSUED AND MAILED: 8 September 2026

/s/ Joshua T. Young

JOSHUA T. YOUNG, ESQ.
SENIOR DEPUTY CHIEF COUNSEL

Sent via OOR e-file portal to: Samuel Sulkosky;
Janice Hendler, AORO

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