



FINAL DETERMINATION

IN THE MATTER OF	:
	:
RAYMOND HOFELDER,	:
Requester	:
	:
v.	: Docket No: AP 2026-3359
	:
YARDLEY BOROUGH,	:
Respondent	:

On July 21, 2026, Raymond Hofelder (“Requester”) submitted a request (“Request”) to Yardley Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[a] complete copy of the Yardley Borough’s Financial Assistant Patty Sargent employment agreement, including all addenda, amendments, and renewal resolutions, effective between January 1, 2020, and July 21, 2026.”

On July 31, 2026, following a thirty-day extension, 65 P.S. § 67.902(b), the Borough issued a response granting in part and denying in part the Request. The Borough informed the Requester that it had identified responsive records in the form of a two-page addenda, which was received and maintained solely in paper form and made available for in-person inspection or, at a duplication fee of \$0.25 per page, available to the Requester for an estimated total of \$0.50. To the extent the Request sought electronic copies, that portion was denied as the Borough stated the responsive records were not maintained electronically. The Request as to employment agreements,

amendments, and renewal resolutions was also denied as no responsive records were found to exist in the Borough's possession, custody or control.

On August 14, 2026, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. The Requester also asked the OOR make a finding of bad faith on behalf of the Borough. 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 this appeal. 65 P.S. § 67.1101(c).

The Borough 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. 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). 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 Borough has acted in bad faith or that the requested records exist, “the averments in [the Affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Envlt. 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)).

Section 701 of the RTKL provides that “[a] record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists.” 65 P.S. § 67.701. The RTKL does not define “medium;” however, the OOR has defined it “as the substance through which something is transmitted or carried, a ‘means,’ such as on paper or on the hard-drive or on a database or over the internet.” *Acton v. Fort Cherry Sch. Dist.*, OOR Dkt. AP 2009-0926, 2009 PA O.O.R.D. LEXIS 786, *aff’d*, No. 2010-719 (Wash. Com. Pl. July 26, 2011), *aff’d*, 38 A.3d 1092 (Pa. Commw. Ct. 2012), *petition for allowance of appeal denied*, 57 A.3d 72 (Pa. 2012). “Under the RTKL, ‘medium’ is a broad term, and ‘electronic medium’ encompasses all electronic formats.”

Section 705 of the RTKL frees agencies from the obligation “to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705; *see also Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010) (holding that an agency cannot be made to create a record that does not exist). In accordance with Section 705 of the RTKL, the Borough is not required to convert these records into an electronic medium. *See* 65 P.S. § 67.705; *Ayoob v. Glenfield Borough*, OOR Dkt. AP 2021-1513, 2021 PA O.O.R.D. LEXIS

1516 (acknowledging that the agency was not required to create electronic copies of records that existed only as hard copies); *Ayoob v. Haysville Borough*, OOR Dkt. AP 2021-1565, 2021 PA O.O.R.D. LEXIS 1651 (same).

In support of its position that the appeal should be denied, the Borough supplied a position statement, supported by the attestation of Patricia Sargent, (“Sargent Attestation”). She attests that following the receipt of the Request, a record search was initiated under the direction of the Borough Manager and Open Records Officer, Paula Johnson.¹ Sargent Attestation, ¶6. In its position statement, the Borough states that Ms. Sargent is an hourly employee. *See* Position Statement; *see also* Sargent Attestation, ¶¶7-8. As an hourly employee, she does not have an employment agreement. *Id.* The sole responsive record found within Ms. Sargent’s employee file was a document identified as an “addenda” which granted Ms. Sargent a paid vacation request. *Id.* This was kept in physical, paper form and there are no electronic copies of the document, either on the computer system or in Ms. Sargent’s possession. *Id.* Ms. Sargent attests to the specific circumstances and the search as being fully and accurately outlined in the position statement. *Id.*

As the Borough has proved by a preponderance of the evidence that it does not have any additional records in its possession, custody or control, it has met its burden. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). In addition, as the Borough is not required to create a record from a physical, paper copy into an electronic copy, it has also met its burden under Section 705. 65 P.S. § 67.705. The Sargent Attestation states that most of the records requested are only maintained by the Borough in hard copy format, i.e. the paper files. Sargent Attestation, ¶7. While the Requester argues that in other RTKL cases with the Borough, RTKL requests were fulfilled by reproducing responsive records onto a digital flash drive, this has no

¹ During the pendency of this appeal, Ms. Johnson was out of the office due to a personal matter and delegated the responsibility of the appeal issue to Ms. Sargent. Sargent Attestation, ¶3.

bearing on this particular RTKL Request. *See* 65 P.S. § 67.705; *Ayoob v. Glenfield Borough*, OOR Dkt. AP 2021-1513, 2021 PA O.O.R.D. LEXIS 1516. As the Borough attests the records are only in paper format, they are not required to reproduce the record electronically. *See* Position Statement; *see also* Sargent Attestation, ¶¶7-8.

For the foregoing reasons, the appeal is **denied**. The Borough 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 Bucks 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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 8, 2026

/s/ Meryl M. Peterman

MERYL M. PETERMAN, ESQ.
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Raymond Hofelder
Travis Hunsberger, Esq.

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