



FINAL DETERMINATION

IN THE MATTER OF

**NATHAN STRUNK,
Requester**

v.

**MONROE COUNTY,
Respondent**

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Docket No: AP 2026-2917

FACTUAL BACKGROUND

On June 10, 2026, Nathan Strunk (“Requester”) submitted a request (“Request”) to Monroe County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the following:

Copies of all records related to Bridge ID 45721003529021, located on Green Hill Road over Pohopoco Creek in Polk Township, Monroe County [(“Green Hill Road Bridge”)], constructed in or around 1971, that document pre-construction, existing-condition, historical, hydrologic, environmental, survey, mapping, floodplain, or site-condition information for the [B]ridge location and surrounding Pohopoco Creek corridor. This [R]equest includes, but is not limited to, General Plan and Elevation sheets, cross section drawings of the creek channel, banks, and adjacent floodplain, existing-condition plans or drawings prepared before construction, site layout plans, profiles and grading plans, hydraulic design drawings, hydrologic or hydraulic studies, floodplain mapping, creek channel alignment records, stream morphology documentation, topographic surveys, soil or sediment information, wetland or environmental observations, aerial photographs, project maps, drawing indexes, file indexes, bridge files, archived engineering records, correspondence with the U.S. Army Corps of Engineers [(“USACE”)], [the Pennsylvania Department of Transportation (“PennDOT”)], [the Pennsylvania Department of Environmental Protection (“DEP”)] or predecessor agencies, and any records describing ponding, backwater conditions, flood storage, altered channels, prior water conditions, or other observed hydrologic characteristics. This [R]equest

includes any responsive records that are archived, stored offsite, held by the [] County Archives or another [C]ounty office, or maintained in paper, microfilm, scanned, or non-digitized formats. Digital formats are preferred. These materials are needed to assess documented pre-construction site conditions and compare them with present-day channel and floodplain characteristics for archaeological and historical landscape research.^[1]

On June 16, 2026, Greg Christine, County Agency Open Records Officer (“AORO”), emailed the Requester, stating that after checking the County’s current files and Archives Office, no file on the project referenced in the Request was found. *See* Requester Appeal, pp. 5, 9. He further stated that he suspected that the file was either destroyed as part of retention requirements, or that it was not a County project because the Beltzville Dam project would have been done by the USACE. *Id.*

On June 26, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County denied the Request (“Final Response”), arguing that no responsive records exist.

On July 17, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, he argued that the County failed to demonstrate that a good faith search occurred. The OOR invited both parties to supplement the record and directed the County to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

¹ The Request also stated, in part, that the County and/or the USACE previously explained that the Green Hill Road Bridge was constructed as part of the Beltzville Dam project constructed by the USACE. Requester Appeal, p. 12. In addition, the Request indicated that, in response to a separate FOIA request, the USACE informed the Requester that it may be in the possession of records responsive to that request, and it estimated that searching the federal repository would require approximately 160 hours of staff time over roughly three months, followed by additional review, with an estimated fee of approximately \$7,920. *Id.* at pp. 14-19.

On July 28, 2026, the County submitted the attestation of Mr. Christine (“Christine Attestation”), which provides information about the County’s search and reiterates its grounds for denial.²

In response, on July 30, 2026, the Requester made a submission, reiterating his previous arguments and challenging the sufficiency of the Christine Attestation. He further argued, in part, that responsive records must exist.

On July 31, 2026, the OOR extended the submission period to provide the County with an opportunity to respond to the Requester’s July 30, 2026 submission. To date, the County has not further supplemented the record.³

LEGAL ANALYSIS

The County 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 County 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

² The Christine Attestation is made subject to penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

³ The OOR also extended the deadline for the issuance of the Final Determination in this matter to September 21, 2026, upon the agreement of the Requester. *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)”).

request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (citing 65 P.S. § 67.708).

On appeal, the County argues that no responsive records exist. The Requester contends that responsive records must exist based on the County’s alleged ownership of the Bridge, the retention requirements of the Municipal Records Act, 53 Pa.C.S. §§ 1381 *et seq.*, and federal and state laws that require the County to inspect/maintain the bridge and “keep all pertinent records,” and because the County denied the Requester’s prior RTKL request for the same records “under a security/public-safety exception.” He further asserts that various responsive records would be in the possession of the County Engineer’s office, Public Works/Bridge Maintenance Department, Planning or GIS divisions and/or contractors, not the County’s elected Commissioners’ or their secretarial staff. In addition, the Requester argues that the County’s evidence fails to demonstrate that the County searched all locations where responsive records would be stored, including “any digital repositories (network drives or engineering software databases)[.]” In addition, the Requester argues that the USACE confirmed that it maintains over sixty years of technical project records for the Green Hill Road Bridge project, and therefore, the County “would reasonably be expected to have received or generated records necessary to assume ownership, inspection, and maintenance responsibilities, including ownership documentation, inspection records, maintenance files, and related engineering materials.”

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) (*Uniontown Newspapers I*), *aff'd*, 243 A.3d 19 (Pa. 2020) (*Uniontown Newspapers II*). 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 its position, the County submitted the attestation of Mr. Christine, who is familiar with its records and coordinated the search. *See Christine Attestation*, ¶¶ 1-3.⁴ The County's attestation affirms that "[t]he Commissioners' Office is the sole repository for bridge files with the exception of closed files which are archived in the Archives Office. No other County Office is a repository for this information." *Id.* at ¶ 3. The attestation further reflects Mr. Christine inquired with those offices and directed them to conduct a search of the records that they maintain for responsive records. *Id.* The evidence also shows that Mr. Christine was advised that no records responsive to the Request were located by those offices. *Id.* at ¶ 6. As such, Mr. Christine determined that no responsive records exist. *Id.* at ¶¶ 6-7. Additionally, the evidence reflects that said determination "is based upon and limited to the searches conducted by the appropriate [offices] and the information provided to [Mr. Christine] in [his] capacity as AORO, and not upon

⁴ 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the County has acted in bad faith, "... 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 *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

a personal search by [him] of every record maintained by the” County. *See* Christine Attestation, ¶ 7.

Despite the Requester’s arguments, the RTKL places a low burden of proof on the agency, and in the absence of countervailing evidence, the County’s attestation, shows that a good faith search was conducted and that no responsive records currently exist. *See Roberts v. City of Erie*, OOR Dkt. AP 2026-1091, 2026 PA O.O.R.D. LEXIS 1787, *7 (explaining that “[e]vidence of a reasonable search and contact with the correct custodians is sufficient to show that records do not exist in the agency’s possession”) (citation omitted); *see also Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (explaining that “[i]t is questionable to what degree additional detail and explanation are necessary to establish the nonexistence of a record rather than its exemption from disclosure”) (quoting *Hodges*, 29 A.3d at 1192); *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry). While the Christine Attestation could have been more detailed, it establishes that the Commissioners’ Office and the Archives Office are the only departments within the County where bridge files would be maintained, and that no responsive records were located there.

Although the Requester argues that responsive records must exist, the OOR makes no determinations as to whether any responsive records *should* exist, as our inquiry is limited to only whether or not 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. Further, any claims regarding the the County’s violation or noncompliance with the Municipal Records Act and federal and state laws that require the County to inspect/maintain the bridge and “keep all pertinent

records,” are outside the scope of the appeal and the purview of the OOR. Additionally, there is no indication in the appeal record presently before the OOR that the County would be required to obtain records from the USACE. Moreover, to the extent the Requester argues that records may be possessed by PennDOT or the DEP, the County would have no obligation under the RTKL to obtain any responsive records from those separate agencies. *See generally, Mutchler v. Pa. Off. of Admin.*, 334 A.3d 57, 2025 Pa. Commw. LEXIS 50 (Pa. Commw. Ct., Mar. 18, 2025) (in the context of the applicability of 65 P.S. § 67.506(d)(1), the Commonwealth Court explained that the RTKL does not “require one agency to obtain from another agency information that the requester could get from that other agency directly”), *petition for allowance of appeal granted in limited part*, No. 196 MAL 2025, 2025 Pa. LEXIS 1472 (Sept. 23, 2025).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the County 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 Monroe 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.⁵ 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>.

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

FINAL DETERMINATION ISSUED AND MAILED: September 14, 2026

/s/ Megan Burns

MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Nathan Strunk; and Greg Christine, AORO