



FINAL DETERMINATION

IN THE MATTER OF

**DEVIN MARESCA,
Requester**

v.

**NEW CASTLE CITY,
Respondent**

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Docket No: AP 2026-3402

FACTUAL BACKGROUND

On July 8, 2026, Devin Maresca (“Requester”) submitted a request (“Request”) to New Castle City (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...[A]ny and all records[] including[,] but not limited to[,] emails (including attachments), text messages, written correspondence, memoranda, and logs of telephone communications, between any [C]ity official, employee, or agent (including the Mayor’s Office, City Council members, and City Police Department) and any officer or representative of the U.S. Probation and Pretrial Services for the Western District of Pennsylvania. The records sought are those that mention, refer to, or involve ‘Devin Ryan Maresca’, ‘Devin Maresca’, ‘Dan Glassman’, or social media activity, comments, or ‘complaints’ regarding these individuals. The timeframe for this request is from July 31, 2025, through May 4, 2026.

On July 14, 2026, the City invoked a thirty-day extension to respond to the Request, 65 P.S. § 67.902(b)(2). As the Requester did not receive a final response from the City by the expiration of the thirty-day extension, or by August 14, 2026, the Request was deemed denied on

that date. *See* 65 P.S. § 67.902(b)(2).

On August 18, 2026, the Requester appealed to the Office of Open Records (“OOR”), stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the City to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On August 24, 2026, the Requester submitted a position statement, providing the timeline for the appeal.

On August 25, 2026, the City submitted a position statement made subject to the penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities, authored by Chris Frye (“Frye Statement”), the City’s Agency Open Records Officer (“AORO”). The Frye Attestation claims records responsive to the Request do not exist in the City’s possession, custody or control.

On August 25, 2026, the Requester submitted a second position statement, claiming the City’s search for responsive records was incomplete and the Frye Statement is conclusory.

On August 26, 2026, the OOR requested that the City provide additional details concerning the City’s search for responsive records, to include a description of the locations searched and inquiries made for responsive records; however, through the date of this Final Determination, no further submissions of any nature were made by the City.

LEGAL ANALYSIS

The City 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 City 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).

The City asserts that records responsive to the Request do not exist within its possession, custody or control. 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 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), *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).

Here, the Request seeks emails, text messages, written correspondence and telephone logs of communications between City employees and U.S. Probation and Pretrial Services that

reference three names over approximately nine months. In support of the City's argument that it does not possess records responsive to the Request, the Frye Statement indicates that a search was conducted by the City's third party managed service provider of all City records and emails and no records were found. Frye Statement.¹

The Frye Statement is authored by its AORO, who has direct knowledge of the City's records. The City has demonstrated that a good faith search of the City's emails was performed and that responsive emails were not located as a result of that search. Thus, based on the evidence provided, the City has demonstrated that it does not possess emails responsive to the Request. There has been no sufficient evidence provided by the Requester that otherwise contradicts the statements offered by the City in the Frye Statement. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the City has met its burden of proof that emails responsive to the Request do not exist in the City's possession, custody or control.² *Hodges*, 29 A.3d at 1192.

However, despite the OOR's request for the City to submit additional evidence regarding telephone logs, text messages and other types of records searched, the City has failed to do so. Without this evidence, the OOR must find that the City has not demonstrated that these type of records responsive to the Request do not exist. The City has provided no information regarding its search for responsive records other than its search for emails and "records." Thus, based upon the lack of evidence, the City has not demonstrated that it performed a good faith search for

¹ Under the RTKL, an affidavit or statement made under 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 City has acted in bad faith, "the averments in the [statement] 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)).

² The OOR makes no determination as to whether 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.

telephone logs, text messages and other types records responsive to the Request. *See Hodges*, 29 A.3d at 1192 (“[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request”).

Nevertheless, the OOR is mindful that an agency cannot be required to produce records that do not exist. 65 P.S. § 67.705. If the City completes its search for telephone logs, text messages and other types records responsive to the Request and determines that records do not exist, it must provide the Requester with an attestation explaining the search for the records and affirming that responsive records do exist within its possession, custody or control.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the City is required to produce records responsive to the Request, as described above, or, if a portion of the responsive records do not exist, a detailed attestation describing its search, within thirty days. 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 Lawrence 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; however, 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 65 P.S. § 67.1303. 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>.

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

FINAL DETERMINATION ISSUED AND MAILED: September 15, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent via portal only to: Devin Maresca; Christopher Frye, Jr.