



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
HILDA VAZQUEZ-ROSA,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2026-2884
	:	
PENNSYLVANIA DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION,	:	
Respondent	:	

FACTUAL BACKGROUND

On June 25, 2026, Hilda Vazquez-Rosa (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Environmental Protection (“Department” or “DEP”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, for 4 identified properties:

[A]ll record[s] of Blasting report, Permit, Permit application, inspection report, Correspondence [sic], emails, letters, and text messages, and I would like to request the materials being used for blasting but not limited from Maine Drilling & Blasting inc. used in PAX-1 project.

On July 15, 2026, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b)(2), the Department granted the Request and provided responsive records.

On July 16, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), stating grounds for disclosure. Specifically, the Requester asserts, in part, that “the response

unreasonably omitted, excluded, or withheld the following essential records: Emails, text messages, and official and internal/external service correspondence related to the case, original permit application as described for each parcel. Information and specifications of explosives material currently being used for blasting operations (blasting materials).” The OOR invited both parties to supplement the record and directed the Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On July 28, 2026, the Department submitted a position statement, arguing that all responsive records have been provided. In support, the Department submitted the attestation of Cory Seese (“Seese Attestation”), the Department’s District Mining Manager (“DMM”) for the Cambria District Mining Office (“CAMDMO”).

On July 19, 26 and 28, 2026, the Requester made multiple submissions, arguing, in part, that “blasting and earth disturbance permits directly impact the safety, health, and property of the community. Concealing these deliberations violates the fundamental principle of government transparency.”

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 Department 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 factfinder ... 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)).

Although the Requester asked the OOR to conduct *in camera* review, the OOR declines to do so because it has sufficient information and evidence before it to adjudicate this matter. *See* 65 P.S. § 67.1102(a)(2).

The Department argues that additional responsive records do not exist. 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).

In this instance, the Seese Attestation¹ states, in relevant part, as follows:

¹ Under the RTKL, an attestation is generally competent evidence to sustain an agency’s burden of proof. *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 competent evidence that the Department acted in bad faith, “the averments in [the attestations] should be accepted as true.”

3. I am the District Mining Manager (“DMM”) for CAMDMO. My responsibilities include the coordination of permitting and enforcement activities within CAMDMO and the oversight of CAMDMO responses to records requests processed pursuant to the Right-to-Know Law (“RTKL”). I am the point of contact for receiving RTKL requests and gathering responsive records from staff in each of the programs located in CAMDMO.
- ...
5. Because of my responsibilities and experience as DMM, I am familiar with the records stored at CAMDMO including, but not limited to, paper records, electronic records, maps, microfiche, photographs, and video. My staff and I know where these records are located, how these records are maintained, and are aware of CAMDMO staff that might possess these records.
6. When an RTKL request is submitted to DEP that potentially involves records in CAMDMO’s possession, custody, or control, my staff and I are responsible for searching for and collecting responsive records from CAMDMO office files and relevant CAMDMO staff. Relevant CAMDMO staff and I are responsible for searching for any possibly responsive records including, but not limited to, paper records, electronic records, maps, sampling analyticals, microfiche, photographs, and video.
- ...
10. DEP’s Agency Open Records Officer (“AORO”) assigned Vazquez-Rosa’s RTKL [R]equest to CAMDMO because it issued the blasting activity permits and conducted explosive inspections for the PAX-1 Project located in Middlesex Township, Cumberland County.
- ...
12. CAMDMO’s search for records included the office’s file area, staff offices, and electronically stored information.
- ...
14. Upon completion of CAMDMO’s good faith search and inquiry conducted at my direction, records responsive to Vazquez-Rosa’s RTKL [R]equest were located in the custody, control, or possession of my office.
- ...
17. None of the supplemental filing involves additional records that would be found at DEP’s CAMDMO or change DEP’s CAMDMO’s response to Vazquez-Rosa’s RTKL [R]equest that CAMDMO provided all the responsive records in its possession, custody, or control concerning Vazquez-Rosa’s [R]equest.

Here, the Seese Attestation is authored by an individual who has knowledge of whether any responsive records exist. The Attestation describes who was asked to conduct searches and

the results of those searches. Moreover, the Requester has not submitted sufficient legal argument or evidence to undermine the assertions made in the Department's attestation.

Therefore, based on the evidence provided, the Department has met its burden of proof that all records responsive to the Request were provided to the Requester. *See 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 (Pa. Commw. Ct. 2022) (holding that, when there is evidence that a record does not exist, "[i]t is questionable to what degree additional detail and explanation are necessary..."); *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).²

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Department 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 Commonwealth Court. 65 P.S. § 67.1301(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>.

² Notably, the OOR makes no determinations as to whether additional 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.

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

FINAL DETERMINATION ISSUED AND MAILED: September 16, 2026

/s/ Magdalene C. Zeppos-Brown
MAGDALENE C. ZEPPOS-BROWN, ESQ.
DEPUTY CHIEF COUNSEL

Sent to: Hilda Vazquez-Rosa (via OOR e-file portal only);
Chelsea Dickert, AORO (via OOR e-file portal only); and
Alicia Duke, Esq. (via OOR e-file portal only)