

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF

**ADAM HEIMER AND ARCW
SYSTEMS, INC.,
Requester**

v.

**BERKS-MONTGOMERY
MUNICIPAL AUTHORITY,
Respondent**

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Docket No: AP 2026-2716

FACTUAL BACKGROUND

On May 22, 2026, Adam Heimer and ARCW Systems, Inc. (collectively “Requester”) submitted a request (“Request”) to the Berks-Montgomery Municipal Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Request BC-02: Meter Approval and Specification Records

All records of [Authority]’s review and approval of the water meter installed at 802 PA-100 Bechtelsville, PA 19505 pursuant to [Authority] Rules §3.10.02, including the approved make, model, size, and serial number of the meter, any required exterior remote reader, and the date [the Authority] approved the installation. These are [the Authority’s] own approval records.

On July 1, 2026, the Authority partially granted and partially denied the Request.¹ The Authority provided a responsive record that included the serial number of the water meter and

¹ On May 27, 2026, the Authority issued a notice to invoke a thirty-day extension during which to respond, 65 P.S. § 67.902(b).

identified a responsive drawing from a professional engineer that could not be duplicated but could be inspected by the Requester pursuant to the Federal Copyright Act (“Act”). *See* 17 U.S.C.S. §§ 106, 501. The Authority also concluded that additional responsive records sought – review and approval of water meter, records of the approved make model and size of meter and any remote reader – do not exist in its possession, custody or control.

On July 7, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.² The OOR invited both parties to supplement the record and directed the Authority to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On July 29, 2026, the Authority submitted a position statement³ and an attestation made under the penalty of unsworn falsification to authorities⁴ from Keith L. Corson (“Corson Attestation”),⁵ the Authority’s Manager and Open Records Officer (“AORO”), reiterating its grounds for denial. On August 7, 2026, the Requester submitted a response improperly narrowed the Request and search was deficient. On August 9, 2026, the Authority submitted the position statement that corresponded to the instant appeal reiterating its grounds for denial.⁶

LEGAL ANALYSIS

The Authority 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

² The Requester granted the OOR a 30-day extension to issue a final determination. *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).”).

³ At the time of the submission, the parties had a separate pending appeal docketed at *Heimer v. Berks-Montgomery Mun. Auth.*, OOR Dkt. 2026-2719. The Authority’s submission included the position statement which corresponded to the appeal in OOR Dkt. AP 2026-2719 and not this instant appeal.

⁴ 18 Pa.C.S. § 4904.

⁵ Under the RTKL, a sworn affidavit or unsworn attestation 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).

⁶ The Authority submission included a duplicate copy of the Corson Attestation dated July 29, 2026.

law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Authority 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)).

1. The Authority cannot duplicate the responsive drawing but can make it available for inspection

The Authority identified a responsive drawing from a professional engineer and argues that the drawing cannot be duplicated but inspected. In the Authority’s Request response, the Authority provided the Requester with an opportunity to inspect the drawing and the Requester failed to do so prior to filing the appeal. The Authority asserts that the responsive, professional, drawing plans are subject to the Act, which precludes reproduction of copyrighted work without the consent of the copyright holder. *See* Corson Attestation, ¶¶ 7-8; 17 U.S.C.S. §§ 106, 501. However, the Act does not prohibit inspection of records; it only limits duplication. *See Ali v. Philadelphia City Planning Commission*, 125 A.3d 92 (Pa. Commw. Ct. 2015) (the Copyright Act does not exempt materials from disclosure under the RTKL but limits the access to a public record only with respect to duplication, not inspection). In *Ali*, the Commonwealth Court further explained:

Because we lack jurisdiction under federal law to resolve the question of whether a local agency’s disclosure of copyrighted material pursuant to the RTKL without the owner’s consent constitutes infringement under the Copyright Act, where a local agency has refused to duplicate a public record in response to a RTKL request by invoking the Copyright Act, our review must be confined to determining whether the local agency has met its burden of proving facts sufficient to show that forced duplication of copyrighted material under the RTKL implicates rights and potential liabilities arising under the Copyright Act that can only be resolved by the federal courts. ...

we hold that where a local agency invokes the Copyright Act as a basis to limit access to a public record to inspection only, the absence of consent by the copyright owner to duplication in response to a RTKL request should be presumed.

125 A.3d at 104-05. Here, the dispute does not involve the public nature of the record, but rather access to the record. The Authority identified the engineering drawing as responsive to the Request but determined that it was unable to duplicate the drawing under the Act; therefore, the Authority granted access by inspection. Based on a review of the record, the responsive engineering drawing is subject to copyrights owned by the engineer and the Authority has demonstrated that it has not received permission to copy the engineering drawing.⁷ See Corson Attestation, ¶¶ 7-8. Accordingly, the Authority has met its burden of proving that the responsive drawing is protected by copyright and that the Act limits disclosure of the requested plans and reproduction is not permitted. See *Arena v. Upper Gwynedd Twp.*, OOR Dkt. AP 2021-0506, 2021 PA O.O.R.D. LEXIS 809; *Marinari v. Upper Merion Twp.*, OOR Dkt. AP 2021-1145, 2021 PA O.O.R.D. LEXIS; *Ciavaglia v. Bensalem Twp.*, OOR Dkt. AP 2021-2735, 2022 PA O.O.R.D. LEXIS 458.

2. The Authority demonstrated that it does not possess additional responsive records sought in the Request

The Authority asserts that other than the records made accessible, additional responsive records do not exist in 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 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:

⁷ See 17 U.S.C. § 501 (a violation of the “exclusive rights of the copyright owner ... is an infringe[ment] of the copyright....”).

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).

Additionally, “[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). An attestation by the individual who searched for responsive records is sufficient to meet an agency's burden of proving the nonexistence of a record. *Id.*; *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (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).

Here, the Authority asserts that no records responsive to the Request were located in the Authority's possession, custody, or control for the review and approval of the water meter installed at 802 PA-IOO Bechtelsville, PA 19505, for the approved make, model, and size of the meter, and for any remote reader. On appeal, the Authority provided the Corson Attestation,

authored by the Authority's Manager and AORO, detailing the search for responsive records including the files regarding connection permits to determine whether the Authority had any documents responsive to the Request. *See* Corson Attestation, ¶¶ 6-13. The Manager only located a record of the serial number of the water meter installed at 802 PA100, which was provided to the Requester, and was unable to locate any additional records responsive to the Request. *See Id.*, ¶¶ 9, 13.

The Requester insists that additional responsive records should exist, and the Authority improperly narrowed its search for records. Based on a plain reading of the Request and a review of the record, the Authority's interpretation of the Request is reasonable, and it did not improperly narrow the Request.⁸ Furthermore, the Requester did not present evidence which contradicts the Authority's assertions. *See Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022) (concluding that, in the absence of countervailing evidence, an agency may satisfy its burden of proving a record does not exist by submitting "either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record"). The Authority has met its burden of proof that no additional records responsive to the Request exist in its possession, custody or control. *See Hodges*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *Campbell*, 268 A.3d 502 (Pa. Commw. Ct. 2021).

⁸ When responding to an RTKL request, an agency is permitted to make a reasonable interpretation of its meaning. *See Spatz v. City of Reading*, OOR Dkt. AP 2013-0867, 2013 PA O.O.R.D. LEXIS 513; *Signature Info. Solutions, Inc. v. City of Warren*, OOR Dkt. AP 2012-0433, 2012 PA O.O.R.D. LEXIS 557; *Madison v. Pa. Bd. of Prob. & Parole*, 212 A.3d 560, 563 (Pa. Commw. Ct. 2019). Additionally, the OOR has repeatedly held that a request may not modify or expand a request on appeal, and that the OOR's review on appeal is confined to the Request as written. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Pa. Dep't of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that "where a requestor requests a specific type of record ... the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request").

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Authority 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 Montgomery 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.⁹ 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>.

FINAL DETERMINATION ISSUED: September 17, 2026

/s/ Damian J. DeStefano

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent via OOR E-file appeal portal to: Adam Heimer; Keith L. Corson, AORO;
Matthew Fessler, Esq.

⁹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).