



• • • • •

1

status, disability/accommodation issues, CHRIA, USERRA, civil-rights complaints, protected activity, or appeal rights.

4. All communications between the [Office] and any Commonwealth office, agency, attorney, human-resources official, civil-service official, EEO official, hiring official, or legal office concerning [the Requester's] LEOT 4019 or LEOT 4015 candidacy or disqualification.
5. All records concerning whether [the Requester's] LEOT 4019 disqualification triggered or did not trigger State Civil Service Commission appeal rights, [Office] review rights, eligibility review rights, list-removal review rights, non-selection review rights, reconsideration rights, EEO rights, PHRC/EEOC rights, USERRA/DOL-VETS rights, or any other administrative review path.
6. All policies, procedures, manuals, guidance, training materials, matrices, rubrics, or written standards used by [the Office] to determine appeal rights or review paths for civil-service job applicants, LEOT applicants, or applicants removed from consideration after a background, criminal-history, military-record, or suitability review.
7. All records concerning how [the Office] evaluates criminal-history record information under CHRIA for hiring, eligibility, list-removal, non-selection, suitability, or background-review purposes.
8. All records concerning how [the Office] evaluates military justice records, special court-martial records, general court-martial records, UCMJ findings, military discharge status, upgraded discharges, military duty-status offenses, or military justice records for Commonwealth employment applicants.
9. All records concerning whether [the Office] classified any UCMJ finding, special court-martial record, or military adjudication involving [the Requester] as a Pennsylvania felony, misdemeanor of the first degree, misdemeanor of the second degree, misdemeanor of the third degree, civilian arrest, civilian conviction, felony-equivalent event, misdemeanor-equivalent event, automatic disqualifier, or discretionary suitability factor.
10. All records concerning whether [the Office] considered [the Requester's] Army Review Board/Army Discharge Review Board upgrade to General, Under Honorable Conditions, and what weight [the Office] gave that official military action.
11. All records concerning whether [the Office] considered USERRA, veterans' preference, disability/accommodation issues, protected EEO activity, civil-rights activity, or retaliation issues in connection with [the Requester's] LEOT 4019 or LEOT 4015 candidacy.

12. All records concerning communications, routing, review, or disposition of [the Requester's] separate LEOT Process/Officer Placement reconsideration and record-correction requests.
13. All non-exempt comparator records, in redacted or aggregated form if necessary, showing how [the Office] or Commonwealth hiring authorities evaluated applicants who self-disclosed old dishonesty-related, theft-related, fraud-related, military justice, or credibility-related conduct but had no civilian arrest or civilian conviction.
14. All records showing the decision-maker chain or [Office] involvement in [the Requester's] LEOT 4019 disqualification, including who reviewed, approved, advised on, or communicated about the decision.
15. All records concerning the meaning, application, or use of the phrases: criminal activity; criminal behavior; criminal history record information; fraudulent insurance claim; conviction; misdemeanor-equivalent; felony-equivalent; automatic disqualifier; suitability factor; military conviction; court-martial; or special court-martial in connection with [the Requester's] LEOT 4019 or LEOT 4015 processing.
16. All records concerning communications between [the Office] and the State Civil Service Commission regarding LEOT applicant appeal rights, LEOT background disqualification, LEOT suitability disqualification, LEOT non-selection, LEOT eligibility, or LEOT list removal.

On August 13, 2026, following a thirty-day extension, 65 P.S. § 67.902(b), the Office granted the Request in part, providing responsive records. The Office also denied the Request in part, asserting that it properly redacted or withheld medical history information, personal identification information, and information exempt under the Americans with Disabilities Act (“ADA”). 65 P.S. § 67.708(b)(5); 65 P.S. § 67.708(b)(6); 42 U.S.C. § 12101 *et seq.* The Office also withheld records as exempt pursuant to the attorney-client privilege, and further asserted that certain records do not exist in its possession, custody or control. Finally, the Office provided the Requester with information as to how to file a RTKL request with the PSP for any additional responsive records.

On August 17, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the Office’s denials and stating grounds for disclosure. The Requester also asked the OOR to consider conducting an *in camera* review of withheld records, if necessary. The OOR invited both parties to supplement the record and directed the Office to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On August 31, 2026, the Office submitted a position statement reiterating its grounds for denial. Additionally, in response to the Requester’s threshold argument that the Office impermissibly shortened to Request timeframe, although the Office asserts that its interpretation of the timeframe of the Request ending to the date of the Request, *i.e.*, up to June 25, 2026, was reasonable, it confirms that no additional responsive records were located between June 25, 2026, through July 8, 2026, the date that the Request was actually received. In support of its position, the Office submitted the attestations of Wha Lee Strohecker (“Lee Strohecker Attestation”), Open Records Officer (“AORO”) for the Office, and Anthony Holbert, Esq. (“Holbert Attestation”) Chief Counsel for the Office.²

On September 1, 2026,³ the Requester submitted a supplemental position statement, first clarifying that he “does not contest appropriate redaction of Social Security numbers, third-party personal contact information, or genuinely protected medical details.”⁴ The Requester states that “[t]he disputed issues are search sufficiency, item-by-item accounting, and the wholesale withholding of ten responsive records without record-specific proof.” The Requester reiterates his argument that the Office failed to conduct an adequate search within the requested timeframe as

² The Lee Strohecker Attestation and Holbert Attestation are made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

³ The Requester’s submission was received after the record closed; however, to develop the record, the submission was considered. *See* 65 P.S. § 1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

⁴ As the Requester reiterates that he “expressly accepts valid redaction of protected identifiers and medical information,” the OOR will not address these issues in this Final Determination.

to uncover all potentially responsive records, and argues that the Office has failed to provide a privilege log as to support withholding records as privileged. On September 8, 2026, the Office submitted correspondence, advising that it inadvertently failed to produce additional responsive records due to a labeling error, and attached additional emails and attachments redacted of personal identification information and medical history information.

On September 11, 2026, the OOR sought additional clarification and evidence from the Office concerning the individuals contacted during its search for responsive records, and whether after the Office's subsequent production of additional records due to the labeling error, if all responsive records have been produced in its possession, custody or control. That same day, the Requester submitted a supplemental position statement.⁵ To date, the Office did not respond to the OOR's inquiry.

LEGAL ANALYSIS

The Office 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 Office 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*

⁵ Because the OOR did not specifically seek this submission after the closing of the submission period, it was not considered during the disposition of the appeal. *See UnitedHealthcare of Pa., Inc. v. Baron*, 171 A.3d 943, 953 (Pa. Commw. Ct. 2017) ("Requester is not entitled to rebuttal for the sake of having the last word"); *SERS v. Pennsylvanians for Union Reform*, 113 A.3d 9 (Pa. Commw. Ct. 2015) (explaining that requesters do not have a due process right to challenge agency submissions).

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). Here, the Requester asked the OOR to consider *in camera* review of responsive records, but this request is denied, as the OOR has sufficient evidence to render a decision.

1. The appeal is dismissed as moot in part

On September 8, 2026, the Office provided additional emails and attachments to the Requester during the pendency of the appeal. Accordingly, the appeal is dismissed as moot as to these records. *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records and, thus, “the controversy has been mooted”).

2. The Office has demonstrated that certain records are privileged

The Office asserts that it properly withheld 10 records of communications pursuant to the attorney-client privilege and the attorney work-product doctrine. The RTKL defines “privilege” as “[t]he attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.” 65 P.S. § 67.102.

In order for the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the

privilege has been claimed and is not waived by the client. *See Bousamra v. Excelsa Health*, 210 A.3d 967, 983 (Pa. 2019) (internal citations omitted). “[A]fter an agency establishes the privilege was properly invoked under the first three prongs, the party challenging invocation of the privilege must prove waiver under the fourth prong.” *Office of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2014) (citing *Id.*). An agency may not rely on a bald assertion that the attorney-client privilege applies. *See Clement v. Berks Cnty.*, OOR Dkt. AP 2011-0110, 2011 PA O.O.R.D. LEXIS 139 (“Simply invoking the phrase ‘attorney-client privilege’ or ‘legal advice’ does not excuse the agency from the burden it must meet to withhold records”). The attorney-client privilege protects only those disclosures necessary to obtain informed legal advice, where the disclosure might not have occurred absent the privilege, and where the client’s goal is to obtain legal advice. *Joe v. Prison Health Services, Inc.*, 782 A.2d 24 (Pa. Commw. Ct. 2001).

The attorney work-product doctrine, on the other hand, prohibits disclosure “of the mental impressions of a party’s attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.” Pa. R.C.P. 4003.3. “The purpose of the work-product doctrine is to protect the mental impressions and processes of an attorney acting on behalf of a client, regardless of whether the work product was prepared in anticipation of litigation.” *Bousamra*, 210 A.3d at 976; *see also Heavens v. Pa. Dep’t of Env’tl. Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013) (“[U]nder the RTKL the work-product doctrine protects a record from the presumption that the record is accessible by the public if an agency sets forth facts demonstrating that the privilege has been properly invoked”). While the attorney-client privilege is waived by voluntary disclosure, *Bousamra*, 210 A.3d at 978, the work-product doctrine is not primarily concerned with confidentiality, as it is designed to provide protection against adversarial parties. *Id.* at 979.

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 Office 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)).

Here, Mr. Holbert, who serves as Chief Counsel for the Office, first affirms that he represents the Office, and he is an active member of the Pennsylvania bar. Holbert Attestation ¶¶1-2, 5. Mr. Holbert further attests that the responsive records in his possession were never publicly presented to, or shared with any outside parties. Holbert Attestation ¶¶20-21. Mr. Holbert provides background as to the Office previously finding that the Requester should be denied preference under Veterans’ Preference Act (“VPA”), and further attests that “[the Requester]...filed an action in Federal Court against [the Office] and several [Office] employees, and the Federal litigation remains pending.” Holbert Attestation ¶¶6-12, 18. As a result, Mr. Holbert attests that “the attorney-client communications, which are within the scope of [the Requester’s] [RTKL] [R]equest, serve as a memorialization of attorney-client communications and/or my mental impressions, conclusions, opinions, memoranda, notes or summaries, legal research or legal theories that occurred in furtherance of providing legal advice and strategy to my clients and to prepare for defense against all claims raised by [the Requester].” Holbert Attestation ¶19. Finally, nothing in the records demonstrates that these communications were created for the purpose of committing a crime or a tort, and Mr. Holbert affirms that “[m]y client has never waived attorney-

client privilege and retains a reasonable expectation of privacy regarding the information shared, discussed, debated, and executed through counsel.” Holbert Attestation ¶ 22.

The Requester argues that the Office must be required to provide a privilege log in order to support its assertions of privilege for each record withheld. However, the OOR determines that the Office has adequately provided evidence in the form of an attestation to support its claims by a preponderance of the evidence. *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that a preponderance of the evidence, the lowest evidentiary standard, is tantamount to a “more likely than not” inquiry). While an agency may choose to provide a privilege log as evidence, it is not required by the OOR or the RTKL. Accordingly, the Office has demonstrated by a preponderance of the evidence that these records are exempt from access pursuant to the attorney-client privilege and the attorney-work product doctrine.

3. The Office has demonstrated that it conducted a good faith search and additional responsive records do not exist in its possession, custody or control

The Office asserts that it has conducted a good faith search for responsive records, and further asserts that “[n]o documents, deemed public records under the RTKL, were wholly withheld by [the Office].” In response, the Requester argues that the Office failed to conduct an adequate search within the requested timeframe as to uncover all potentially responsive records. In support of the Office’s position, the Lee Strohecker Attestation states the following, in part:

8. The Request provided a “Request Date” of June 25, 2026 [].
9. The provided Request date was used to determine the parameters of time for which records were being sought.
10. Generally, the Request date (6/25/26) defines the universe of responsive records, as [the Office] only has a duty to disclose records created on or before June 25, 2026. *See Uniontown Newspapers, Inc. v. Pennsylvania Dep’t of Corr.*, 151 A.3d 1196, 1205 (Pa. Commw. Ct. 2016) (“[Agency] had no obligation to disclose records created after the Request date[.]”)

11. Upon receipt of the Request, I conducted a thorough examination of files in the possession, custody, and control of [the Office] for the records responsive to the Request underlying this appeal.
12. Additionally, I inquired with relevant [Office] personnel as to whether the requested records exist in their possession or whether they had knowledge of anyone else who may have possession of such records.
13. Specifically, I contacted Lydia White, Miranda Martin, Autumn Stillman, [Korvin] Auch, Christopher Clocker, Martin Kearney, Sandra Arnold, and Melissa Ecija and asked them to provide records.
14. On July 8, 2026, I received communication from Ecija indicating that no responsive records existed in her program area.
15. On July 9, 2026, I received similar “no records” responses from Stillman, Clocker, Kearney, and Arnold indicating no responsive records existed in their respective program areas.
16. After conducting a good faith search of [the Office’s] files and discussing the Request with relevant agency personnel, I identified and collected responsive records within [the Office’s] possession, custody, or control.
17. The collected records were shared with counsel for assistance identifying appropriate exemption under the RTKL and whether certain records were privileged, and therefore, for purposes under the RTKL, they were not considered records.
18. I note that no responsive records were discovered for the period between and including June 25, 2026 and July 8, 2026.

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. The RTKL does not define the term “good faith effort.” However, the Commonwealth Court has concluded that:

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 record and assess their public nature under... the RTKL.

Uniontown Newspapers, Inc. v. Pa. Dep't of Corr., 185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020).

In *Pa. Dep't of Health v. Mahon*, the Commonwealth Court discussed the evidence required to establish the absence of records, quoting its previous decision in *Hodges v. Pa. Dep't of Health*, which held that an agency “may satisfy its burden of proof...with either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record.” *Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (quoting *Hodges*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011)); *see also Campbell*, 268 A.3d 502 (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, Ms. Lee Strohecker, who serves as AORO, affirms that the Office conducted a good faith search for responsive records by examining its files and contacting the relevant custodians of any responsive records from various program areas/bureaus:⁶ Director of the Bureau of Talent Acquisition; Director of the Talent Management Office; Administrative Officers; Special Advisor for Veterans Programs; Director of the Bureau of Equal Employment Opportunity Investigations; Director of the Bureau of Equal Employment Opportunity Policy and Appeals; and Human Resources. Lee Strohecker Attestation ¶¶ 12-13. Ms. Lee Strohecker further affirms that upon taking such actions, she gathered and identified all responsive records in the Office’s possession, custody or control. Lee Strohecker Attestation ¶ 16. Further, as previously stated, despite the Requester’s arguments concerning the search time period implicated on the Request, Ms. Lee Strohecker attests that no additional responsive records were located between June 25, 2026, the provided date on the Request, through July 8, 2026, the date that the Request was actually received.

⁶See <https://pennwatch.pa.gov> (last accessed September 16, 2026).

Lee Strohecker Attestation ¶ 18. Finally, the Office clarified during the pendency of the appeal that certain records provided to its counsel for review after they were gathered were mistakenly labeled as unresponsive, but have since been provided to the Requester on September 8, 2026. Lee Strohecker Attestation ¶ 17.

In response, the Requester cites *Daly v. Pa. Office of the Governor*, to support his argument that the Office failed to conduct a good faith search. OOR Dkt. AP 2025-1584, 2025 PA O.O.R.D. LEXIS 1717. In *Daly*, the OOR reasoned that the evidence provided by the office “lack[ed] the factual averments to demonstrate what individuals, offices or bureaus were contacted, other than the IT staff, what electronic accounts were searched, why those accounts were searched and what search terms were used,” and further asserted that it was “unclear whether the consultation was an actual search of records.” As a result, the OOR determined that the office failed to demonstrate that it conducted a good faith search. However, here, unlike *Daly*, the Office provided evidence of searching for records with specifically named individuals who would be reasonably likely to be the custodians of any responsive records, and was able to produce approximately 40 records as a result. Accordingly, the OOR can conclude, by a preponderance of the evidence, that the Office has sufficiently demonstrated that it conducted a good faith search, and has provided all responsive records in its possession, custody or control. *See Mahon*, 283 A.3d at 936; *Hodges*, 29 A.3d at 1192; *Campbell*, *supra*.

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Office 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. 65 P.S. § 67.1303. 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.⁷ 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 AND MAILED: September 17, 2026

/s/ Tope L. Quadri

TOPE L. QUADRI
APPEALS OFFICER

Sent via portal to: Evan Wood
Wha Lee Strohecker, AORO
Bryan Bartosik-Velez, Esq.

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).