

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF

**JIHAD ALI,
Requester**

v.

**CITY OF PHILADELPHIA
DEPARTMENT OF COMMERCE,
Respondent**

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Docket No: AP 2026-3243

FACTUAL BACKGROUND

On July 17, 2026,¹ Jihad Ali (“Requester”) submitted a request (“Request”) to the City of Philadelphia Department of Commerce (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. Any Economic Opportunity Plan (EOP) application, draft, or certified plan submitted by or on behalf of Philadelphia Technician Training Institute (PTTI), or in connection with the development/conveyance proposed at [address omitted] (OPA parcels 243221000, 243221200, 243215750), Philadelphia, PA.
2. Any correspondence between the Office of Economic Opportunity and PTTI, the Philadelphia Land Bank, or Klehr Harrison Harvey Branzburg LLP regarding EOP applicability, exemption, or waiver for this project.

¹ On July 16, 2026, the Requester initially submitted the Request via email. After being informed that a request must be provided on a standard RTKL form per the City of Philadelphia’s policy and would therefore be treated as an informal request, the Requester promptly submitted the Request on the standard RTKL form as requested, received by the Department on July 17, 2026, identified as RTKL Request #39059. The Requester further asked the previous RTKL request #39052 to be withdrawn.

3. Confirmation of whether a certified EOP is required for, and/or on file for, this project as a 'Covered Project' under Philadelphia Code Section 17-1601(1).

On July 24, 2026, on behalf of the Department, the City of Philadelphia Law Department ("Law Department") mistakenly issued correspondence again labeling the Request as "informal," incorrectly citing that the Requester failed to provide the Request on a standard RTKL form. On August 7, 2026, the Requester appealed to the Office of Open Records ("OOR"), stating grounds for disclosure, citing the continued confusion the Law Department caused by assigning multiple tracking numbers for the same request, and failing to process the Request even after complying with the request to use the standard RTKL form. As such, the Requester asks the OOR to find that the Request was properly submitted under the RTKL, and the Department should be directed to provide the requested records. 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 August 19 and August 20, 2026, the Requester submitted a supplemental position statement and Exhibits, reiterating his arguments that the Request is valid, and responsive records are public and should be provided. Also on August 20, 2026, after receiving correspondence from the Law Department requesting an extension to make its submissions in this matter, and the Requester's objection in response, the OOR issued correspondence, partially granting the Law Department's extension request, and extending the filing deadline.

On August 25, 2026, the Law Department, on behalf of the Department, submitted its response to the appeal. Specifically, the Law Department first clarifies that the Request at issue was indeed valid, confirms that the July 24, 2026 correspondence was an error, and the Request

should have been correctly processed with an extension notice.² In response to the Request, the Law Department asserts that records responsive to Items 1 and 2 do not exist within the Department's possession, custody or control. The Law Department further asserts that in response to Item 3 of the Request, the Department is not required to answer questions and/or perform legal research. In support of its position, the Law Department submitted the attestation of Margot Smith, Esq. ("Smith Attestation"), Chief Deputy Solicitor and Open Records Officer ("AORO") for the Law Department.

On August 26, 2026,³ the Requester submitted a request for leave to make supplemental submissions into the record after it had already closed, providing Exhibits 11 and 12. Specifically, as Exhibit 11, the Requester provides a copy of a City of Philadelphia (hereinafter "City") Economic Opportunity Plan for the project at the specified address that was produced to Requester by the Philadelphia Land Bank on August 24, 2026, concerning a land purchase application from August 2025. The Requester argues that the plan implicates various City departments/divisions, and even includes signature lines for the Deputy Director of Commerce and an official for the Division of Housing and Community Development,⁴ that is directly responsive to the Request. The Requester argues that the Department has failed to demonstrate that it conducted a good faith search for responsive records, and argues that the Smith Attestation cites that it contacted the Procurement Department, which would not have responsive records, which Law Department

² The Law Department provided a copy of a final response issued to the Requester on August 25, 2026, which stated that "[o]n July 24, 2026, the City asserted its right to a 30 calendar day extension to respond to your request, although the July 24, 2026 correspondence incorrectly described the request as informal." However, as the Law Department did not issue correct notice of a 30-day extension to the Requester via clear written correspondence, the Request was deemed denied on July 24, 2026, and the final response is untimely. 65 P.S. § 67.902(b).

³ The Requester's submissions were received after the record closed; however, to develop the record, the submissions were 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 The signature lines are blank, and therefore the plan was not signed by the Deputy Director of Commerce or any official from the Division of Housing and Community Development.

counsel acknowledged was an oversight and drafting error via email in Exhibit 12 as provided by the Requester.

On August 27, 2026, in order to clarify and develop the record, the Requester agreed to allow the OOR to extend the Final Determination due date. Accordingly, that same day, the OOR sought additional clarification and evidence from the Law Department requesting clarification of the steps that the Department took to search for records responsive to Items 1 and 2 of the Request and conclude that records do not exist. The OOR further notified the parties that after a certain date, unless the OOR specifically seeks additional clarification/evidence from a party, no additional submissions would be accepted or considered.

On August 30, 2026, the Requester submitted a supplemental position statement, arguing that any additional supplement from the Law Department must meet several standards, and asked the OOR to provide an updated briefing schedule for him to make a final submission before the closing of the record. On August 31, 2026, the OOR denied this request. *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). On September 2, 2026, in response to the OOR, the Law Department submitted the supplemental attestation of Ms. Smith (“Supplemental Smith Attestation”).⁵

LEGAL ANALYSIS

The Department 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

⁵ The Smith Attestation and Supplemental Smith Attestation are made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

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 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).

1. The Department has not demonstrated that records responsive to Items 1 and 2 of the Request do not exist in its possession, custody or control

The Law Department, on behalf of the Department, asserts that after conducting a good faith search, records responsive to Items 1 and 2 of the Request do not exist in the Department and/or the City’s possession, custody or control. In support of the Department’s position, the Supplemental Smith Attestation states, in part:

6. ...[the City] is one single local agency as defined by the RTKL. *See* 65 P.S. § 67.102. The [Department] and the Department of Planning and Development are both departments of [the City].
7. While the City has appointed Open Records Officers in many of its departments, offices, boards, and commissions for administrative purposes due the size of the City—not only does [the City] have more than 25 departments, boards, offices, and commissions, the City employs over 28,000 employees—RTKL requests sent to one department often have responsive records from multiple other parts of the City.
8. I, and members of the RTKL Unit I oversee, routinely coordinate among multiple departments within the City to locate records responsive to RTKL requests, regardless of which department the RTKL request was originally directed to by [a] requester.
9. The RTKL [R]equest at issue in the instant appeal sought records from the [Department’s] Office of Economic Opportunity.

10. As [AORO] for the Law Department and Chief Deputy City Solicitor of the RTKL Unit, I have direct knowledge regarding the search for records and review of records concerning this appeal, which was conducted by members of the Unit I oversee in coordination and consultation with the [Department] and the Department of Planning and Development, which were the departments determined to have responsive records, if any existed. No responsive records were located after a thorough search for responsive records in the City, which was coordinated by members of the RTKL Unit I oversee.
11. Lynn Newsome, Deputy Commerce Director of the Office of Economic Opportunity, an office of the [Department], confirmed that the office has no record of the economic opportunity plan or project specified in the [R]equest underlying this appeal.
12. Emily Persico, Deputy Director of Development Services in the Department of Planning and Development, confirmed that the department has no record of the economic opportunity plan or project specified in the [R]equest underlying this appeal.
13. After a thorough search, no other responsive records were located and no other departments were determined to have potentially responsive records.

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 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). Notably, the holding of the Commonwealth Court in *Mahon* states that when there is evidence that a record does not exist, “[i]t is questionable to what degree additional detail and explanation are necessary to establish the nonexistence of a record...” 283 A.3d at 936.

Further, under the RTKL, a statement made under made under the penalty of perjury may serve as sufficient evidentiary support 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010); however, “a generic determination or conclusory statements are not sufficient to justify the exemption of public records.” *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013); *see also Office of the District Attorney of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (“Relevant and credible testimonial affidavits may provide sufficient evidence in support of a claimed exemption; however, conclusory affidavits, standing alone, will not satisfy the burden of proof an agency must sustain to show that a requester may be denied access to records under the RTKL”) (citations omitted); *Pa. Dep’t of Educ. v. Bagwell*, 131 A.3d 638, 659 (Pa. Commw. Ct. 2016) (“Affidavits that are conclusory or merely parrot the exemption do not suffice”) (citing *Scolforo*).

As a preliminary matter, concerning Items 1 and 2 of the Request, the Law Department had first indicated that it was advised that “there is not a City partner involved in the project indicated

by the underlying RTKL [R]equest and therefore there are no responsive City records.” Smith Attestation ¶ 6. However, the Requester produced a copy of the Economic Opportunity Plan for the project at the specified address which described that the City was acting through its offices of the Division of Housing and Community Development (hereinafter “DHCD”), which is a division within the Department of Planning and Development,⁶ and the Office of Economic Opportunity (hereinafter “OEO”) within the Department,⁷ together with the Philadelphia Housing Development Corp. (“PHDC”).

Here, the Supplemental Smith Attestation ultimately only provides that Ms. Newsome and Ms. Persico, as Deputy Directors, each confirm that “the office has no record of the economic opportunity plan or project specified in the request underlying this appeal.” ¶¶ 11-12. Despite these declarations, the evidence provided by the Law Department is silent as to what files, such as electronic or physical, were searched for any responsive records, makes no clear references to searches for any correspondences, and provided no explanation as to whether other custodians were consulted, other than the Deputy Directors of the relevant Departments. Further, as the OEO appears to be currently housed within the Office of Business Impact and Economic Advancement rather than the Department of Commerce, it is unclear as to whether any employees from this office were consulted, as the Supplemental Smith Attestation has affirmed that searches are conducted across the entire City, “regardless of which department the RTKL request was originally directed to by [a] requester.” ¶ 8. As a result, in light of these discrepancies, the OOR is not persuaded a sufficient search as to uncover records responsive to Items 1 and 2 of the Request was conducted.

⁶ See <https://www.phila.gov/departments/division-of-housing-and-community-development/> (last accessed September 15, 2026).

⁷ The OEO is stated to be currently housed within the Office of Business Impact and Economic Advancement, rather than the Department of Commerce. See <https://www.phila.gov/departments/office-of-business-impact-and-economic-advancement/divisions/> (last accessed September 15, 2026).

Accordingly, based on the totality of the evidence, the OOR must conclude that the Department has not demonstrated that records responsive to Items 1 and 2 of the Request do not exist in possession, custody or control. *See Mahon*, 283 A.3d at 936; *Hodges*, 29 A.3d at 1192. The OOR is mindful that an agency cannot produce records that do not exist within its possession, custody or control and, accordingly, is not ordering the creation of any new records. *See* 65 P.S. § 67.705. In the event that records responsive to Items 1 and 2 do not exist, the Department is required to provide the Requester with a detailed affidavit or attestation made under the penalty of perjury describing the search for these responsive records and affirming their non-existence.

2. Item 3 of the Request requires legal research

The Law Department also argues that Item 3 of the Request would require the Department to impermissibly answer questions and/or conduct legal research. The Commonwealth Court has found that “[a] request that explicitly or implicitly obliges legal research is not a request for a specific document; rather it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request.” *Askew v. Pa. Off. of the Governor*, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013); *see also* 65 P.S. § 67.703. A request for an agency to identify the legal authority to take specific actions or to review files and make judgments would obligate legal research. *Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 264 (Pa. Commw. Ct. 2012); *see also Pa. Dep’t of Corr. v. St. Hilaire*, 128 A.3d 859 (Pa. Commw. Ct. 2015); *Rogers v. Lycoming Cnty.*, OOR Dkt. AP 2022-1027, 2022 PA O.O.R.D. LEXIS 1271 (holding that a request seeking authority to tax a property required legal research); *Amberg-Blyskal v. City of Phila. Parks and Recreation Dep’t*, OOR Dkt. AP 2023-2316, 2023 PA O.O.R.D. LEXIS 2469. An agency cannot be required to perform legal research for a requester. *See Gilmore v. Pa. Bd. of Prob. and Parole*, OOR Dkt. AP 2017-0821, 2017 PA 5 O.O.R.D. LEXIS 778.

Here, Item 3 of the Request seeks “[c]onfirmation of whether a certified EOP is required for, and/or on file for, this project as a ‘Covered Project’ under Philadelphia Code Section 17-1601(1).” A review of this portion of the Request supports that it would require the Department to perform legal research to determine whether a certified EOP is “required” for the specified project, and also, whether the specified project is considered to be a “Covered Project” as defined under the Philadelphia Code. Item 3 of the Request would reasonably require the Department to conduct legal research to be able to discern what information may be responsive, and would require legal judgments and determinations to respond with any “confirmations” about project requirements and how the project should be legally classified. Such a request, whether explicitly or implicitly, seeks “for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request,” as cautioned in *Askew*. Accordingly, Item 3 of the Request seeks to compel the Department to perform legal research in contravention of the RTKL.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to conduct an additional search for records responsive to Items 1 and 2 of the Request and provide any responsive records within thirty days. If records responsive to Items 1 and 2 do not exist, the Department is required to provide the Requester with a detailed affidavit or attestation made under the penalty of perjury describing the search for responsive records and affirming their non-existence. 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 Philadelphia 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. 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.⁸ 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: Jihad Ali
 Margot Smith, Esq., AORO
 Kate Redding, Esq.
 Adrienne Chapman, Esq.

⁸ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).