

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF	:
	:
AMANDA WHITEBREAD,	:
Requester	:
	:
v.	: Docket No: AP 2026-4085
	: Consolidated Appeal of OOR Dkt. Nos.
MIDDLETOWN BOROUGH,	: AP 2026-4085, AP 2026-4090, AP 2026-
Respondent	: 4091, and AP 2026-4097

FACTUAL BACKGROUND

On September 15 and 18, 2026, Amanda Whitebread (“Requester”) submitted four requests (collectively the “Request”) to Middletown Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

[1] Timeframe of Request: August 1, 2026, through September 15, 2026.

Records Requested:

Any and all records of communication sent to, received by, or CC’d between Councilman James Curry and Sean Geiter, Christina Geiter, Ashley Nicholson, or Duane Davis regarding Right-to-Know requests, legal notices, phone record requests, subpoenas, or coordinating responsibility for surveillance. This request explicitly includes, but is not limited to, Borough-issued email accounts, personal email accounts used to conduct or discuss Borough business, cellular text messages (SMS/MMS), Apple iMessages, cellular call logs from both Borough-issued devices and personal devices, and direct messages on third-party applications (e.g., WhatsApp, Facebook Messenger, Signal).

Search Parameters:

Please search the above communications for any references to subpoenas, record requests, phone records, tip-offs, or discussions regarding someone taking the blame for surveillance activities. Search terms must include, but are not limited to, the keywords: “subpoena”, “subpoenaed”, “phone records”, “top of the list”, “fall”, “take the fall”, “blame”, “Duane”, “Davis”, “Geiter”, “Sean”, “Christina”, “warn”, and “notified”.

[2] Timeframe of Request:

May 1, 2026, through September 15, 2026.

Records Requested:

Any and all records of communication sent to, received by, or CC'd between Councilman James Curry and Ian Reddinger. This request explicitly includes, but is not limited to, Borough-issued email accounts, personal email accounts used to conduct or discuss Borough business, cellular text messages (SMS/MMS), Apple iMessages, cellular call logs from both Borough-issued devices and personal devices, and direct messages on third-party applications (e.g., WhatsApp, Facebook Messenger, Signal).

Search Parameters:

Please search the above communications for any references to my family, our location, recent Right-to-Know filings, or discussions regarding subpoenas and evidence. Search terms must include, but are not limited to, the keywords: “Amanda”, “Whitebread”, “Logan”, “Moose”, “Lodge”, “Geiter”, “Sean”, “Christina”, “Nicholson”, “Duane”, “Davis”, “subpoena”, “RTK”, “Right to Know”, “fall”, “take the fall”, “tracking”, and “surveillance”.

[3] Timeframe of Request:

May 1, 2026, through September 15, 2026.

Records Requested:

Any and all records of communication sent to, received by, or CC'd between Councilman James Curry and Christopher (Chris) Clouser within the timeframe specified above. This request explicitly includes, but is not limited to, Borough-issued email accounts, personal email accounts used to conduct or discuss Borough business, cellular text messages (SMS/MMS), Apple iMessages, cellular call logs from both Borough-issued devices and personal devices, and direct messages on third-party applications (e.g., WhatsApp, Facebook Messenger, Signal).

Search Parameters:

Please search the above communications for any references to the Middletown Fire Department, its leadership, or my family. Search terms must include, but are not limited to, the keywords: “Kenny”, “Kenton”, “Whitebread”, “Chief” “Fire Chief”, “Firehouse”, “Fire department”, “FD”, and “MVFD”

[4] Copies of all text messages, MMS, emails, direct messages, and photo attachments sent to, received by, or forwarded to Councilman James Curry containing photos, images, or location updates of Amanda Whitebread, Fire Chief Kenny Whitebread, or my minor child. Timeframe: August 20, 2026, to August 21, 2026. This includes any photos or messages referencing the Moose Lodge, whether sent from municipal accounts or Councilman Curry's personal cell phone and private accounts.¹

On September 22, 2026 the Borough denied Items 1-3, asserting responsive records do not exist within the possession, custody or control of the Borough. On September 23, 2026, the Borough denied Item 4 on the same basis.

On September 22, 2026, the Requester filed three separate appeals with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure for Items 1-3. On September 23, 2026, the Requester appealed the Borough’s response to Item 4, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On October 5, 2026, the Borough submitted five position statements reiterating its grounds for denial for each portion of the Request. In support of its position, the Borough submitted the five attestations made under penalty of perjury² authored by Grace Miller (“Miller Attestations”), the Borough’s Agency Open Records Officer (“AORO”). The Miller Attestations also verify the contents of the Borough’s position statements. Miller Attestations ¶ 9.

¹ The Items have been numbered by the OOR for purposes of clarity. The Items were docketed by the OOR and received by the Borough as follows: Item 1 as OOR Dkt. AP 2026-4085, Item 2 as OOR Dkt AP 2026-4090, and Item 3 as OOR Dkt. AP 2026-4091, which were received by the Borough on September 15, 2026; Item 4 as OOR Dkt. AP 2026-4097 and received by the Borough on September 18, 2026.

² 18 Pa. C.S. § 4904.

On October 5, 2026, the Requester submitted a reply statement in each appeal, asserting that the Miller Attestations are false and that she submitted evidence to show that responsive records do exist. The records submitted by the Requester are redacted emails from AORO Miller inquiring with Borough officials on whether they possess any responsive records to a previous request made by the Requester, and what appears to be a responsive record from that request consisting of a text message with a photograph of the Requester's family at a restaurant.

The OOR consolidated the four appeals, *sua sponte*, on October 13, 2026.³

LEGAL ANALYSIS

The Borough 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 Borough 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)).

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:

³ Because they involve the same agency, requester and issues, the four appeals were consolidated into OOR Dkt. AP 2026-4085. *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”).

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).

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*, 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).

Here, AORO Miller indicates in all four of her attestations that she is familiar with the records of the Borough and upon receipt of the Request, she conducted a thorough, good-faith search for responsive records. *See Miller Attestations ¶¶ 3, 5*. The search included a thorough examination of the files within the Borough's possession, custody or control, and directed as well

Councilman James Curry to search for responsive records in his possession as well as to search his personal devices and private communications accounts. *See Id.* ¶¶ 5-6. As a result of AORO Miller’s search and Councilman Curry’s search, the Borough did not identify any records responsive to the Request. *See id.* at ¶ 7.

Under the RTKL, a sworn affidavit or statement made under the 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. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Borough has acted in bad faith or that the requested records exist, “the averments in [the attestations and statements] 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 *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

While AORO Miller conducted a search of records within the possession of the Borough and directed Councilman Curry to conduct a search, there has been no evidence shown that other council members were also directed to conduct searches of their devices. For example, Item 1 seeks “communication[s] sent to, received by, or CC’d between Councilman James Curry and Sean Geiter, Christina Geiter, Ashley Nicholson, or Duane Davis.” Councilman Curry is not necessarily included on any or all of these potential responsive communications. Accordingly, the Borough has not sufficiently conducted a good faith search that would be reasonably calculated to identify the requested records or demonstrate that no records exist. *See Stookey v. Unionville-Chadds Ford Sch. Dist.*, OOR Dkt. AP 2018-2025, 2018 PA O.O.R.D. LEXIS 1359; *Pa. Dep’t of Labor and Indust. v. Earley*, 126 A.3d 355 (Pa. Commw. Ct. 2015).

The Borough is therefore directed to conduct a supplemental good faith search for as set forth in 65 P.S. § 67.901, and provide any records discovered as a result of that search. However,

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 records. 65 P.S. § 67.705.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Borough is required to conduct a good faith search for responsive records 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 Dauphin 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.⁴ 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: October 20, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Amanda Whitebread
 Grace Miller, AORO
 Lauren M. Burge, Esq.

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).