



FINAL DETERMINATION

IN THE MATTER OF

**JOHN DEMASI,
Requester**

v.

**UPPER DARBY TOWNSHIP,
Respondent**

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Docket No: AP 2025-1139

FACTUAL BACKGROUND

On August 15, 2026, John DeMasi (“Requester”) submitted a request (“Request”) to Upper Darby Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “all business licenses, including but not limited to mercantile licenses and business privilege licenses” for twenty-three addresses.

On September 23, 2026, following an extension during which to respond, 65 P.S. § 67.902(b), the Township denied the Request, stating that no responsive records exist.

On September 24, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Township to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On October 7, 2026, the Township submitted a position statement, and on October 13, 2026 the Township submitted a supporting attestation made under the penalty of unsworn falsification

to authorities from its Open Records Officer, Crandall Jones (“Jones Attestation”). In its position statement, the Township acknowledged that responsive records do exist, and it provided those records to the Requester.

On October 8, 2026, the OOR asked the Requester to review the responsive records and inform the OOR whether he wished to withdraw his appeal. The same day, the Requester indicated that he was not withdrawing his appeal. The Requester argues that the Township’s position statement and the responsive records “call[] into question if the Township is actually enforcing its own regulations that all businesses – regardless of location – must register with the Township.”

LEGAL ANALYSIS

The Township is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of an 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 Township 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 appeal is partially dismissed as moot

On October 7, 2026, the Township provided records that it asserts are responsive to the Request. Therefore, the appeal is moot as to the records provided to the Requester. *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. No additional records exist within the possession, custody or control of the Township

The Township asserts that it has now searched for and provided all responsive records. On appeal to the OOR, “[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) (citing Section 708 of the RTKL). 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:

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*, which holds 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 at 1192); *see Moore v. Off. of Open Recs.*,

992 A.2d 907, 909 (Pa. Commw. Ct. 2010) (search of records and affidavit that documents are not in agency's possession are enough to satisfy burden of demonstrating nonexistence). "It is questionable to what degree additional detail and explanation are necessary to establish the nonexistence of a record rather than its exemption from disclosure. In the absence of any competent evidence that the agency acted in bad faith or that the agency records exist, the averments in such affidavits [of nonexistence] should be accepted as true." *Mahon*, 283 A.3d at 936 (citing *Smith Butz, LLC v. Pa. Dep't of Env't Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016)).

On October 13, 2026, the Township submitted the Jones Attestation. Jones attests that a supplemental search was conducted, responsive records were located and provided to the Requester, and no responsive records exist in the Township's possession, custody or control.¹ See Jones Attestation, ¶ 30. The evidence describes the search the Township employed to determine whether it possesses responsive records and identified the personnel within the Township's various offices to which Jones inquired to assist in responding to the Request, including the Township's Deputy Open Records Officer, the Township's Director of Administrative Services, the Township's Director of Licenses and Inspections and Chief Building Official, and the Township's Finance Department's Tax Operations Manager. the Board of Supervisors, and the last two Township Secretaries. *Id.*, ¶¶ 5-11; 43-47. The Township also "contacted eCollect+, the Township's third-party business tax collection vendor." *Id.*, ¶¶ 26-29, 47.

Accordingly, the Township has met its burden of proof that proved that no additional records exist within its possession, custody or control. *Hodges*, 29 A.3d at 1192.²

¹ Jones acknowledges that the Township incorrectly characterized all the listed properties as residential in its initial denial letter. Jones Attestation, ¶ 22.

² The OOR makes no determination as to whether additional records should exist within the Township's possession, custody, or control, only whether it provided sufficient evidence that it does not possess them. See *Gorol v. Forest*

CONCLUSION

For this reason, the appeal is **denied in part** and **dismissed as moot in part**, and the Township 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 Delaware 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.³ 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 25, 2026

/s/ Josh Macel

APPEALS OFFICER
JOSH MACEL

Sent *via* Portal to: John DeMasi (Requester); Crandall Jones (AORO); Travis Hunsberger, Esq.

Hills Borough, OOR Dkt. AP 2019-0329, 2019 PA O.O.R.D. LEXIS 427 (“While... evidence may establish that a [record] should exist, the OOR lacks jurisdiction to rule on the propriety of the lack of such [record] - the OOR may only determine whether a responsive record does, in fact, exist.”).

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