



FINAL DETERMINATION

IN THE MATTER OF	:
	:
ANDREW DYMSKI,	:
Requester	:
	:
v.	:
	:
MIDDLESEX TOWNSHIP MUNICIPAL	:
AUTHORITY,	:
Respondent	:

Docket No: AP 2026-3934
(Consolidated with OOR Dkts.
AP 2026-3935 and AP 2026-3939)

On August 10, 2026, Andrew DymSKI (“Requester”) submitted six requests (collectively, the “Requests”) to the Middlesex Township Municipal Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking communications exchanged by six named Authority officials and various entities and individuals regarding a data center project. On August 26, 2026, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b), the Authority granted the Requests and provided the Requester with responsive records. The Authority also noted that, insofar as the Requests sought records not provided to the Requester, those records do not exist within the Authority’s possession, custody or control.

Also on September 16, 2026, the Requester filed six separate appeals with the Office of Open Records (“OOR”), challenging the sufficiency of the Authority’s search for records and the

completeness of its production.¹ The OOR invited both parties to supplement the record and directed the Authority to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On October 21, 2026, the Authority submitted a position statement, the factual contents of which were verified, under the penalties set forth in 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), by Keith Brenneman, Esq., (“Brenneman Statement”), the Authority’s Solicitor, arguing (1) the Authority was not obligated to provide evidence when issuing its final response(s) to the Requests, (2) the Authority’s Open Records Officer inquired of the relevant Authority officials about the Requests and asked them to perform searches of their records, and (3) that all responsive records were provided to the Requester and no other records exist within the Authority’s possession, custody or control. In support, the Authority also submitted an attestation, made subject to the penalty of perjury, from Rory Morrison (“Morrison Attestation”), the Authority’s Manager. The Requester did not submit any additional legal argument or evidence during the appeal.

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.

¹ The appeals were docketed as OOR Dkts. AP 2026-3934 through AP 2026-3939. Because they involve the same parties and similar issues, the appeals are hereby consolidated into the appeal docketed as OOR Dkt. AP 2026-3934.

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).

Here, the Brenneman Statement and Morrison Attestation affirm that Mr. Morrison, an individual with personal knowledge of the Authority's records, conducted a search of the Authority's records and contacted the relevant individuals for records responsive to the Requests. Morrison Attestation, ¶ 4; Brenneman Statement, p.2. More specifically, Mr. Morrison contacted the individuals named in the Requests, asked them to do a thorough search of their records, and confirm whether any responsive records exist. Morrison Attestation, ¶¶ 5-13. In addition to the records provided to the Requester prior to the appeal, Mr. Morrison confirmed that several additional emails from Scott Coleman, the Authority's Assistant Manager, were located and provided to the Requester.² Morrison Attestation, ¶ 7. Additionally, the Morrison Attestation affirms Mssrs. Lusardi, Murphy, Geistwhite, Jr., Wandling and Otto were asked to search for responsive records; each confirmed with Mr. Morrison that, other than records already provided, they did not possess records responsive to their respective Request. Morrison Attestation, ¶ 9. Furthermore, regarding the requested telephone call logs, voicemails, text messages, meeting recordings or notes, Mr. Morrison attests that no such records responsive to the Requests exist, and all meeting meetings relevant to the Requests were provided to the Requester. *Id.* at 8.

² Insofar as the records provided to the Requester on appeal are responsive to the Requests, the appeal related thereto is dismissed as moot. *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").

The Authority's evidence is authored by its Solicitor and its Manager, Mr. Morrison, who is an authorized custodian of the Authority's records, and determined that no additional responsive records, other than those provided to the Requester before and during the appeal, exist. Additionally, the Requester has not submitted competent evidence to undermine the credibility of the Morrison Attestation or the Brenneman Statement. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (finding that, in the absence of countervailing evidence establishing that the agency acted in bad faith or that the requested records exist, averments of nonexistence should be accepted as true). Therefore, based on the evidence provided, the Authority has met its burden of proving that no additional records responsive to the Requests exist within the Authority's possession, custody or control. *Hodges v. Pa. Dep't of Health*, 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, which is tantamount to a "more likely than not" inquiry).

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, 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 or petition for review to the Cumberland 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

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

this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 26 October 2026

/s/ Joshua T. Young

JOSHUA T. YOUNG, ESQ.
SENIOR DEPUTY CHIEF COUNSEL

Sent via OOR e-file portal to: Andrew Dymski;
Keith Brenneman, Esq. and Rory Morrison