pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ANN VINATIERI,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-0323**
	:	
KLINE TOWNSHIP,	:	
Respondent	:	

FACTUAL BACKGROUND

On December 20, 2025,[1] Ann Vinatieri ("Requester") submitted a request ("Request") to Kline Township ("Township") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> …[A]ll communication (including[,] but not limited to[,] text messages, phone[]calls, emails, written records, sketch plans) between Amazon Data Services [("AWS")] and [the Township] Board of Supervisors, office staff, solicitor, Planning Commission, Zoning Board from July[]1[,] 2023 [through] December [15, 2025].

On January 23, 2026, the Township denied the Request, claiming that responsive records do not exist in the Township's possession, custody or control.

[1] While the Request is dated December 20, 2025, a Saturday, the Request was not received by the Township until the next business day, or December 22, 2025, in this instance.

On January 23, 2026, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.[2] 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 this appeal. 65 P.S. § 67.1101(c).

On September 11, 2026, the Township submitted a position statement, reiterating its grounds for denial of the Request. Additionally, the Township provided correspondence sent from an attorney representing AWS to the Township. In support of the Township's position that additional responsive records do not exist, the Township submitted an attestation made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, authored by Gary J. Perna, Jr. ("Perna Attestation"), the Township's Agency Open Records Officer ("AORO").

On September 18, 2026, at the request of the OOR, the Township provided a second attestation made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, also authored by Gary J. Perna, Jr. ("Perna Second Attestation"), providing additional details regarding the Township's search for responsive records.

LEGAL ANALYSIS

The Township 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 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

[2] While there is a significant lapse of time between the filing of the appeal and the issuance of this Final Determination, the Requester agreed to the extensions in order to issue this Final Determination. *See* 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).").

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 appeal as it relates to the record provided during the appeal is moot

During the pendency of the appeal, the Township provided correspondence responsive to the Request. Perna Second Attestation ¶ 4.[3] As such, the appeal as to the records provided to the Requester 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").

2. The Township demonstrated that additional responsive records do not exist in its possession, custody or control

The Township asserts that other than the records provided to the Requester during the appeal, no further responsive records exist in the Township's possession, custody or control. 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. 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

[3] 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 Township has acted in bad faith, "the averments in the [attestations] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. 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)).

> agents within its control, including third-party contractors ... After obtaining 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).

Here, the Request seeks communications between AWS and the Township over an approximate year and a half timeframe. In support of the Township's argument that it does not possess additional responsive records, the Township's AORO indicates that a search of the Township's files was performed. Perna Second Attestation ¶ 3. Additionally, the Township inquired with its Solicitor and Township Secretary regarding records responsive to the Request. *Id*. at ¶ 4. Thus, based on the evidence provided, the Township has demonstrated that it does not possess additional responsive records. There has been no sufficient evidence provided by the Requester that otherwise contradicts the statements offered by the Township in the attestations submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, the Township has met its burden of proof that additional records responsive to the Request do not exist in the Township's possession, custody or control.[4] *Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**,

[4] The OOR makes no determination as to whether records *should* exist, as our inquiry is limited to only whether or not records are "in existence and in possession of the … agency at the time of the right-to-know request." *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705.

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 Schuylkill 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; 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.[5] 65 P.S. § 67.1303. 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 28, 2026

/s/ Bandy L. Jarosz

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BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Ann Vinatieri (via portal only)
Mark Semanchik, Esq. (via portal only)
Gary J. Perna, Jr. (via portal only)

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