pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
CHRISTINE BRUNO,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-4317**
	:	
BUTLER TOWNSHIP,	:	
Respondent	:	

FACTUAL BACKGROUND

On September 17, 2026, Christine Bruno ("Requester") submitted a request ("Request") to Butler Township ("Township") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> Category A: Engineering Contracts and Agreements
>
> 1. All contracts, agreements, invoices, purchase orders, and payment records between [the Township] and Reilly Associates (also known as Reilly Engineering, 49 South Main St, Pittston, PA 18640) from January 1, 2015 to the present.
>
> 2. All contracts, agreements, invoices, purchase orders, and payment records between [Township] and Tuskes Homes, Sand Springs Development Corporation, Sand Springs Land LLC, CMC Development Corp, Triple Crown, TMC, Mill Mountain, or any entity listing 4511 Falmer Drive, Bethlehem, PA 18020 as its address, from January 1, 2015 to the present.
>
> 3. All land development plans, subdivision plans, stormwater management plans, and grading permits submitted to [the Township] for the Sand Springs Development identifying the engineering firm of record.

> Category B: Stop Sign Removal Communications
>
> 4. All communications (emails, letters, text messages, phone logs, meeting notes, and memoranda) between any [Township] supervisor, employee, or contractor and any of the following parties regarding traffic control devices in Sand Springs, from August 1, 2026 to the present: Ross Berhang; Reilly Associates; Charles Tuskes; Michael Tuskes; Tuskes Homes; Sand Springs Development Corporation; Sand Springs Land LLC; CMC Development Corp; and the Tuskes Group.
>
> 5. All work orders, directives, or instructions issued to [the Township] road crew, maintenance staff, or any contractor regarding the removal, relocation, or alteration of stop signs, traffic signs, or flashing beacons in the Sand Springs Development from September 1, 2026 to the present.
>
> 6. The name and title of the individual who authorized the removal of stop signs at the golf cart crossing on Sand Springs Drive on or about September 9, 2026, and any written or verbal directive supporting that authorization.
>
> Category C: Campaign Finance
>
> 7. All campaign finance reports on file for Charles P. Altmiller, Jack Matteo, and Michael J. Reich, including all contribution and expenditure reports and amendments.

As the Requester did not receive the Township's response within five business days of the Request, the Requester filed an appeal with the Office of Open Records ("OOR") on October 5, 2026, claiming that the Request was deemed denied. *See* 65 P.S. § 67.901. 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 23, 2026,[1] the Township submitted a position statement, providing responsive records consisting of emails, meeting minutes, and the September 2026 ordinance amendment concerning stop intersections that are responsive to Item 3, 4 and 5 of the Request. The Township claims that further records responsive to Items 1 and 4-7 of the Request do not exist. The Township

[1] On October 20, 2026, the Township requested a submission extension until October 23, 2026, which was granted. *See* 65 P.S. § 67.1102(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").

also made responsive records responsive to Item 3 of the Request available for inspection at the Township building, asserting that the records cannot be copied due to the Federal Copyright Act. 17 U.S.C. § 106; 17 U.S.C. § 501.[2] Finally, the Township acknowledges records responsive to Item 2 of the Request are not exempt from public access but it does not indicate whether responsive records exist. In support of its position, the Township submitted the attestation made under penalty of perjury[3] authored by Jane Reakes ("Reakes Attestation"), the Township's Agency Open Records Officer ("AORO").

On October 26, 2026, the OOR asked the Requester to confirm whether the responsive records provided on appeal satisfy the Request, and if not, to provide any outstanding issues to be determined by the OOR in the Final Determination. To date, the Requester has not responded.

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 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)).

[2] The Requester has not indicated any challenges to the claim that these records are subject to the Copyright Act or to the in-person inspection of records, despite being given an opportunity to do so. As such, the Copyright Act will not be addressed further herein.
[3] 18 Pa. C.S. § 4904.

1. Responsive records were provided on appeal

On appeal, the Township provided a September 1, 2026 correspondence from Ross Berhang, P.E. and a September 8, 2026 email correspondence from Township Manager Alan Kost concerning the removal of stop signs, Township Board of Supervisors meeting minutes, and the September 2026 ordinance amendment concerning stop intersections within the Sands Spring Development. The Township also identified records responsive to Item 3 of the Request consisting of land development plans and engineering plans, which are available for inspection. Therefore, the appeal is dismissed as moot as to the records provided and available for inspection. *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 proved some additional records do not exist in its possession, custody or control, but failed to prove that others do not

The Township asserts that additional responsive records do not exist in its possession, custody or control. In response to a request for records, "…an agency shall make a good faith effort to determine…whether 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 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, AORO Reakes indicates that she conducted a search for responsive records to this Request, which included forwarding the Request to the Township Manager, Road Department, Police Chief, and members of the Board of Supervisors, along with the Township's consulting engineer, and, also, provided responsive records to the Solicitor for review and production to the Requester. Reakes Attestation ¶¶ 2-5. AORO Reakes confirmed that no records responsive to Items 5 and 6 of the Request exist, because the removal of stop signs at the Sand Springs golf cart crossing was handled through verbal communications. *Id.* ¶ 6. While AORO Reakes identified one responsive email that discusses the anticipated removal of the signs and provided it on appeal, AORO Reakes attests that there is no formal written work order or authorization documenting the underlying verbal instructions. *Id.* ¶ 7. The Township also maintains land development and engineering plans relating to the Sand Springs Development that may be responsive to Item 3 of the Request, which are available for inspection and its offices. *Id.* ¶ 9. Finally, AORO Reakes confirms that records responsive to Item 7 of the Request are not received or maintained by the Township and would be filed with county election authorities rather than the Township. *Id.* ¶ 8.

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 Township has acted in bad faith or that additional responsive records exist, "the averments in [the attestation] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. 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)). There has been no sufficient evidence provided 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). Thus, based upon the evidence presented, the Township has proven by a preponderance of the evidence that no additional records responsive to Items 3-7 of the Request exist in the Borough's possession, custody or control. *See* 65 P.S. § 67.708(a).

However, the Reakes Attestation is wholly silent as to the existence of records responsive to Items 1 and 2 of the Request. The Township position statement indicates that records responsive to Item 1 of the Request do not exist, and that records responsive to Item 2 of the Request would be subject to disclosure; however, it implies that the Township is still searching for such records. *See* Township position statement p.2. The position statement also states that "the Township further requests leave to supplement the record with an attestation from the appropriate Township records custodian concerning the search for additional responsive records." *Id.* p. 4.[4] Regardless, an "unsworn position statement does not constitute evidence. Position statements are akin to briefs or proposed findings of fact, which, while part of the record, are distinguishable from the *evidentiary* record." *Office of the Governor v. Davis*, 122 A.3d 1185, 1193-94 (Pa. Commw. Ct. 2015) (*en banc*) (emphasis in original). *See, e.g., Hous. Auth. of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209, 216 (Pa. Commw. Ct. 2012) (holding that unsworn statements of counsel are not competent evidence). However, as the evidence provided does not address Items 1 and 2 of the Request, the Township failed to meet its burden of proof under the RTKL. 65 P.S. § 67.305; *Hodges v. Pa.*

[4] Without the agreement of the Requester to extend the response timeframe or the Final Determination deadline, the Township is constrained to respond within the statutory timeframe set forth in the RTKL. *See* 65 P.S. §§ 67.901; 67.902; 67.1101(b)(1).

Dep't of Health, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) ("[t]he burden of proving a record does not exist…is placed on the agency responding to the right-to-know request").

The Township is therefore directed to conduct a supplemental good faith search for records responsive to Items 1 and 2 of the Request 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 in part, denied in part,** and **dismissed as moot in part**, and the Township is required to conduct a good faith search for records responsive to Items 1 and 2 of the Request within thirty days. However, if no additional records are located as a result of its search, the Township shall provide a detailed attestation or affidavit to the Requester confirming same 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 Luzerne 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.[5] 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: November 2, 2026

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

/s/ Julie Sodl

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APPEALS OFFICER
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