Pennsylvania
Office of Open Records

Pennsylvania Office of Open Records
555 Walnut Street, Suite 605
Harrisburg, PA 17101-1925
717-346-9903 | openrecords.pa.gov

FINAL DETERMINATION

DATE ISSUED AND MAILED: November 3, 2026

IN RE: *Mary Anne Whitonis v Rice Twp.*, OOR Dkt. AP 2026-4621

Upon review of the appeal filed with the Office of Open Records ("OOR") to the above-referenced docket number, as well as the parties' submissions, the appeal is **DENIED** because:

The records do not exist. On November 2, 2026, the Rice Township ("Township") submitted a statement made under the penalty of perjury[1] from Shaun Zane, the Township's Chief of Police, who attests that a search was conducted and that no responsive records exist in the Township's possession, custody or control. *See* Zane Attestation, ¶¶ 2-7.[2] While the Requester also submitted statements made subject to the penalties set forth in 18 Pa.C.S. § 4904, the statements do not demonstrate that responsive record in fact exist.[3] Based upon this evidence, the Township demonstrated that it conducted a good faith search for responsive records as required by 65 P.S. § 67.901 and did not locate any. Therefore, based on the evidence provided, the Township has met its burden of proof that it does not possess the requested records. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For this reason, the Township is not required to take any further action. Within thirty days of the mailing date of this Final Determination, either party may appeal or petition for review with 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.[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 website at: http://openrecords.pa.gov.

Issued by:

/s/ Kelly C. Isenberg

KELLY C. ISENBERG, ESQ.

Sent via OOR E-file Portal to: Mary Anne Whitonis; Drew McLaughlin, Esq.; Jeff Beck, AORO

[1] *See* 18 Pa.C.S. § 4904.
[2] The Requester objected to the admission of the Township's appeal submission because it was filed on November 2, 2026, after the record closing date of October 30, 2026. However, the Requester also filed a supplemental appeal statement on November 2, 2026 and, thus, had an opportunity to review the Township's arguments and respond. The OOR admitted all submissions provided on Novemmber 2, 2026, and denied the Requester's extension request for the purpose of filing an additional response to the Township's appeal submission. *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").
[3] 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 v. Off. of Open Records*, 992 A.2d 807, 909 (Pa. Commw. Ct. 2010; *see also* 65 P.S. § 67.705.
[4] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).