

October 22, 2024

James Lamb
JimLamb@usa.com

RE: Advisory Opinion on Use of the Word “Denied”

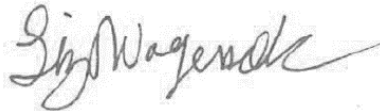
Dear James:

The Office of Open Records (“OOR”) received your request for an advisory opinion on October 9, 2024. The OOR may issue advisory opinions pursuant to Section 1310 of the Right-to-Know Law (“RTKL”), 65 P.S. § 67.1310(a)(2). Your request for an advisory opinion is respectfully **DENIED**.

Your request for an advisory opinion concerns an agency’s use of the word “denied” in response to a RTKL request, when the agency claims that no responsive records exist. You argue that the agency’s use of the word “denied” is improper and implies that the agency should have used “granted” instead. However, an agency’s claim that no responsive records exist triggers appeal rights, and on appeal, that agency has the burden of proof with respect to its claim. *See, e.g., Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190 (Pa. Commw. Ct. 2011) (“The burden of proving a record does not exist, or is exempt from disclosure, is placed on the agency responding to the right-to-know request”). Because the claimed nonexistence of records triggers appeal rights no matter how it is framed, we do not see the need for an advisory opinion on this issue.

This response to your Advisory Opinion request will be posted on the OOR’s website at <https://www.openrecords.pa.gov/RTKL/AdvisoryOpinions.cfm>.

Respectfully,



Liz Wagenseller
Executive Director