



FINAL DETERMINATION

IN THE MATTER OF

**JOSEPH IVY,
Requester**

v.

**CARLISLE BOROUGH,
Respondent**

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Docket No: AP 2024-0562

On February 12, 2024, Joseph Ivy (“Requester”) submitted a request (“Request”) to Carlisle Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Dec 28th 2023 inspection number PAE9 1533 6235 Case number PA 1023-1682149. Times of encounter with [O]fficer Ronk, Chad 15073 around 8am until handing of inspection. Time of [O]fficer Manning, Patrick around 0500 [-] 0530 encounter on instructions to driver.

On February 14, 2024, the Borough denied the Request, stating that the records do not exist within the Borough’s possession, custody or control.

On February 28, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

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.

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).

On March 27, 2024, the Borough submitted a position statement and an attestation made under the penalty of perjury from Owen Snyder (“Snyder Attestation”), the Borough’s Interim Open Records Officer (“AORO”), who attests that a search was conducted and that no responsive records exist in the Borough’s possession, custody or control.¹ Though the Borough’s submissions were past the initial submission deadline, the submissions are hereby accepted for the purpose of

¹ 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 Borough has acted in bad faith or that the requested 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)).

developing the record. *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”).

In this matter, the Borough submitted the Snyder Attestation in support of its position, which states, in part:

1. I serve as a Lieutenant for the [Borough] Police Department.
2. I am responsible for searching criminal records requested through Right-to-Know requests filed with the [Borough] that pertain[] to records maintained by the [Borough] Police Department.
3. Based upon my responsibilities noted in Paragraph 2, above, I am familiar with the records of the [Borough] Police Department.
4. Upon receipt of the [R]equest, I conducted a thorough examination of files in the possession, custody and control of the [Borough] Police Department for records responsive to the requests underlying this appeal.
5. Additionally, I have inquired with relevant personnel and, if applicable, relevant third party contractors as to whether the requested records exist in their possession.
6. After conducting a good faith search of the records and files and inquiring with relevant personnel, I have made the determination that the records requested do not exist within the possession, custody or control of the [Borough] Police Department and therefore are not in the possession, custody or control of the [Borough].
7. I believe that the record requested due to its description is a record of the Pennsylvania State Police, which record would be under that agency’s exclusive possession, custody and control.

The evidence shows the Borough conducted a good faith search by an individual with knowledge of the Borough’s records, and it conducted a search reasonably calculated to uncover relevant documents responsive to the Request. *See* Snyder Attestation, ¶¶ 3-6. Therefore, based on the evidence, the Borough has met its burden of proof that it does not possess, have custody or control of responsive records sought in the Request. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936

(holding that, when there is evidence that a record does not exist, “[i]t is questionable to what degree additional detail and explanation are necessary....”); *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, and is tantamount to a “more likely than not” inquiry).

For the foregoing reasons, the appeal is **denied**, and the Borough 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.² 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>.

FINAL DETERMINATION ISSUED: March 28, 2024

/s/ *Damian J. DeStefano*

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent to: Joseph Ivy (via portal only); Lt. Owen Snyder, AORO (via portal only);
Keith Brenneman, Esq. (via portal only)

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).