



FINAL DETERMINATION

IN THE MATTER OF

**PHILIP HUNT,
Requester**

v.

**PHILADELPHIA SHERIFF'S OFFICE,
Respondent**

:
:
:
:
:
:
:
:
:
:

Docket No: AP 2024-0484

FACTUAL BACKGROUND

On December 6, 2023, Philip Hunt ("Requester") submitted a request ("Request") to the Philadelphia Sheriff's Office ("Sheriff's Office") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, stating:

I [am] writing to formally request Sheriff Sale Distribution Dockets showing monies distributed to rightful parties and excess funds due to the deed owner of the foreclosed property. I would like these records from January 2022-Present.

Please provide ALL and ONLY properties with unclaimed excess Sheriff Sale funds due to previous deed owners. Please provide date of Sheriff Sale, Name of owner at time of sale, parcel number, property address, amount of surplus due to the owner.

On February 2, 2024, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), and an additional extension to which the Requester and the Sheriff's Office agreed, the Request was deemed denied because the Sheriff's Office failed to respond.¹

On February 20, 2024, the Requester appealed to 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 Sheriff's Office to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

The original submission deadline for this appeal was March 1, 2024. On that date, the Sheriff's Office requested an extension of the submission deadline until March 22, 2024. The OOR granted the extension request on the same day.

On March 22, 2024, the Sheriff's Office submitted a position statement, reiterating its reason for denial. In support of its position, the Sheriff's Office submitted the attestation of the Agency Open Records Officer ("AORO"), LaVanda K. Harris ("Harris Attestation").²

On April 15, 2024, in response to a request for additional information, the Sheriff's Office submitted additional documentation to substantiate the agreed upon extension for the Sheriff's Office to respond to the Request.

On April 17, 2024, the Requester also submitted additional documentation to substantiate the agreed upon extension for the Sheriff's Office to respond to the Request. Also on the same date, the Requester expressed his frustration with the Sheriff's Office's interpretation of the

¹ The OOR requested that the Sheriff's Office submit a copy of the response letter it issued, but the Sheriff's Office failed to respond.

² The Harris Attestation is made subject to the penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

Request as seeking “final” distribution dockets. He explained the reasons for his Request, and he noted that he would accept alternative records.³

LEGAL ANALYSIS

The Sheriff’s Office 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 Sheriff’s Office 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)).

1. The Township reasonably interpreted the Request

As noted above, the Request sought Sheriff’s Sale Distribution Dockets that show properties with unclaimed excess Sheriff Sale funds due to the previous deed owners. The Sheriff’s Office AORO asserts, among other things, that she interpreted the Request to be seeking *final* distribution dockets that have unclaimed excess funds, based upon her knowledge and experience with Sheriff Sale distribution policies. Harris Attestation ¶ 4.

An agency may interpret the meaning of a request for records, but that interpretation must be reasonable. *See Bradley v. Lehigh Area Sch. Dist.*, OOR Dkt. AP 2021-0333, 2021 PA

³ Neither a requester nor the OOR is permitted to modify a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Dep’t of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a requestor requests a specific type of record ... the requestor may not, on appeal, argue that an agency must instead disclose different records in response to the request”). However, nothing in this Final Determination prevents the Requester from filing a more specific RTKL request for the same information, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

O.O.R.D. LEXIS 715; *Ramaswamy v. Lower Merion Sch. Dist.*, OOR Dkt. AP 2019-1089, 2020 PA O.O.R.D. LEXIS 2095. When a request is subject to multiple reasonable interpretations, the OOR's task on appeal is to determine if the agency's interpretation was reasonable. *Ramaswamy*, 2020 PA O.O.R.D. LEXIS 2095. The OOR determines this from the text and context of the request alone, as neither the OOR nor the requester is permitted to alter a request on appeal. See *McKelvey v. Off. of the Att'y Gen.*, 172 A.3d 122, 127 (Pa. Commw. Ct. 2016); *Smith Butz, LLC v. Pa. Dep't of Env't Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016).

Here, the Requester asked for records of Sheriff Sale properties that have unclaimed excess funds due to previous deed owners. Thereafter, the Sheriff's Office performed a search where final distribution dockets with unclaimed excess funds would be stored. Based on the language of the Request, the Sheriff's Office's interpretation of the Request was reasonable.

2. The Sheriff's Office proved that no responsive records exist in its 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 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 22, 2024, the Sheriff's Office submitted the Harris Attestation. Ms. Harris attests that a search was conducted and that no responsive records exist in the Sheriff's Office's possession, custody or control.⁴ The Harris Attestation further provides that Ms. Harris caused to be search all locations where responsive records would be stored, and after a thorough search, no responsive records could be located. Harris Attestation ¶¶ 5-6. Therefore, based on the evidence provided, the Sheriff's Office has met its burden of proof that it does not possess the records sought in the Request. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

CONCLUSION

For the foregoing reason, Requester's appeal is **denied**, and the Sheriff's Office 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 Philadelphia 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 Section 1303 of the RTKL, 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated 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

⁴ 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 Sheriff's Office has acted in bad faith or that the requested 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)).

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

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 AND MAILED: April 18, 2024

/s/ Daneen L. Miller-Smith
Daneen L. Miller-Smith, Esq.
Appeals Officer

Sent via OOR portal to:
Philip Hunt
LaVanda Harris, AORO
Margot Smith, Esq.