



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**CURTIS GARNER,
Requester**

v.

**PHILADELPHIA PRISON SYSTEM,
Respondent**

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Docket No.: AP 2016-1224

INTRODUCTION

Curtis Garner (“Requester”), an inmate of the Philadelphia Prison System (“System”), submitted a request (“Request”) to the System pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records regarding the commissary at the Riverside Correctional Facility. The System denied the Request because the Requester owed outstanding fees from a prior RTKL request. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the System is not required to take any further action.

FACTUAL BACKGROUND

On May 27, 2016, the Request was filed, seeking the “price list” and the “request ‘bubble’ sheet” for the commissary at the Riverside Correctional Facility. On June 6, 2016, the System invoked a thirty-day extension of time to respond to the Request. *See* 65 P.S. §

67.902(b). On July 6, 2016, the System denied the Request, arguing that the Requester owed outstanding fees from a prior RTKL request.

On July 18, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited the parties to supplement the record, and directed the System to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On August 4, 2016, the System submitted a position statement and the statement made under the penalty of perjury of Jeffrey Cohen, Esq., Assistant City Solicitor and the Open Records Officer for the City of Philadelphia Law Department, who attests that the Requester owes unpaid fees in the amount of \$54.75 from a prior RTKL request submitted to the System. The Requester did not submit any additional information to contradict the System's submission.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a

hearing to resolve an appeal; however, the decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither of the parties requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate this matter.

The System is a local agency subject to the RTKL that is required to disclose public records. 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. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). 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)).

In the present matter, the System argues that the Requester owes outstanding fees from prior a RTKL request submitted to the System. In support of its position, the System provided the statement made under the penalty of perjury of Attorney Cohen, who attests that the

Requester was previously granted access to 219 pages of records, which amounted to a copying fee of \$54.75. Attorney Cohen further attests that “the Requester has not paid the City this \$54.75 fee” and that the previously requested records “are currently sitting on a shelf in [Attorney Cohen’s] office.” Under the RTKL, a statement made under the penalty of perjury is competent evidence to sustain an agency’s burden of proof. *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 competent evidence that the System acted in bad faith, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. 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)). Based upon the evidence submitted, therefore, the System has demonstrated that the Requester owes outstanding fees, and therefore, permissibly denied the Request.

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied**, and the System 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. However, 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: 10 August 2016

/s/ Joshua T. Young

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APPEALS OFFICER

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