



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF :
 :
 PATRICK HORAN, :
 Requester :
 :
 v. : **Docket No: AP 2016-1738**
 : **(Consolidated)**
 PENNSYLVANIA DEPARTMENT OF :
 CORRECTIONS, :
 Respondent :

On August 29, 2016, Patrick Horan (“Requester”), an inmate at SCI-Benner Township, filed a request with the Pennsylvania Department of Corrections (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking water test results. On September 7, 2016, the Requester filed a second request with the Department, seeking an unredacted list of names produced by the Department in response to an earlier request. On August 31, 2016, the Department invoked a thirty-day extension to respond to the first request, and on September 7, 2016, the Department also invoked an extension to respond to the second request. *See* 65 P.S. § 67.902. On September 21, 2016, the Department denied both requests (“Requests”) because the Requester owes \$4.68 for copy charges incurred by the Department in responding to the earlier request.

On October 14, 2016, the Requester timely filed an appeal with the Office of Open Records (“OOR”), challenging the denials and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On October 19, 2016, the Department submitted a statement made under penalty of perjury by its Open Records Officer, who attests that records were generated in response to an earlier request by the Requester and that no payment was received.

¹ Pursuant to the prisoner mailbox rule, the appeals were timely, as they were postmarked October 4, 2016. *Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997). The appeals were docketed at OOR Dkt. AP 2016-1738 and OOR Dkt. AP 2016-1739. Since they involve the same Requester and agency and were denied for the same reason, they are hereby consolidated into the above-referenced docket number.

An agency may refuse to process a request if a requester has an outstanding balance from previous RTKL requests. *Pa. Dep't of Transp. v. Drack*, 42 A.3d 355, 363 (Pa. Commw. Ct. 2012); *see also* OOR Advisory Opinion issued Jan. 12, 2016.² Under the RTKL, an affidavit 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 Department has 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 on the evidence provided, the Department has met its burden of proving that it is justified in refusing to process the Request until payment is received from the Requester. Accordingly, the appeal is **denied**.

For the foregoing reason, the Department 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 Commonwealth Court. 65 P.S. § 67.1301(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.³ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 4, 2016

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Patrick Horan, HF-2541;
Chase Defelice, Esq. (via e-mail only);
Andrew Filkosky (via e-mail only)

² This Advisory Opinion is available at: http://www.openrecords.pa.gov/Documents/RTKL/2016-01-12_Smith-Payment_when_requester_has_not-received-records.pdf.

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