



**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:
	:
<b>CHARLES TALBERT,</b>	:
<b>Requester</b>	:
	:
<b>v.</b>	:
	:
<b>PENNSYLVANIA DEPARTMENT OF</b>	:
<b>CORRECTIONS,</b>	:
<b>Respondent</b>	:

**Docket No: AP 2022-1705**

On June 16, 2022, Charles Talbert (“Requester”), an inmate at SCI-Camp Hill, submitted a request (“Request”) to the Pennsylvania Department of Corrections (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. All public records that pertain to any and all disciplinary measures that were taken against the [Department] officials at SCI Camp Hill involved in the use of force against [Requester] on December 30, 2021.
2. The name of any and all counsel that are, or will be, representing the [Department] officers in federal court under case: Talbert v. Beaver, et al. No. 22-CV-0112.

On June 21, 2022, the Department invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b).

On July 7, 2022, the Department partially denied the Request, providing the names of counsel responsive to item 2 and stating that it does not possess any records responsive to item 1.

On July 18, 2022, 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 Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On July 27, 2022, the Department submitted a statement made under the penalty of perjury from Andrew Filkosky, the Department's Open Records Officer, who attests that a search was conducted and that no responsive records exist in the Department's possession, custody or control.

Mr. Filkosky further attests that:

5. In response to Mr. Talbert's RTKL Request, I contacted Deb Alvord, Superintendent's Assistant at SCI-Camp Hill, who would likely possess such records if they existed.

6. Ms. Alvord indicated that there are no records to provide in response to Mr. Talbert's RTKL Request.

7. Specifically, Ms. Alvord stated that the incident in question is still under investigation, therefore no records pertaining to disciplinary measures as requested currently exist.

Declaration ¶¶ 5-7. Mr. Filkosky corresponded with potential holders of records and no records currently exist.

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 Department has acted in bad faith or that additional responsive records exist, "the averments in the attestation 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)).

The Department provided sufficient evidence to satisfy its burden of proof under the RTKL's preponderance of the evidence standard, which is "the lowest evidentiary standard," and "is tantamount to a "more likely than not" inquiry." *Delaware County v. Schaefer ex rel.*

*Philadelphia Inquirer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012). *See also Brock v. Pa. Dep't of Health*, OOR Dkt. 2021-2834, 2022 PA O.O.R.D. LEXIS 378; *Pakutz v. Pa. Dep't of State*, OOR Dkt. AP 2021-0415, 2021 PA O.O.R.D. LEXIS 1419. Therefore, based on the evidence provided, the Department has met its burden of proof that it does not possess additional records responsive to item 2 of the Request. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **denied**, and 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. 65 P.S. § 67.1303. 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.<sup>1</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: AUGUST 16, 2022**

/s/ *Matthew Eisenberg*

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APPEALS OFFICER  
MATTHEW EISENBERG, ESQ.

Sent to: Charles Talbert, QA-4727 (via US Mail only);  
Tara Wikhian, Esquire (via email only);  
Andrew Filkosky (via email only)

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