



**FINAL DETERMINATION**

**IN THE MATTER OF**

**SHAWN FREEMORE,  
Requester**

**v.**

**PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS,  
Respondent**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Docket No: AP 2022-1718**

On May 27, 2022, Shawn Freemore (“Requester”), an inmate at SCI-Houtzdale, 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 “publication denials and appeals for inmate Andrew Tutko #JV6325 between January 2018 and December 2019 to include outcomes.”

On June 1, 2022, the Department invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b). On June 30, 2022, the Department denied the Request, stating that disclosure of the records could threaten personal security or public safety. 65 P.S. § 67.708(b)(1)(ii); 65 P.S. § 67.708(b)(2). The Department also stated that disclosure of the records would violate the constitutional right to privacy.

On July 20, 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 August 3, 2022, the Department submitted a sworn declaration 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.<sup>1</sup> Mr. Filkosky further attests that when the Department's final response was sent to the Requester, a search had not yet been fully completed. Declaration ¶5. In the interim between the response and the Department's submissions, Mr. Filkosky's office contacted SCI-Houtzdale; where any responsive records would reside if they existed. Declaration ¶7. SCI-Houtzdale confirmed that in fact no records responsive to the Request exist in their possession or control. *Id.*

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 the requested records exist, "the averments in the declaration 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 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).

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.*

---

<sup>1</sup> On appeal, the Department abandons the exemptions noted in the final response as no records exist.

*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.

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>2</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*

---

APPEALS OFFICER  
MATTHEW EISENBERG, ESQ.

Sent to: Shawn Freemore, KJ-5671 (via US Mail only);  
Andrew Filkosky (via email only);  
Joseph Gavazzi, Esquire (via email only)

---

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