



**FINAL DETERMINATION**

**IN THE MATTER OF**

**LOIS KANESHIKI,  
Requester**

**v.**

**CUMBERLAND VALLEY SCHOOL  
DISTRICT,  
Respondent**

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

**Docket No.: AP 2022-1848**

On June 23, 2022, Lois Kaneshiki (“Requester”) submitted a request (“Request”) to the Cumberland Valley School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “all records, lesson plans and materials given by Battelle for Kids/Portrait of a Graduate to [District] teachers and staff.”

On June 24, 2022, the District invoked a thirty-day extension to respond; however, as the Requester did not receive the District’s response within the extension period, on August 10, 2022, the Requester filed an appeal with the Office of Open Records (“OOR”) claiming that the Request was deemed denied.<sup>1</sup> *See* 65 P.S. §§ 67.901, 902(b)(2). The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

---

<sup>1</sup> The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

On August 18, 2022, the District submitted a position statement explaining that it had responded on August 1, 2022, denying the Request and claiming that it does not possess any responsive records, but providing a copy of draft competencies from Portrait of a Graduate which was distributed to District families. The District provided a copy of its August 1, 2022 final response and submitted the attestation made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, of Tracy Panzer, the District's Open Records Officer, who attests that a search was conducted and that no responsive records exist in the District's possession.

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 record[.]" 65 P.S. § 67.901. While the RTKL does not define the term "good faith effort" as used in Section 901 of the RTKL, 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 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); *see also Rowles v. Rice Twp.*, OOR Dkt. AP 2014-0729, 2014 PA O.O.R.D. LEXIS 602 (citing *Judicial Watch, Inc. v. United States Dep't of Homeland Sec.*, 857 F.Supp. 2d 129, 138-139 (D.D.C. 2012)) (citations omitted).

In sum, an agency must show that it has conducted a search reasonably calculated to uncover all relevant documents; an agency may do so by providing relatively detailed and non-conclusory affidavits submitted in good faith by officials or employees with knowledge of the records and the search for the records. *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); *In re Silberstein*, 11 A.3d 629, 634 (Pa. Commw. Ct. 2011) (holding that it is “the open-records officer’s duty and responsibility” to both send an inquiry to agency personnel concerning a request and to determine whether to deny access).

Ms. Panzer affirms that she searched the District’s computer databases and hard copy records but was unable to locate any responsive records. She also inquired with the Superintendent as to whether he was aware of any such records. He confirmed that the District did not have any records responsive to this Request. Ms. Panzer explains that she did locate a draft of competencies for “Portrait of A Graduate” that were distributed to families, which are not responsive; however, as a courtesy she provided that record to the Requester.

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 District has acted in bad faith or that the 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)). Based on the evidence provided, the District has met its burden of proof that it does not possess the records sought in the Request. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the Requester’s appeal is **denied**, and the District 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 Cumberland County Court of Common Pleas. *See* 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.<sup>2</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: September 30, 2022**

*/s/ Erin Burlew*

---

ERIN BURLEW, ESQ.  
APPEALS OFFICER

Sent via email to: Lois Kaneshiki; Jason A. Statler, Esq.; Tracy Panzer

---

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