



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**ERIC WATSON,
Requester**

v.

**BEAVER COUNTY,
Respondent**

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Docket No: AP 2022-2488

On September 28, 2022, Eric Watson (“Requester”) submitted a request (“Request”) to Beaver County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...any written policy that the [C]ounty has that specifies or stipulates what the procedure is for producing and maintaining video recordings at the Beaver County Human Services building or any building if the policy is not location specific, and/or any contract or agreement pertaining to maintaining of video recordings produced at [C]ounty buildings. Also any communication or agreement, if there is any, regarding the maintaining of video recordings at the Beaver County Human Services building.

On October 24, 2022, after extending its time to respond by thirty days, 65 P.S. § 67.902(b), the County denied the Request, stating that the requested written policy does not exist. The County did not specifically address the parts of the Request seeking a contract, agreement or communication concerning the maintenance of video recordings of County buildings.

On October 27, 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 County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On November 8, 2022, the County submitted a position statement, reiterating its argument that none of the records sought in the Request, including contracts, agreements and communications relating to the maintenance of video recordings, exist. The County also provided a sworn affidavit from Kaylei Callaghan, Assistant Director of Human Resources for the County.¹

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,” 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). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency’s records, that it has conducted a search reasonably calculated to uncover all relevant documents. *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).

As noted above, the County argues that records sought in the Request do not exist. In support, the County provided the Callaghan Affidavit attesting that Assistant Director Callaghan

¹ The Requester did not submit any additional legal argument or evidence during the appeal.

has access to and is directly involved with the maintenance of all County Policies. Callaghan Attestation, ¶ 1. Furthermore, after acknowledging her awareness of the Request, Assistant Director Callaghan attests that the applicable County records were reviewed and that “the aforementioned requested documents do not exist.”² Callaghan Attestation, ¶¶ 2-3.

While the County could have included additional detail about the search performed, we find credible the statements made in the Callaghan Affidavit insofar as it affirms that Assistant Director Callaghan has access to and is involved with the maintenance of all County policies, that the applicable records were searched and that no responsive records exist. In *Pa. Dep’t of Health v. Mahon*, the Commonwealth Court concluded that, in the absence of countervailing evidence, an agency may satisfy its burden of proving a record does not exist by submitting “either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record.” 2022 Pa. Commw. LEXIS 136, *11-12 (Pa. Commw. Ct. 2022) (quoting *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011)); see also *Campbell v. Pa. Interscholastic Ath. Ass’n.*, 268 A.3d 502 (Pa. Commw. Ct. 2021). Here, the Requester has not disputed the assertions made in the County’s submission or the Callaghan Affidavit; therefore, based on the evidence provided, the County has met its burden of proof that the records sought in the Request do not exist.

For the foregoing reasons, the appeal is **denied**, and the County 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 Beaver County

² Under the RTKL, a sworn 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 County has acted in bad faith or that the requested records exist, “the averments in [the affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. 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)).

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. 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.³ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 22 November 2022

/s/ Joshua T. Young

JOSHUA T. YOUNG
DEPUTY CHIEF COUNSEL

Sent to: Eric Watson (via email only);
Nathan Morgan, Esq. (via email only)
Stacey Householder, AORO (via email only)

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