



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
HON. SCOTT MARTIN AND SENATE OF	:	
PENNSYLVANIA,	:	
Requester	:	
	:	Docket No: AP 2022-2512
v.	:	
	:	
UNIONVILLE-CHADDS FORD SCHOOL	:	
DISTRICT,	:	
Respondent	:	

FACTUAL BACKGROUND

On September 7, 2022, Hon. Scott Martin and the Senate of Pennsylvania (collectively “Requester”) submitted a request (“Request”) to the Unionville-Chadds Ford School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, among other things, records related to COVID-19 pandemic related policies and records related to reports made under the Child Protective Services Law (“CPSL”), 23 Pa.C.S. §§ 6339-6340. More specifically, the Request sought, the following:

1. ... [C]opies of any written requests submitted to the District from any District resident demanding that the District provide a detailed statement or written opinion of counsel setting forth the source of its legal authority to enforce its pandemic related policies including but not limited to mandatory masking and providing in-person schooling.
2. If the District received any such written requests from a District resident, please provide copies of any written responses from the District to the requesting resident.

If the response was discussed in a public meeting, please provide copies of the transcript or minutes from the public meeting.

3. In May 2021, the Unionville School Board unanimously adopted amendments to District Policy 203. During the March 2021 work session and board meetings, board member John Murphy stated on the record that such amendments were directed by ‘the State’ and were necessary for ‘legal liability reasons’.” Please provide copies of written communications from ‘the State’ identifying legal liability concerns and/or directing the District’s school board to adopt the amendments to Policy 203.

4. ... [C]opies of all versions of Policy 203 which have been in effect at any time between May 2021 and the present.

5. ... [C]opies of any District reports detailing the aggregate number of suspected child abuse reports made by District employees to ChildLine between March 2020 and March 2022.

6. ... [C]opies of any written communication from any Pennsylvania State agency to the District defining or outlining circumstances under which mandatory reporters were not required to make or forward reports of alleged harm under the Child Protective Services Law (CPSL) (such as, for example, any instructions that mandated reporters were not required to make or forward complaints that mask-wearing constituted child abuse under the CPSL).

7. [C]opies of any written communication from the District to any District employee defining or outlining circumstances under which District employees were not required to make or forward reports of alleged harm under the CPSL (such as, for example, any instructions that mandated reporters were not required to make or forward complaints that mask-wearing constitute child abuse under the CPSL).

On October 14, 2022, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the District partially denied the Request, arguing that Items 1-3 are insufficiently specific, 65 P.S. § 67.703, and that Item 5 seeks records that are confidential under the CPSL. Regarding, Items 6-7, the District also argues that they are insufficiently specific, but, in the interest of transparency, the District provided some records that appeared to be responsive. The District referred the Requester to the District’s public website in response to Item 4.

On October 31, 2022, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ In the appeal, the Requester expressly limits the challenge to the denial and partial denial of Items 1-3 and 5-7 of the Request. 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. 65 P.S. § 67.1101(c).

On November 10, 2022, the District submitted a position statement reiterating its grounds for denial. The District claims that Items 1-3 and 6-7, fail to identify a finite timeframe, fail to identify specific search terms or keywords, fail to identify discrete senders, recipients or records custodians, and do not seek a specific type of record.² The District further argues that Items 1-3 of the Request are ambiguous and subject to multiple meanings. In addition, the District also argues that it properly denied access to the records sought in Item 5, because any information concerning a report of suspected child abuse is strictly confidential under Section 6339 of the CPSL, 23 Pa.C.S. § 6339. In the alternative, without conceding its position that the CPSL prevents the disclosure of the records sought in Item 5, the District asserts that a search was conducted and a responsive record does not exist within the District’s possession, custody or control. In support of its position, the District submitted the affidavit of Joseph Deady, the District’s Director of Finance and Open Records Officer.

Also, on November 10, 2022, the Requester submitted a position statement in support of the appeal. The Requester argues that Items 1-3 and 6-7 of the Request are sufficiently specific because the language of each Item identifies a sender and or recipient of either communications or

¹ The Requester granted the OOR’s request for additional time to issue a final determination, until December 9, 2022. *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).”).

² The District provided some records in response to Items 6-7, based on Superintendent John Saville’s recollection of receiving potentially responsive correspondence from the Pennsylvania Departments of Health and Education.

written responses and a subject matter of the requested records. The Requester argues that a timeframe may be implied by the context of the Request Items, in that they relate to COVID-19 pandemic concerns in the District. The Requester further argues that the District improperly denied access to the aggregated data sought in Item 5, because such information is not protected under the CPSL. The Requester relies on *Pa. Dep't of Health v. Mahon*, _____ A.3d ____ (Pa. Commw. Ct. 2022), to assert that the CPSL does not apply to aggregated data.

LEGAL ANALYSIS

The District is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the District is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. Portions of the Request are insufficiently specific

Regarding Items 1-3, the District argues that the Request fails to identify the types of documents sought, fails to provide specific search terms, fails to provide a timeframe and fails to identify particular records custodians. Section 703 of the RTKL provides, in pertinent part, “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested” 65 P.S. § 67.703. When interpreting a RTKL request, agencies should rely on the common meaning of words and phrases, as the RTKL

is remedial legislation that must be interpreted to maximize access. *See Gingrich v. Pa. Game Comm'n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d at 824). In determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015), and *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pa. Dep't of Educ.*, 119 A.3d at 1125. Second, the scope of the request must identify a discrete group of documents (*e.g.*, type or recipient). *See Id.* at 1125. Third, “[t]he timeframe of the request should identify a finite period of time for which the records are sought.” *Id.* at 1126. This factor is the most fluid and is dependent upon the request’s subject matter and scope. *Id.* Failure to identify a finite timeframe will not automatically render a sufficiently specific request overbroad; likewise, a short timeframe will not transform an overly broad request into a specific one. *Id.*³

The District presents the Deady affidavit in support of its argument. The Deady affidavit states, with respect to Items 1 and 2, the following:

7. [Items 1 and 2] of the Request sought ‘written requests’ by ‘any District resident’ and ‘written responses’ from ‘the District’ thereto relating to a request for a ‘detailed statement or opinion of counsel setting forth the source of [the District’s] legal authority to enforce pandemic related policies,’ which Requester stated included but was ‘not limited to mandatory masking and providing in-person schooling.’

³ While it does not appear that the Requester is asserting that his position, at the time of the Request as the Majority Chair of the Senate Education Committee, has a bearing on the determination of the instant appeal, the District correctly notes that a requester’s identity or motivation for making a request is not relevant to determining whether a record is accessible to the public under the RTKL. *Padgett v. Pa. State Police*, 73 A.3d 644, 647 (Pa. Commw. Ct. 2013). Under the RTKL, whether the document is accessible is based only on “whether a document is a public record, and if so, whether it falls within an exemption that allows that it not be disclosed. The status of the individual requesting the record and the reason for the request, good or bad, are irrelevant as to whether a document must be made accessible under Section 301(b) [of the RTKL].” *Hunsicker v. Pa. State Police*, 93 A.3d 911, 913 (Pa. Commw. Ct. 2014); *see also* 65 P.S. § 67.102; 65 P.S. § 67.305.

8. [Items 1 and 2] of the Request did not contain specific search terms, a date range, any particular type of record (because ‘written’ requests or responses could include e-mails, letters, faxes, etc.) or any specifically identified records custodians.

9. According to the information published by the Pennsylvania Department of Education, the District has approximately 21,500 residents.

10. Additionally, in terms of email accounts, alone, there are 5,403 unique active ucfdsd.net email accounts.

11. The phrase ‘pandemic related policies’ could encompass many different topics when relating to a school district, such as, by way of example only: masking; in-person versus virtual schooling; sanitizing school property; transportation logistics; physical distancing; procurement of technical equipment to support remote learning; staffing issues; contact tracing; in-person versus Zoom Board meetings; vaccinations; and/or quarantine time frames.

12. Because no specific search terms, date range, type of record, or records custodians were identified, and because of the excessively broad list of potential topics that constitute ‘pandemic related policies,’ I was unable to reasonably conduct a search for records responsive to the Request.

13. Even if I were to infer that the phrase ‘pandemic related policies’ implied a date ranged of March of 2020 through the date of the Request, the failure to identify records custodians, specific search terms/topics, or particular types of records rendered [Items 1 and 2] insufficiently specific....

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 determining whether a request is sufficiently specific under Section 703, the OOR examines to what extent the request sets forth (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. *Pa. Dep’t of Educ.*, 119 A.3d at 1124-25. “The fact that a request is burdensome does not deem it overbroad, although it may be considered as a factor in such a determination.” *Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) (*en banc*). A request involving a detailed review

of voluminous documents does not relieve the agency of presuming the records are open and available and to respond in accordance with the RTKL.

While Items 1 and 2 do not provide a specific timeframe, as suggested by the Requester, one is implied by the context of the Request. The Items seek records in connection with “pandemic related policies,” and, therefore, the District is able to narrow its search parameters beginning with the inception of the COVID-19 pandemic emergency declaration. *See Mitchell v. Phila. Police Dep’t*, OOR Dkt. AP 2015-2335, 2015 PA O.O.R.D. LEXIS 1944 (finding a request interpreted to seek current agency policies to have an implied timeframe); *Nello Construction v. Greater Latrobe Sch. Dist.*, OOR Dkt. AP 2019-0988, 2019 PA O.O.R.D. LEXIS 984 (finding that a request for records related to a construction project to have an implied timeframe of the duration of the project); *Zimolong v. Tredyffrin-Easttown Sch. Dist.*, OOR Dkt. AP 2021-1843, 2021 PA O.O.R.D. LEXIS 2286 (finding that a request for records related to a service agreement with a vendor has an implied timeframe of the duration of the contract). Here, it would be reasonable for the District to utilize the inferred timeframe suggested in the Deady affidavit of a date range from March 2020 to the date of the Request.

Regarding the subject matter and scope, a plain reading of Items 1 and 2 shows that the Requester seeks all “written requests” submitted to the District by residents, asking for a record containing “a detailed statement or written opinion of counsel setting for the source of its legal authority to enforce ... pandemic related policies...” and the District’s “written responses” to the inquiries. The Requester asserts that Items 1 and 2 clearly meet each of the remaining prongs of the specificity test as they set forth a subject matter and a defined scope, in that they seek “written requests” and “written responses” to resident inquires for documents referencing the “legal authority” for “pandemic policies,” and also, state the type of document (written

requests/responses) and senders (District/employees and District residents). The Requester asserts that, with the language provided, the District would be able to conduct a search for responsive records. Conversely, the District asserts that Items 1 and 2 essentially seek all records related to a broad subject matter that implicates tens of thousands of residents and thousands of District employees as records custodians.

The Commonwealth Court has noted that “the specificity of a request must be construed in the request’s context, rather than envisioning everything the request might conceivably encompass.” *Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012). Neither the courts nor the OOR endorse needlessly interpreting a RTKL request when a reasonable reading of the text would allow, at least, the provision of many plainly responsive records. However, the OOR is mindful that an agency is bound to the wording of a request, which may create conditions which render a useful search for records unreasonably difficult. *See Martin v. Pa. Dep’t of State*, OOR Dkt. AP 2017-2064, 2017 PA O.O.R.D. LEXIS 1738 (a request which sought records of a doctor was insufficiently specific because the Department could not determine which of several doctors with the same name to which the request referred).

While the Requester attempted to specifically identify a subject matter and scope, the terms in Items 1 and 2 that would be utilized to conduct a search are subject to multiple interpretations or definitions and, as such, result in a very broad subject matter. Therefore, to be sufficiently specific, the scope and timeframe of a request must be narrow enough to guide the District’s search. An agency should not be required to examine a large universe of records and make a judgment regarding whether a record is related to the subject matter. *See Winklosky v. Pa. Office of Admin.*, OOR Dkt. AP 2018-1438, 2018 PA O.O.R.D. LEXIS 1391 (“Seeking all records related to a topic or topics does not necessarily make a request insufficiently specific; however, a request must

provide enough specificity in its scope and timeframe to help guide the agency in its search for records”); *Commonwealth v. Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (finding that a request with a broad subject matter requires a narrow scope and timeframe that render the request specific).

As established by the Deady affidavit, “written requests” and “written responses” may potentially include correspondence, emails, and faxes. In addition, regarding “pandemic related policies,” Items 1 and 2 provided two examples of policies, but also included the language, “including but not limited to.” The Deady affidavit further establishes that the phrase “pandemic related policies,” implicates a myriad of District responsibilities and duties ranging from educating to facility sanitation to student transportation, among others. Furthermore, while Items 1 and 2 state senders of the written requests and responses, the evidence demonstrates that the universe of records custodians potentially consists of tens of thousands of District residents and over five thousand District employees. As an example, a written email may be sent to the District Superintendent inquiring into the legal authority for the District’s masking policy, but the same email may be sent to an individual student’s teacher. This factor distinguishes Items 1 and 2 from the remaining portions of the Request that are narrower in scope. Like the request in *Iverson*, where the Commonwealth Court held that a request which “does not identify specific individuals, email addresses, or even departments, but requests any applicable emails sent from the County’s domain to four other domains” was insufficiently specific, Items 1 and 2, here, are insufficiently specific in scope to enable the District to conduct a meaningful search for records, especially in light of the very broad subject matter. 50 A.3d at 284; *see also Winklosky, supra; Engelkemier, supra.*⁴

⁴ The Requester is not precluded from filing a new request with additional detail to guide the Department’s search for responsive records.

Regarding Item 3, the District also argues that the Request fails to identify the types of documents sought, fails to provide specific search terms, fails to provide a timeframe and fails to identify particular records custodians. Item 3 also has an implied timeframe, in that the records sought relate to District School Board work sessions and regular meetings in spring of 2021, specifically discussing amendments to Board Policy 203.

Regarding the subject matter, Item 3 seeks “written communications from the State identifying legal liability” or directing the District’s Board “to adopt amendments to Policy 203.”⁵ The Requester argues that Item 3 is narrowed to records related to a single Board Policy and references a May 2021 Board meeting⁶ when amendments were adopted and March 2021 work sessions and Board meetings,⁷ wherein a Board member made a statement that the changes were directed by “the State.” The Requester states, “[i]f the District understood the subject matter of the communications from the State at the time it made statements about them in March 2021, it’s unreasonable for the District to suggest that it doesn’t now understand a request to produce those same communications a little over a year later.”

The District explains that a version of Policy 203 has been in place since 2003, and it governs “Immunizations and Communicable Diseases.” The District argues that Item 3 does not identify records custodians, “particularly with the vague reference to ‘the State’,” and it also does not identify a discrete document. In support of the District’s argument, the Deady affidavit states:

15. [Item 3] of the Request sought written communications from ‘the State’ which identified ‘legal liability concerns’ or directed the District’s Board to ‘adopt amendments to Policy 203.’

⁵ See Board Policy 203: <https://go.boarddocs.com/pa/uncf/Board.nsf/Public?open&id=policies#>; Board Policy 203-AG-0: <https://go.boarddocs.com/pa/uncf/Board.nsf/Public?open&id=policies#>; and, Board Policy -AG-1: <https://go.boarddocs.com/pa/uncf/Board.nsf/Public?open&id=policies#> (last accessed December 1, 2022).

⁶ See <https://go.boarddocs.com/pa/uncf/Board.nsf/Public?open&id=meetings> (last accessed December 1, 2022).

⁷ Notably, the meeting minutes for the District’s Regular School Board meeting held on March 15, 2021, are not available through the District website. See <https://go.boarddocs.com/pa/uncf/Board.nsf/Public?open&id=meetings> (last accessed December 1, 2022).

16. Policy 203 relates to ‘Immunizations and Communicable Diseases,’ and a version of this policy has been in place since at least 2003.

17. [Item 3] did not identify records custodians, particularly with regard to ‘the State,’ or identify any specific type of document.

18. As a result, I was unable to reasonably conduct a search for records responsive to the Request....

However, as set forth above, “the specificity of a request must be construed in the request’s context, rather than envisioning everything the request might conceivably encompass.” *Iverson*, 50 A.3d at 284. Further, while an agency may interpret the meaning of a request for records, that interpretation must be reasonable. *See Pa. State Police v. Off. Of Open Records*, 995 A. 2d 515 (Pa. Commw. Ct. 2010). The OOR determines whether the agency’s interpretation is reasonable from the text and context of the request alone, as neither a requester nor the OOR may modify a request on appeal. *See McKelvey v. Off. of Att’y General*, 172 A.3d 122 (Pa. Commw. Ct. 2017) (“Once a RTKL request is submitted, a requester is not permitted to expand or modify the request on appeal.”).

A review of Policy 203-AG-1 “Communicable Diseases/Attendance” shows that it was adopted on the Board meeting date referenced in Item 3, March 17, 2021.⁸ It is unclear how the District can assert that such context does not aid in its search for records. In addition, regarding the use of the phrase “the State,” a reasonable implication is that, if a public school district was being advised to amend the Immunization and Communicable Diseases policy during the course of a global pandemic, the reference to “the State” would be a reference to the relevant Commonwealth of Pennsylvania agencies. Further, viewing the Request as whole reveals that the Requester expressly references “any *Pennsylvania state agency*” in Item 6, which provides additional context to Item 3.

⁸ See <https://go.boarddocs.com/pa/uncf/Board.nsf/Public?open&id=policies#> (last accessed December 1, 2022).

Regarding the scope of Item 3, the District's interpretation is overly broad when considering the context set forth above. In addition, because Item 3 seeks records that a public school district would receive from state government agencies addressing issues related to amending District policy, the universe of records custodians would not be anywhere near as large as the universe of record holders in Items 1 and 2. It is reasonable to infer that only the highest level District officials would receive such guidance such as, the Superintendent or Board President, for example. It is unreasonable to interpret Item 3, as implicating all District employees, thereby suggesting that an elementary school teacher may have responsive records. Accordingly, we determine that Item 3 is sufficiently specific, in that it states a subject matter – amendments to Policy 203, it identifies a discrete category of records - written communications from Pennsylvania state government agencies and has an implied timeframe.

Regarding Items 6 and 7, the District presents the Deady affidavit, which states in pertinent part, as follows:

27. [Items 6 and 7] ... are somewhat related.

28. [Item 6] seeks 'written communications' from 'any Pennsylvania State agency' to 'the District' relating to when 'mandatory reporters' should not make reports of alleged harm under the CPSL, and provides one example, 'such as ... complaints that mask-wearing constituted child abuse.'

29. [Item 7] also seeks 'written communications' from 'the District' to 'any [D]istrict employee' relating to when the employee should not make reports of alleged harm under the CPSL, again providing one example of 'complaints that mask-wearing constituted child abuse.'

30. ... [Items 6 and 7] did not include any specific search terms, date ranges, particular types of documents, and/or records custodian.

31. As noted above, there are thousands of District issued email accounts, alone.

32. Additionally, the failure to define custodians or the phrase, 'any Pennsylvania State agency' rendered it impossible for me to determine which search parameters to utilize in conducting a meaningful search....

34. However, in the interest of transparency, the District was able to locate records that appeared responsive to [Items 6 and 7], which records the District's Superintendent, John Sanville, recalled receiving from the Pennsylvania Department of Education and ... Department of Human Services.

35. As a result, the District produced to the Requester a copy of this communication, as well as the email from Mr. Sanville forwarding the communication along to certain District administrators

Again, a timeframe is implied, as Items 6 and 7 suggest an example of the basis of a report that may or may not be submitted under the CPSL, "complaints that mask-wearing constituted child abuse," thereby implying that the relevant timeframe is during the periods of time when COVID-19 pandemic emergency orders required masking under certain circumstance.

Insofar as the other two prongs of the specificity test, the same reasoning we have applied to Item 3 is also applicable to Items 6 and 7. Items 6 and 7 both set forth a subject matter – when mandatory reporters were not required to make or forward reports under the CPSL, and both identify a discrete category of records – written communications, and identify senders or recipients – relevant Pennsylvania state government agencies and relevant District officials. Again, it is reasonable to infer that the guidance regarding when District personnel should or should not submit a report under the CPSL would be a responsibility for an upper level District Official and such guidance would be disseminated from an upper level official. The records provided by the District in partial response to Items 6 and 7 support this interpretation, as they consist of a Memorandum issued by the Pennsylvania Departments of Education and Human Services concerning the issue of whether masking requirements are a form of child abuse that necessitates the submission of a report to ChildLine and providing guidance on the matter. Accordingly, Items 6 and 7 of the Request are sufficiently specific.

2. The District has proven that records responsive to Item 5 do not exist

The District denied Item 5, arguing that the broad scope of the confidentiality provision of provided in Section 6339 of CPSL makes clear that the requested records may not lawfully be and that the CPSL does not provide an exception for aggregated data. 23 Pa.C.S. § 6339. On appeal, the District argues, in the alternative, that it stands by its position that the type of records requested in Item 5 are confidential under the CPSL, but a search was conducted and a responsive report does not exist. The Deady affidavit states that the affiant has personal knowledge of the facts set forth based on the roles of District Director of Finance and Open Records Officer. The affidavit further states that, “although disputing that such a report would be shared with the public if it existed, I have conducted a search and determined that the District does not possess a report detailing the aggregate number of suspected child abuse reports made to the ChildLine.” Deady affidavit, ¶¶ 3, 26. An agency has the burden of proving that a record does not exist and “it may satisfy its burden of proof . . . with either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record.” *Hodges*, 29 A.3d at 1192; *Moore*, 992 A.2d at 909 (search of records and sworn and unsworn affidavits that documents were not in agency’s possession are enough to satisfy burden of demonstrating nonexistence); *Pa. Dep’t of Health v. Mahon*, ___ A.3d ___, (Pa. Commw. Ct. 2022) (affidavit of open records officer who was advised that no records exist was found sufficient to prove nonexistence of records). The Requester has not presented evidence to counter the District’s position or to demonstrate that “District reports detailing the aggregate number of suspected child abuse reports made by District employees to ChildLine between March 2020 and March 2022” do, in fact exist. In the absence of any evidence that the District has acted in bad faith, “the averments in [the affidavit] 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)). Therefore, we determine that the District has proven that records responsive to Item 5, do not exist within its possession, custody or control. *Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the District is required to conduct a good faith search for records responsive to Items 3 and 6-7, and provide all responsive records within thirty days or provide a sworn statement that responsive records do not exist for a specific Request Item, as appropriate. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Chester County 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 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.⁹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 9, 2022

/s/ Kelly C. Isenberg

SENIOR APPEALS OFFICER
KELLY C. ISENBERG

Sent via email to: Hon. Scott Martin; Crystal Clark, Esq.; Alicia Luke, Esq.; Joseph Deady

⁹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).