



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**DAVID BEDILLION,
Requester**

v.

**BUCKS COUNTY FREE LIBRARY,
Respondent**

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Docket No.: AP 2022-2853

FACTUAL BACKGROUND

On November 23, 2022, David Bedillion (“Requester”) mailed a request (“Request”) to the Bucks County Free Library (“Library”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Any/all email communication records (including associated attachments, URL links and electronic database links) to and/or from any/all Bucks County Free Library...Board Members (including personal email addresses if used for Library business), from August 1st, 2022 to present that contain any of the following keywords:

“Drag”, “Drag Queen”, “Perkasie”, “Complaint”, “Conner”, “Knorr”, “Bedillion”

As the Requester did not receive the Library’s response within five business days of the Request, the Request was deemed denied. *See* 65 P.S. § 67.901. On December 15, 2022, the Requester contacted the Library seeking its response and John Doran, III, Chief Financial Officer for the Library, responded indicating that the Library thought it was the same as a prior request.

Upon learning it was different, he notified the Requester that the Library would not be responding to the Request because the Library is not an agency under the RTKL.

On December 27, 2022, the Requester appealed to the Office of Open Records (“OOR”).¹ The OOR invited both parties to supplement the record and directed the Library to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On January 6, 2023, the Library submitted a position statement arguing that it is not an agency subject to the RTKL. In support of its position, the Library submitted the verification of John Doran, III, Chief Financial Officer for the Library.² The Library also submitted supporting documents, including: an Internal Revenue Service document indicating that the Library is a 501(c)(3) organization; financial statements for 2021, the Library’s 2021 Operating and Capital Budget; the Bucks County Comprehensive Financial Report; and the Bucks County 2023 Preliminary Budget.

On January 6, 2023, the Requester submitted a position statement arguing that the Library is an agency subject to the RTKL, having acted in the past as an agency under the RTKL, and noting two prior final determinations involving the Library.

On January 12, 2023, the Requester submitted additional argument in support of his appeal. This submission was received after the record closed; however, to develop the record, the submission was considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

¹ The Requester granted the OOR a 60-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).”).

² 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).

LEGAL ANALYSIS

The RTKL defines a “local agency” as any of the following:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

65 P.S. § 67.102.

In *Vyonder v. Bucks Co. Free Library*, OOR Dkt. AP 2022-2757, 2023 PA O.O.R.D. LEXIS 33, the OOR determined, based on the same evidence provided by the Library in this case, that the Library is not an agency subject to the RTKL. In that matter, the OOR undertook an analysis pursuant to *Pysher v. Clinton Twp. Volunteer Fire Co.*, 209 A.3d 1116 (Pa. Commw. Ct. 2019) and *Appeal of Hadley*, 83 A.3d 1101 (Pa. Commw. Ct. 2014), wherein the Court “evaluated whether a regional alliance of businesses, industry, and tourism, which was a private nonprofit, was a ‘similar governmental entity’ to be considered a ‘local agency’ under the RTKL.” *Pysher*, 209 A.3d at 1123. In *Hadley*, the Commonwealth Court set forth several factors to be considered when assessing whether an organization is considered a “similar government entity[.]” including the degree of governmental control, the nature of the organization’s functions, and financial control. *Id.*; *see also Hadley*, 83 A.2d at 1108. The Court explained that with respect to the first factor, a court should review the “organizational structure, purposes, powers, duties and fiscal affairs” of the organization. *Id.* The Court also noted that “cooperation with the government is insufficient to establish control.” *Id.* Regarding the second factor, the Court held that “[t]he function an entity performs weighs heavily in a local agency assessment. The function must be governmental, but it need not be ... essential. To qualify as governmental, the function must be a substantial facet of a government activity.” *Id.* Finally, with respect to financial control, the Court

noted that “the less government financing, the less likely it was that there was governmental control.” *Id.*

Here, the Library is a nonprofit corporation and not a “political subdivision, intermediate unit, charter school, or public trade or vocational school[,]...local, intergovernmental, regional or municipal agency, authority, council, board, [or] commission...”³ *Id.* Therefore, the question becomes whether the Library is a “similar governmental entity.”

In the instant matter, the Doran verification affirms that the Library system consists of seven branches throughout Bucks County (“County”) and that the primary purpose of the Library is “to provide to the general public access to books, information, and other materials and other resources for educational, recreational and other informational needs” and that it is governed by a seven-member Board of Directors that operates independently from the County and any other government entity. *See* Doran Verification, ¶¶ 9-10. Members of the Board of Directors are appointed by the County Commissioners pursuant to the Public Library Code, 24 Pa.C.S. § 9318(b)(1), but the Board members do not consist of any County officials.⁴ *Id.* at ¶ 14. Additionally, the Doran verification provides that the Library’s administration consists of a Chief Executive Officer who is hired by Library’s Board of Directors, as well as a Chief Operations Officer, a Chief Financial Officer, a Public Services Director, a Collections Management Director, an Access Service Manager and a District Consultant, all of whom are hired by the Chief Executive Officer. *Id.* at ¶ 11. No County Commissioner or County official is involved in the day-to-day administration, governance or activities of the Library. *Id.* at ¶ 16.

³ The Library submitted a Department of Treasury, Internal Revenue Service document dated December 26, 1991, which indicates that the Library is a 501(c)(3). Additionally, the Doran Affidavit provides that the “[Library] system is a tax-exempt 501(c)(3) non-profit organization under the Internal Revenue Code.” *See* Doran Affidavit, ¶ 8.

⁴ The Public Library Code provides that “[t]he municipal officers of the municipality in which the local library is established shall appoint any members of the board and fill any vacancies on the board....” 24 Pa.C.S. § 9318(b)(1).

The Doran verification further provides that the Library maintains its own website and domain that is separate from the County and that it maintains its own Informational Technology Department, servers and equipment that are all separate from the County. *Id.* at ¶ 12. The Library does not participate in the County’s pension or health benefit plans and provides its own benefit plans to library employees, and does not observe the same holidays County government. *Id.* at ¶¶ 22, 24.

Regarding financing, the Doran verification affirms that “[the Library] prepares its own yearly budgets and is responsible for its own yearly audit which it forwards to the County. The County, in turn, accepts [the Library’s] audit for incorporation into its financial statements concerning the use of taxpayers’ monies.”⁵ *Id.* at ¶ 18. Further, “operations of [the Library] are primarily funded by the County through tax dollars, followed by state aid provided by the Commonwealth of Pennsylvania, as well as by charitable donations, grants, endowments and fines and fees.” *Id.* at ¶ 15. While six of the seven Library branches are in County buildings and are provided rent-free, the Library “solely maintains and upkeeps the buildings and grounds without involvement or assistance by the County or its service employees, unless there is an emergency[.]” Library employees provide cleaning and landscaping services to the Library buildings and grounds, and the Library engages in its own contracts with outside companies. *Id.* at ¶ 21. Additionally, the Library submitted a copy of the County’s 2023 Preliminary Budget, which lists the Library under the “miscellaneous” category rather than under its list of County Departments.

The Requester argues that the fact that the Library previously considered itself an agency under the RTKL and has participated in appeals before the OOR supports a finding that the Library is a local agency subject to the RTKL. While the Requester is correct that the Library has, in the

⁵ On appeal, the Library submitted a copy of the County’s Annual Financial Report for 2021, which identifies the Library as a “component unit,” which the Report defines as “legally separate entities.”

past, considered itself an agency subject to the RTKL and has been a party in previous appeals before the OOR, the Library did not previously raise the issue of jurisdiction and the OOR did not make a finding that the Library is in fact an agency. *See Dearmond v. Bucks Cnty. Free Library*, OOR Dkt. AP 2022-0954, 2022 PA O.O.R.D. LEXIS 1470; *Marcovitz v. Bucks Cnty. Free Library*, OOR Dkt. AP 2013-1041, 2013 PA O.O.R.D. 575. Further, the fact that the Library previously responded to RTKL requests and did not raise the issue of jurisdiction in previous appeals before the OOR does not prevent the Library from now presenting evidence that it is not a local agency, nor does it preclude a finding by the OOR that the Library is not a local agency pursuant to the RTKL. *See Scott v. Del. Valley Reg'l Planning Comm'n*, 56 A.3d 40, 44 n.4 (Pa. Commw. Ct. 2012); *Boyer v. Wyoming Free Library*, OOR Dkt. AP 2018-1276, 2018 PA O.O.R.D. LEXIS 1143.

The Requester further argues that the County maintains control over the day-to-day operations of the Library and its assets, and that the Library receives the majority of its funding from the County. He argues that the Library has only provided the OOR with partial documentation in support of its argument and has misrepresented itself to avoid compliance with the RTKL. In support of this, he points to various statements within the Library's 2021 Financial Audit and provides a copy of the Library's IRS 1023 Form from 1991.⁶

Here, upon consideration of all the evidence submitted, the Library has established that, while its Board members are appointed by the County Commissioners, as required by the Public Library Code, the Library itself is not under government control as the day-to-day activities, governance and administration of the Library is done by the Board members, without County oversight. Further, the Library receives funding from various sources, and while it receives

⁶ This form is an Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

government funding, this fact alone is not enough to transform a private nonprofit corporation into a local agency under the RTKL. *See Hadley, supra*. Therefore, as there is no evidence before the OOR of any governmental control that would make the Library a “similar governmental entity,” the Library is not a local agency, and thus, not subject to the RTKL and the OOR lacks jurisdiction over this appeal. *See MacNeil v. Sharon Hill Boro. Library*, OOR Dkt. AP 2021-1015, 2021 PA O.O.R.D. LEXIS 1472 (a public library is not a local agency under the RTKL); *Boyer, supra*.

CONCLUSION

For the foregoing reasons, the appeal is **dismissed for lack of jurisdiction**, and the Library 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 to the Bucks 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.⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 23, 2023

/s/ Erin Burlew

ERIN BURLEW, ESQ.
SENIOR APPEALS OFFICER

Sent via portal only to: David Bedillion; John Doran, Karen A. Diaz, Esq.

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).