



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DARREN LAUSTSEN,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2022-2486
	:	
PENNRIDGE SCHOOL DISTRICT,	:	
Respondent	:	

FACTUAL BACKGROUND

On October 19, 2022, Darren Laustsen (“Requester”) submitted a request (“Request”) to the Pennridge School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

Seeking a report that should be available from the [D]istrict’s electronic library system (Follet Destiny). See attached pages for screenshots. Specifically requesting a ‘Library-> titles’ report exported to either Excel or XML. The report should include all titles checked out by those patrons that are NOT [s]tudents. No personal information specifically identifying an individual patron is required. The report can be limited to Pennridge High School.

As the Requester did not receive the District’s response within five business days of the Request, on October 27, 2022, the Requester filed an appeal with the Office of Open Records (“OOR”) claiming that the Request was deemed denied. *See* 65 P.S. § 67.901. 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.

On October 28, 2022, the District provided the Requester with a report showing “the call number, bar code, and title/description of the books checked out by non-students that are current as of [October 28, 2022] for the Pennridge High School (meaning, these are the books currently checked out by non-students).” On October 30, 2022, the Requester contacted the OOR seeking a one week extension of the submission deadline in order to resolve the Request. On November 21, 2022, the parties notified the OOR indicating that the parties were unable to resolve the Request and wanted to proceed with the appeal.

On November 23, 2022, upon agreement of the parties, the submission deadline was extended to November 30, 2022 and the final determination deadline was extended to December 30, 2022.

On November 30, 2023, the District submitted a position statement arguing that the appeal is moot because it “provided Requester with the two types of reports that it has the capability of generating relating to non-student check out activity” and that the “[a]ppeal should be denied because the Request was not sufficiently specific and [the] Requester cannot modify his Request on appeal.” In support of its position, the District submitted the attestation (“Bolton Attestation”) of David Bolton, Ed.D.,¹ Superintendent of the District.

On December 12, 2023, noting that the District “was able to generate reports consistent with the Request and the Requester’s subsequent modifications of his Request during the [a]ppeal process and [that] it provided the reports to the Requester[,]” the OOR asked the Requester to

¹ Dr. Bolton is the direct supervisor of the individual responsible for RTK Requests filed with the District and assists the District’s Open Records Officer in responding to RTK Requests. Additionally, Dr. Bolton “specifically assisted in responding to the [RTK] Request at issue in this Appeal....”

succinctly identify what issues remain outstanding for the OOR to adjudicate or, in the alternative, whether the Requester would be seeking to withdraw the above-captioned appeal. That same day, the Requester responded that the “remaining issue for the OOR to adjudicate is whether the [District’s] production was complete.” The Requester argues that he has “the ability to compare the produced records to the online card catalog, which is the database from which the reports were drawn. From that evidence it’s clear that each of the produced reports are incomplete (and inconsistent with each other) despite the District’s assertions in the affidavit.”²

On December 12, 2022, the Requester submitted a position statement arguing that he “is requesting a complete report of the books that bear the status of being ‘checked out’ for review by non-students.”³ The Requester also submitted an attestation from the Requester made pursuant to 18 Pa.C.S. § 4904, with attached screen shots of “all potentially controversial titles that appeared to be checked-out by non-students (using ‘estimated waited in days’ of over 300 days as the indicator).”

On January 6, 2023, the OOR sought additional information from the parties while specifically asking the District to “provide evidence that it does not maintain a list of ‘titles checked out by those patrons that are not students.’” Both parties were provided the opportunity to supplement the record.

² The Requester also asked the OOR to confirm that the OOR received its November 30, 2022 submission and the Requester’s sworn statement. The OOR responded that it did not receive the Requester’s submission and asked the Requester to resubmit its submission.

³ As a way of background, the Requester sent an email to the Superintendent attempting to figure out which books are being reviewed for potential removal from the high school library. The Superintendent informed the Requester that “[w]ith the approval of Policy 109...[the District’s] librarians and curriculum supervisors will be reviewing [the District’s] current resources against the updated policy [and that it is] too early to have a list of resources [that the District] feel[s] need[s] to be reviewed based on the criteria.” However, the District does not have a list of banned books. In an attempt to figure out which books are being considered by the District for the potential ban, the Requester filed the instant Request seeking a “report [that] should include all titles checked out by those patrons that are not students.”

On January 13, 2023, the District provided a supplemental position statement arguing that the “check out time period in the online card catalog is not an indication of whether the book is checked out by a student or non-student account as alleged by Requester.” The District further explained the difference between student and non-student accounts and argues that it “does not maintain a list of titles checked out by those patrons that are not students.” The District maintains that it “only has the capability to run reports that can show those books that are checked out by non-student accounts.” Finally, the District submitted the supplemental attestation of Dr. Bolton (“Bolton Supplemental Attestation”).

On January 13, 2023, the Requester submitted a supplemental position statement arguing, among other things, that the “District’s new evidence does not establish that they cannot provide the requested information.”

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. The appeal is moot as to any responsive records provided by the District during the pendency of this matter

Here, the Request seeks a report of “all titles checked out by those patrons that are not students.”⁴ On October 28, 2022, the District provided the Requester with an excel spreadsheet (“report”) of non-student check outs for October 28, 2022. This report “includes the call number, bar code, and title/description of the books checked out by non-students that are current as of [October 28, 2022] for the [District] (meaning, these are the books currently checked out by non-students).”⁵ The District also provide the Requester with another report on November 17, 2022. Bolton Attestation, ¶ 12. As such, based on a review of the report and the Bolton Attestation, the District has demonstrated that it produced records that are responsive to the Request. Therefore, the appeal as to those records is dismissed as moot. *See Kutztown Univ. of Pa. v. Bollinger*, 2019 Pa. Commw. Unpub. LEXIS 521, *6 (holding that an appeal is properly dismissed as moot where no controversy remains).

2. The District proved that no additional records responsive to the Request exist.

The District contends that it provided records responsive to the Request, that it has no additional reports in its possession, and that it is unable to generate additional reports responsive to the Request. In support of that position, the Bolton Supplemental Attestation states as follows:

1. Books in the online card catalog with longer check out periods, including periods of more than 250 days, can be, and are at times, books that are checked out by student accounts. Check out times of this length also exist for non-student accounts. The check out time period in the online card catalog is not an indication of whether the book is checked out by a student or non-student account as alleged by Requester.

⁴ While the OOR commends the parties attempt to resolve the instant matter during the pendency of the appeal, the OOR has repeatedly held that a requester may not modify, explain or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Pa. Dep’t of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a requestor requests a specific type of record ... the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request.”). Therefore, the OOR must look at the Request “as written” by the Requester.

⁵ The OOR notes that this report contains a list of 121 titles.

2. The reports the District is capable of generating show the activity of student and non-student accounts, *i.e.* the patron status assigned to the account.
3. The reports do not show, and are not capable of showing, only those books that are specifically checked out by non-students (as individuals). The District does not maintain a list of titles checked out by those patrons that are not students. Rather, the District has only the capability to run reports that can show those books that are checked out by non-student accounts.
4. The significance of this distinction is that, as previously attested, non-students may be utilizing a student account to check-in/check-out books for various reasons, including because “a faculty member does not have their ‘patron’ status updated appropriately in the system or that a faculty member checked out a book under a student account designation such that those books – while technically checked out by non-students – would not populate in the non-student reports discussed above because they show as student check outs in the system.” Meaning, books may be checked-out by non-students (as individuals) but those books do not show up under the non-student reports (both Status and Transactions) because those books are checked out by non-students under student accounts.
5. To be more clear about the November 17, 2022 Status Report provided to the Requester, it contained all of the book titles that the system generated as being checked out on that date by *non-student patron accounts* pursuant to the report generating function in Destiny. This same clarification applies with equal force to the Transaction Report that was provided to Requester which contained all of the book titles that the system generated as being checked-in/checked-out by date by *non-student patron accounts* pursuant to the report generating function in Destiny.
6. In sum, the District does not maintain a list of titles checked out by those patrons that are not students. The District does not have the ability to generate a report from its Destiny report builder system that will create a list of titles checked out by those patrons that are not students (as individuals). Instead, the District can generate reports (Status and Transaction) from its Destiny report builder system that will create a list of titles checked out by non-student accounts.
7. The online card catalog is not the same as the Transactions Report. The online card catalog is a library search tool permitting any member of the public to run keyword searches for library books contained in the District’s system. The online card catalog indicates the number of copies of a particular title that are registered in the system, whether any copies of the title are available at present (*i.e. not checked out*), whether any copies of the titles are checked-out at present, and provides an estimated due date of return for any checked-out copies as of the current date. In addition, the information available on the online catalog does not show the check-in/check-out activity for a specified time

- period for any particular book like the Transaction Report. Instead, it shows a snapshot in time of a book title's current status in the system (which may include multiple books of the same title). Meaning, it does not include the date the book was checked out/in. Importantly, the online card catalog does not show by what kind of patron account the book was checked out/in by.
8. On the other hand, the Transaction Report is generated through an internal report builder function that only District employees can access. It capture, by specified date range, check-out and check-in activity for books within a time frame and by patron status designation, *i.e.*, non-student accounts.
 9. The online card catalog would perhaps be more analogous to the Status Report in that it shows the current status of the book searched on that particular date rather than a historical representation of a book's activity over time like the Transactions Report. But, the online card catalog and the Status Report are also not the same.
 10. Unlike the Status Report, the online card catalog shows all current statuses of a book's title – both checked-in and checked-out status of all the books of that same title – not just checked-out status of a specific book which is what the Status Report shows. Again, however, like the Transaction Report, the Status Report can be run by patron account, student verses non-student account, whereas the online card catalog does not distinguish between the kind of patron account and does not show by what kind of patron account the book is checked out by.
 11. The online card catalog and the Destiny system utilized to run reports are linked to the same database such that the two systems have the same information and should be updating at the same time. Any direct comparison would have to occur at any given second in time as activity in the library, which occurs regularly, will affect the data, meaning a screenshot taken of the online card catalog on one day and time cannot necessarily be compared to a report run on a different day or even an hour later as interim activity would necessarily change the results. In any event, the inability to compare the online card catalog to the reports run is that the online card catalog does not distinguish between student versus non-student accounts whereas the reports do make such a distinction.
 12. The Destiny Report building function does have the capability of generating other kinds of reports. However, the Status Report and the Transaction Report are the only two kinds of reports that are responsive to the Request. Meaning, these are the only two kinds of reports that would generate reports of books that are checked-out by non-student accounts. As to lists or reports of books that are checked-out by non-students (as individuals), the District does not have records that exist that provide that information.

...

14. As it relates to the Request as written, the District does not have a report or list of “all titles checked out by those patrons that are NOT Students” as requested.

Under the RTKL, an attestation 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 additional responsive records exist, “the averments in [the supplemental attestation] 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)).

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).

The Requester argues that the District’s “new evidence does not establish that they cannot provide the requested information.” In support, the Requester submits screen shots of particular books that have been checked out from the District’s library for lengthy periods of time. The Requester submitted screen shots of “all potentially controversial titles that appeared to be checked-out by non-students (using ‘estimated waited in days’ of over 300 days as the indicator).” The Requester argues that “[n]one of the controversial titles that showed as ‘checked out’ in the public card catalog were listed in the report.” The Requester further argues that “[t]he reports [he has] received from the [D]istrict do not comport with what is listed in the online card catalog or even with each other.”

The Commonwealth Court has held that an agency cannot be made to create a record that does not exist. *See Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010); *see also Commonwealth v. Cole*, 52 A.3d 541, 549 (Pa. Commw. Ct. 2012) (“[D]rawing information from a database does not constitute creating a record under the Right-to-Know Law”); *see also Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38, *21 (Pa. Commw. Ct. 2012) (“[P]ulling information from a database is not the creation of a record”). “To hold otherwise would encourage an agency to avoid disclosing public records by putting information into electronic databases.” *Cole*, 52 A.3d at 549. “An agency need only provide the information in the manner in which it currently exists.” *Id.* at 547. An agency is not required to create a list or spreadsheet containing the requested information; “the information ... must simply be provided to requestors in the same format that it would be available to agency personnel.” *Id.* at 549 n.12.

As noted in *Cole*, the Commonwealth Court in *Gingrich* found that drawing information from a database does not constitute creating a record under the RTKL. The Court explained:

In *Gingrich*, a requester sought information relating to Pennsylvania’s annual deer harvest, habitat programs, and related financial information. The requester sought information contained in the Game Commission’s database and suggested possible formats for the Game Commission to produce that information. The Game Commission denied the request on the grounds that it did not have to create a record and the information sought did not exist in the formats identified by the requester. This Court held that suggesting a possible format in which to present the requested information was not an improper request to create a record. Specifically, we held that an agency can be required to draw information from a database, although the information must be drawn in formats available to the agency. In short, to the extent requested information exists in a database, it must be provided; an agency cannot claim otherwise under Section 705 of the [RTKL].

Cole, 42 A.3d at 548 (emphasis added). Notably, in *Gingrich*, with respect to the portion of the request seeking “Deer Totals,” the Court determined that, while the request sought information from the Game Commission’s Deer Harvest database, the Commission demonstrated that “it does not retain deer harvest data separating antlerless and ‘button bucks’” in the database. As a result, the Court found that those particular records did not exist and, pursuant to 65 P.S. § 67.705, the Game Commission was not required to create a record in order to respond to the request. *Gingrich*, 7 2012 Pa. Commw. Unpub. LEXIS 38 at *20; *see also Scicchitano v. Pa. Interscholastic Ath. Ass’n*, OOR Dkt. AP 2019-1504, 2019 PA O.O.R.D. LEXIS 1521 (holding that the agency was not required to create a database in response to a RTKL request). Similar to *Gingrich* and *Scicchitano*, here, the District is asserting that it provided the Requester with information it is able to extract from its database and to the extent the Requester is seeking additional information, it is not maintained in a manner by which the District could extract it from a database in order to provide it to the Requester.

Here, the Request specifically seeks a report that “include[s] all titles checked out by those patrons that are NOT [s]tudents.” In its supplemental position statement, the District explains that “the check out time period in the online card catalog is **not** an indication of whether the book is checked out by a student or non-student account as alleged by Requester.” Furthermore, the

District indicates that “the reports the District is capable of generating show the activity of student and non-student accounts, *i.e.* the patron status assigned to the account...” and “has only the capability to run reports that can show those books that are checked out by non-student accounts.”⁶ In sum, the District argues that it “does not have the ability to generate a report from its Destiny report builder system that will create a list of titles checked out by those patrons that are non-students (as individuals). Instead, the District can generate reports (Status and Transaction) from its Destiny report builder system that will create a list of titles checked out by non-student accounts.”⁷

Additionally, both the Bolton Attestation and the Bolton Supplemental Attestation explain that the District “provided Requester with the reports it was capable of generating through repeated attempts to gain clarification from [the] Requester concerning his Request as part of the [a]ppeal process.” Bolton Attestation, ¶ 26.⁸ Furthermore, a review of the Report identifies 121 book titles that are checked out by non-students showing “the call number, bar code, and title/description of the books checked out by non-students that are current as of [October 28, 2022] for the Pennridge High School (meaning, these are the books currently checked out by non-students).” Therefore, based on the evidence submitted, including the attestations by the District Superintendent, the District has met its burden, by a preponderance of the evidence, that no additional records responsive to the Request exist within its possession, custody or control. *See Hodges v. Pa. Dep’t*

⁶ The District further explains that “non-students may be utilizing a student account to check-in/check-out books for various reasons, including because ‘a faculty member does not have their ‘patron’ status updated appropriately in the system or that a faculty member checked out a book under a student account designation such that those books – while technically checked out by non-students – would not populate the non-student reports discussed above because they show as student check outs in the system.”

⁷ The District also explains that “the Status Report and the Transaction Report are the only two kinds of reports that are responsive to the Request.” Nothing in this final determination precludes the Requester from filing future Requests seeking a report of books checked out by student accounts.

⁸ To the extent the District’s IT Department is unable to sync the online catalog with the reports it is able to generate and send to the Requester, the RTKL does not require that agencies organize, compile or maintain their records in a certain way. *See* 65 P.S. 67.705.

of Health, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022).

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, 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 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.⁹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 27, 2023

/s/ Lyle Hartranft

LYLE HARTRANFT, ESQ.
APPEALS OFFICER

Sent via email to: Darren Laustsen; Joy Ramsingh, Esq.; Nancy Chenoweth, AORO;
Tricia Springer, Esq.

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