pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JONATHAN ALTIERI,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2023-0022**
	:	
TAYLOR COMMUNITY LIBRARY,	:	
Respondent	:	

FACTUAL BACKGROUND

On December 19, 2022, Jonathan Altieri ("Requester") submitted a request ("Request") to the Taylor Community Library ("Library") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking "all Emails to and from your [specified email account] regarding the following terms: 'service animal policy' 'service dogs' between 10/15/22 and 12/1/22."

The Library did not respond within five business days, and the Request was therefore deemed denied on December 27, 2022. *See* 65 P.S. § 67.901. On January 4, 2023, the Requester appealed to the Office of Open Records ("OOR"), challenging the deemed denial and stating grounds for disclosure. 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).

From January 9, 2023 through January 25, 2023, the OOR received numerous emails from the Requester with supporting argument and information regarding government regulation of

libraries, sources of library funding, and tax documents of the Library for the 2020 tax year.

On January 24, 2023, the OOR sought evidence from the Library in this appeal. The Library requested additional time to submit evidence which the OOR granted and the record closing date was set for January 27, 2023. The Requester sent additional emails containing arguments; however, the Library did not respond to the OOR's invitation to submit competent evidence in this appeal.

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.

Here, the Library is 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..." *Id.* Therefore, the question becomes whether the Library is a "similar governmental entity."

In *Pysher v. Clinton Twp. Volunteer Fire Co.*, 209 A.3d 1116 (Pa. Commw. Ct. 2019), the Commonwealth Court discussed its decision in *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*.

The determination of whether an entity is an agency under the RTKL is a fact-specific inquiry; thus, the OOR sought evidence from the Library to aid in this inquiry. The Library failed to provide the OOR with any evidence and therefore the OOR cannot conclude the Library is not a "similar governmental entity" under the RTKL. Thus, in light of the Library's failure to submit any evidence in the matter, the OOR is constrained to hold that the Library is an agency under the RTKL. Furthermore, because the Library raised no other reason to deny access to the requested emails, the OOR is constrained grant the appeal as to the emails.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Library is required to provide all responsive records within thirty days. 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 Lackawanna 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.[1] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: February 3, 2023

/s/ *Catherine R. Hecker*

CATHERINE R. HECKER, ESQ.
APPEALS OFFICER

Sent via email to: Jonathan Altieri
Jeanie Sluck

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