



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**CARRIE HAHN,
Requester**

v.

**LAWRENCE COUNTY,
Respondent**

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Docket No: AP 2024-0257

FACTUAL BACKGROUND

On January 4, 2024, Carrie Hahn (“Requester”) submitted a request (“Request”) to Lawrence County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[1.] Election Board Agendas and Meeting Minutes in their original electronic file format (to include metadata) for all meetings held in 2020, 2021, and 2022.

[2.] Election Board Agendas and Meeting Minutes in their original electronic file format (to include metadata) for all meetings held in 2023...

[3.] Election Board Meeting Minutes for the May 29, 2018 meeting in its original electronic file format (to include metadata).

As the County did not respond within five business days of the Request, or by January 11, 2024, the Request was deemed denied on that date. *See* 65 P.S. § 67.901.

On January 22, 2024, the County issued an untimely response partially denying the Request, asserting that the Agendas for June 1, 2020 and June 7, 2021, as well as the Minutes for May 19, 2020, do not exist in its possession, custody or control.

On January 23, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ Specifically, the Requester argues that all responsive records were not provided and that the responsive records were not provided in original electronic format with metadata. 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 January 29, 2024, the County submitted an attestation made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, authored by Emily Sanchez-Parodi, Esq. (“Sanchez-Parodi Attestation”), the County’s Agency Open Records Officer (“AORO”). The County additionally asserts that responsive records were provided in the medium in which the records exist.

On February 1, 2024, the Requester requested additional time to submit evidence and objected to the Sanchez-Parodi Attestation.² On February 7, 2024, the Requester submitted a position statement, reiterating her objection to the Sanchez-Parodi Attestation and arguing that the agenda of the June 1, 2020 meeting exists. The Requester further requests that the OOR find that the County is acting in bad faith by failing to provide all requested records.

¹ While the County’s response was not timely because it did not assert a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Requester filed a timely appeal with the OOR within 15 business days, 65 P.S. § 67.1101(a).

² The OOR granted the Requester additional time to submit evidence. Additionally, the OOR does not have the jurisdiction to determine whether the AORO has a conflict of interest, and as such, this issue will not be addressed in this Final Determination. In order to develop the record, the County’s 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”). Lastly, Exhibit A of the Requester’s position statement references meeting minutes, not the agenda as stated by the Requester.

LEGAL ANALYSIS

The County 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 County 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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The County provided the records in the requested format

The Requester states the provided records were not in the format requested. Specifically, the Requester indicates that the records should be provided in their original electronic file formats. The County argues it provided copies of the records in the requested format and, as such, it has performed its duty under the RTKL.

Section 701 of the RTKL provides that “[a] record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists.” 65 P.S. § 67.701. The RTKL does not define “medium;” however, the OOR has defined it “as the substance through which something is transmitted or carried, a ‘means,’ such as on paper or on the hard-drive or on a database or over the internet.” *Acton v. Fort Cherry Sch. Dist.*, OOR Dkt. AP 2009-0926, 2009 PA O.O.R.D. LEXIS 786, *aff’d*, No. 2010-719

(Wash. Com. Pl. July 26, 2011), *aff'd*, 38 A.3d 1092 (Pa. Commw. Ct. 2012), *petition for allowance of appeal denied*, 57 A.3d 72 (Pa. 2012). “Under the RTKL, ‘medium’ is a broad term, and ‘electronic medium’ encompasses all electronic formats.” See *Hahn v. Lawrence Cnty.*, OOR Dkt. AP 2020- 0181, 2020 PA O.O.R.D. LEXIS 1893; *Cap v. Lehigh and Northampton Transp. Auth.*, OOR Dkt. AP 2013-0168, 2013 PA O.O.R.D. LEXIS 112.

The OOR has previously differentiated “medium” from “format.” In *Bowling v. Pa. Emgcy. Mgmt. Agency*, the requester sought copies of “electronic spreadsheets,” and the agency provided the documents in .pdf format rather than in Excel format. OOR Dkt. AP 2009-0128, 2009 PA O.O.R.D. LEXIS 607, *rev'd on other grounds*, *Bowling v. Office of Open Records*, 990 A.2d 813 (Pa. Commw. Ct. 2010), *aff'd*, 75 A.3d 453 (Pa. 2013). The OOR held that:

The RTKL provides requesters with the right to inspect and duplicate. Duplication is a snapshot, a static record that cannot be altered or modified, in other words, a “copy.” [Section 701(b) of the RTKL] specifically prevents access to an agency’s computer, evidencing intent to protect government records and files from any interference. By providing a pdf file, [the agency] complied with the RTKL by duplicating its spreadsheet and [the requester] received the “information” requested. It was provided in an electronic medium and there is no requirement to provide records in a manner that would subject them to alteration or manipulation. [The requester] received the record, as defined by the RTKL, which he requested.

OOR Dkt. AP 2009-0128, 2009 PA O.O.R.D. LEXIS 607.

The appeal submissions made by the Requester affirm that responsive records were provided to the Requester in an electronic format, but not in the specific electronic format sought by the Requester. Under *Bowling*, the County’s actions are permissible because the Request asked for the information in an electronic medium, and the County provided the responsive records in an electronic medium. See 65 P.S. § 67.701(a). Therefore, the Requester received the responsive records in the medium requested, and the County did not violate the RTKL by providing the information in .pdf format via email rather than “in an original electronic file format (to include

metadata)” sought by the Requester. *See Vierling v. Pa. Dep’t of Health*, OOR Dkt. AP 2018-1787, 2018 PA O.O.R.D. LEXIS 1518 (the department was not required to provide responsive lists in the requested Excel spreadsheet format, and properly provided responsive records in PDF format, even though more difficult to read and disorganized); *Simmons-Ritchie v. Pa. Dep’t of Cmnty. and Econ. Dev.*, OOR Dkt. AP 2017-0426, 2017 PA O.O.R.D. LEXIS 559, *11-12 (citing *Curry v. West Vincent Twp.*, OOR Dkt. AP 2013-0507, 2013 PA O.O.R.D. LEXIS 230 (denying an appeal where the township provided the records in PDF format even though the requester expressly requested, and the township possessed, the records in Word format)).³

2. The County demonstrated it does not possess additional responsive records

The County asserts that other than the records provided, no further records responsive to the Request exist in the County’s possession, custody or control. 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.

³ The Requester does not describe specifically the “original electronic file format” requested; however, as denoted in the Sanchez-Parodi Attestation, “[w]hile the agenda and minutes of the Election Board may be typed/created via a computer program, such as Word, the agenda and minutes proposed for approval to the Election Board exist in printed, hard-copy, paper format, and until the Election Board votes to approve the agenda and minutes, there is no official agenda or minutes.” *See Sanchez-Parodi Attestation* ¶ 12. Thus, hard copies would need to be scanned and no further electronic medium would exist that would be responsive to the Request. Additionally, metadata is only created from an electronic file and would only have been created at the time the hard copy minutes and agendas were scanned and provided to the Requester.

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).

Here, the Request seeks minutes and agendas resulting from the meetings of the Election Board. Specifically, the Requester claims that the agendas for June 1, 2020 and June 7, 2021, as well as the minutes for May 19, 2020, were not provided. In support of the County's argument that it does not possess any additional responsive records, the Sanchez-Parodi Attestation indicates, in relevant part, as follows:

3. Upon receipt of the [R]equest, I conducted a thorough examination of files in the possession, custody and control of the [County] for records responsive to the [R]equest underlying this appeal[.] [S]pecifically[,] I have inquired with the Director or Voter Services, Tim Germani, and the Administrative Assistant for the Commissioners' Office, Kristine Venasco, who are the relevant [County] personnel.

4. After inquiring with relevant [County] personnel, I was provided with all records within the [County's] possession, custody or control that are responsive to the [R]equest and provided them to the [R]equester.⁴

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 the absence of any evidence that the County has acted in bad faith or that additional responsive records exist, "the averments in the [attestation] should be accepted as true." *McGowan*

⁴ The Sanchez-Parodi Attestation further indicates in a chart that the records specifically mentioned by the Requester do not exist. *See Sanchez-Parodi Attestation* ¶ 14.

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)).

The County's attestation is authored by the AORO. The County has demonstrated that its AORO conducted a good faith search, which included inquiries with relevant County personnel. While the Requester argues the County failed to inquire with its technology department, the approved minutes and agendas existed in hard copy format, making such an inquiry unnecessary. Based on the evidence provided, the County has demonstrated that it does not possess additional records responsive to the Request. There has been no sufficient evidence provided that otherwise contradicts the statements offered by the County in the attestation submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the County has met its burden of proof that additional responsive records do not exist.⁵ *Hodges*, 29 A.3d at 1192.

3. The OOR declines to make a finding of bad faith

The Requester presents a claim concerning the County's actions in regard to the instant Request and appeal, as well as general concerns about the County's assertion that responsive records do not exist. While the OOR may make findings of bad faith, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a). Under the RTKL, a finding of bad faith is appropriate where an agency refuses to comply with its statutory duties under the RTKL. *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 243 A.3d 19, 28-29 (Pa. 2020); *California Univ. of Pa. v. Bradshaw*, 210 A.3d 1134 (Pa. Commw. Unpub. 2021), *appeal*

⁵ The OOR makes no determination as to whether additional records *should* exist, as our inquiry is limited to only whether or not records are "in existence and in possession of the ... agency at the time of the right-to-know request." *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705.

denied, 2019 PA LEXIS (Pa. 2019); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017).

In the instant matter, we decline to make a finding of bad faith. While the County provided an untimely response to the Request, the County timely and fully participated on appeal. As such, a finding of bad faith is not warranted in this instance.

CONCLUSION

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 to the Lawrence 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; 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.⁶ 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 12, 2024

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Carrie Hahn (via portal only)
Emily Sanchez-Parodi, Esq. (via portal only)

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).