



FINAL DETERMINATION

IN THE MATTER OF

**KEITH CHRISTIAN,
Requester**

v.

**BLAIR COUNTY DISTRICT
ATTORNEY'S OFFICE,
Respondent**

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Docket No.: AP 2024-0658

FACTUAL BACKGROUND

On February 12, 2024, Keith Christian ("Requester"), an inmate at SCI-Camp Hill, submitted a request ("Request") to the Blair County District Attorney's Office ("Office") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking: "[1] a multijurisdictional warrant for case No. CP-07-CR-002050-2017 and (2) the policing rule and procedure for an invalid multijurisdictional warrant and hearing date if necessary for a legal resolution of an invalid warrant[.]" The Office did not respond within five business days of receiving the Request, and the Request was, therefore, deemed denied on February 20, 2024.¹ *See* 65 P.S. § 67.901.

On March 7, 2024, the Requester appealed to the Office of Open Records ("OOR"). The OOR invited both parties to supplement the record and directed the Office to notify any third

¹ The Requester submitted a copy of a February 16, 2024 response from the Office; however, the Office's Open Records Officer attests that the letter is a response to a different RTKL request submitted to the Office by the Requester. *See* Wilt Attestation, ¶ 3.

parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c). On March 11, 2024, the Office submitted the attestation made under the penalty of unsworn falsification to authorities of Julia Wilt, Esq., Open Records Officer for the Office, who attests that no records responsive to Item 1 of the Request exist and that Item 2 asks the Office to conduct legal research. On March 19, 2024, the Requester submitted an attestation made under the penalty of unsworn falsification to authorities, in which he states that the Office should obtain the requested warrant from the Attorney General's Office.

LEGAL ANALYSIS

The Office 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 Office 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 Office has proven that the requested warrant does not exist within its possession, custody or control

The Office argues that it does not possess any warrants responsive to Item 1 of the Request. 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).

In support of the Office’s position, the Wilt Attestation provides that the Office’s Open Records Officer conducted a search of the Office’s electronic and physical files, including searching all files relating to all of the Requester’s 2017 criminal cases with the Office, and that no “multijurisdictional warrant” exists.² *See* Wilt Attestation, ¶¶ 5-6. Therefore, based on the evidence provided, the Office has proven that no records responsive to Items 1 the Request exist within its possession, custody or control.³ *See Pa. Dep’t of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022); *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

² Under the RTKL, an attestation or statement made under the penalty of perjury is competent evidence to sustain an agency’s burden of proof. *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 Office has acted in bad faith or that the requested record exists, “the averments in [the attestation] 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)).

³ While the Requester argues that the Office should obtain the requested warrant from the Attorney General’s Office, nothing in the RTKL requires an agency to obtain a record that does not exist in its possession, from another agency.

2. Item 2 of the Request requires the Office to perform legal research

The Office argues that Item 2 of the Request requires the Office to conduct legal research, and is therefore, not a request for a record under the RTKL. The Commonwealth Court has found that “[a] request that explicitly or implicitly obliges legal research is not a request for a specific document; rather it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request.” *Askew v. Pa. Off. of the Governor*, 65 A.3d 989, 993 (Pa. Commw. Ct. 2013); *see also* 65 P.S. § 67.703. A request for an agency to identify the legal authority to take specific actions would obligate legal research. *See Pa. Dep’t of Envtl. Prot. v. Legere*, 50 A.3d 260, 264 (Pa. Commw. Ct. 2012); *see also Pa. Dep’t of Corr. v. St. Hilaire*, 128 A.3d 859 (Pa. Commw. Ct. 2015); *Rogers v. Lycoming Cnty.*, OOR Dkt. AP 2022-1027, 2022 PA O.O.R.D. LEXIS 1271 (holding that a request seeking authority to tax a property required legal research). An agency cannot be required to perform legal research for a requester. *See Gilmore v. Pa. Bd. of Prob. and Parole*, OOR Dkt. AP 2017-0821, 2017 PA 5 O.O.R.D. LEXIS 778; *Lerner v. City of Phila. Dep’t of Revenue*, OOR Dkt. AP 2016-1470, 2016 PA O.O.R.D. LEXIS 1306.

Item 2 asks the Office to conduct legal research to determine which rules and procedures might be responsive to the Request, and to provide such applicable legal authority to the Requester. Therefore, Item 2 of the Request does not seek records under the RTKL.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Office 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 or petition for review to the Blair 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 according to court rules 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.⁴ 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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 19, 2024

/s/ Kathleen A. Higgins

KATHLEEN A. HIGGINS
DEPUTY CHIEF COUNSEL

Sent to: Keith Christian, QD7754 (via U.S. Mail);
Julia B. Wilt, Esq. (via OOR portal)

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).