



FINAL DETERMINATION

IN THE MATTER OF

**TRICIA MEZZACAPPA,
Requester**

v.

**NORTHAMPTON COUNTY,
Respondent**

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Docket No.: AP 2024-0674

On January 17, 2024, Tricia Mezzacappa (“Requester”) submitted a request (“Request”) to Northampton County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “electronic copies of all emails and documents sent to and from any [C]ounty email address to Bernie [O]Hare, subject matter applications for Northampton [C]ounty [C]ouncil seat vacated by Tara [Z]rinski, time frame January 2024.” On January 18, 2024, the County invoked a thirty-day extension to respond; however, as the County did not respond within the extension period, the Request was deemed denied on February 23, 2024. *See* 65 P.S. § 67.902(b)(2).

On March 8, 2024, the Requester appealed to the Office of Open Records (“OOR”).¹ The

¹ The Requester granted the OOR an extension of time 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).”).

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).

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).

On March 20, 2024, the County submitted the sworn affidavit of Tyree Blair, Sr., Esq., Assistant Solicitor for the County, who affirms that the County conducted a good faith search of its records, which included directing its Information and Technology Department to conduct a search, and that no responsive records exist.² *See Blair Attestation*, ¶¶ 7-8. Therefore, based on

² Under the RTKL, an affidavit 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 County has acted in bad faith or that the requested records exist, “the averments in [the affidavit] 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)).

the evidence submitted, the County has proven that no responsive records 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).

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 or petition for review to the Northampton 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 23, 2024

/s/ Kathleen A. Higgins

KATHLEEN A. HIGGINS
DEPUTY CHIEF COUNSEL

Sent via OOR portal to: Tricia Mezzacappa;
Tyree A. Blair, Sr., Esq.

³ The Requester has not submitted any evidence disputing the County's argument that the requested records exist, but rather, on March 13, 2024, submitted a position statement asserting that she believed that the County would raise both the personnel records and internal, predecisional deliberations exemptions as reasons for withholding the records. *See* 65 P.S. §§ 67.708(b)(7), (10)(i)(A).

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