



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ALFONSO PEW,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2024-1336
	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS,	:	
Respondent	:	

On April 10, 2024, Alfonso Pew (“Requester”), an inmate at SCI-Phoenix, submitted a request (“Request”) to the Pennsylvania Department of Corrections (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the Department “commissary rotational item sheet showing salted almonds for the price of 80¢”. On May 2, 2024, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b), the Department denied the Request, stating that the records do not exist within the Department’s possession, custody or control.

On May 22, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Department 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 identified 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 all 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 June 3, 2024, the Department submitted a position statement describing its search for records, as well as a declaration, made under the penalties set forth in 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), from the Department’s Deputy Agency Open Records Officer, Yihsien Mandy Han (“Han Declaration”), who attests that a search was conducted and that no responsive records exist in the Department’s possession, custody or control.¹ *Han Declaration*, ¶ 8. The Han Declaration affirms that, in response to receiving the Request, Deputy

¹ 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 Department has acted in bad faith or that the requested records exist, “the averments in [the Han Declaration] 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)).

Agency Open Records Officer Han contacted the Sales and Marketing Manager for the Department's Corrections Industries, who would have knowledge of any existing records reflecting the pricing of inmate commissary items at the Department's correctional institutions. *Han Declaration*, ¶ 4. The Han Declaration further affirms that the Sales and Marketing Manager also inquired of an Administrative Officer within Correctional Industries to respond to Deputy Agency Open Records Officer Han's inquiry. *Id.* at ¶ 5. Both individuals informed Deputy Agency Open Records Officer Han that the price of salted almonds was never 80¢ and, therefore, no responsive records exist. *Han Declaration*, ¶¶ 6-7.

In this case, the Han Declaration is authored by the Department's Deputy Agency Open Records Officer, and there is nothing in the record that would cause the OOR to question the veracity of this Declaration.² *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Additionally, as explained above, Deputy Agency Open Records Officer Han inquired of the appropriate individuals within the Department's Correctional Industries, which is the entity with knowledge of any existing records reflecting the prices of commissary items within the Department's correctional institutions, and these individuals confirmed that the records sought by the Requester do not exist. Therefore, based on the evidence provided, the Department has met its burden of proving that the records sought in the Request do not exist. *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 Department 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

² On his appeal form, the Requester claims that the Department is withholding responsive records "[b]ecause the price is wrong." On June 5, 2024, the OOR received a submission from the Requester stating that he is now unsure of the price of salted almonds and that it could be 90¢.

Commonwealth Court. 65 P.S. § 67.1301(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 65 P.S. § 67.1303, but 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.³ 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: 10 June 2024

/s/ Joshua T. Young

JOSHUA T. YOUNG
SENIOR DEPUTY CHIEF COUNSEL

Sent to: Alfonso Pew, #BT-7263 (via U.S. Mail);
Ralph Salvia, Esq. and Yihsien Mandy Han, Deputy AORO (via e-file portal)

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