

On May 7, 2024, the County denied the Request in part, arguing that it does not have records responsive to Items 1-3 and part of Item 4 (addresses of State Representatives and County Officials) of the Request. The County granted the Request in part, providing the names sought in Item 4 of the Request.

On May 15, 2024,¹ the Requester appealed to the OOR, arguing that the Request was deemed denied.² 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 June 5, 2024, the County submitted the attestation of Jean Ann Hitchcock (“Hitchcock Attestation”),³ Open Records Officer for the County, reiterating its grounds for denial. On June 6, 2024, in response to a clarification request by the OOR, the County submitted a copy of its May 7, 2024 final response.

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.

¹ Although the appeal was received by the OOR on May 21, 2024, the Requester’s appeal was placed in the prison’s mail system on May 15, 2024, and, pursuant to the “prisoner mailbox rule,” this is considered the date of filing. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

² The County’s evidence demonstrates that it properly denied the Request on May 7, 2024. *See* County’s June 6, 2024 submission.

³ The Hitchcock Attestation is made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

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 County's assertions that it conducted a good faith search and that it has no records responsive to Items 1-3 and part of Item 4 of the Request, the Hitchcock Attestation⁴ states the following:

1. I serve as the Agency Open Records Officer ("AORO") for the Forest County Courthouse and am responsible for responding to [the Request].
2. In my capacity as the AORO, I am familiar with the records of the [County].
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 Request], specifically ... I have looked through the ordinances and the [C]ounty has none. I believe that information would fall under the municipality.
4. Additionally, I have inquired with relevant [County] personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession, specifically ... The Clerk of Courts researched their records and found no citations or fines filed against SCI[-]Forest between 2019 and 2024. We have no record of any shareholders as it is a State Correctional Institution. We sent [the Requester] the names of all of the officials and representatives for Forest County. We do not have any records of their addresses as they can be found on the internet.
5. Based upon the above-described search of the [County's] files and inquiries with relevant [County] personnel, I have made the determination that the records requested are not within the [County's] possession, custody or control.

⁴ Under the RTKL, an attestation is generally 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 competent evidence that the County acted in bad faith, "the averments in [the County's evidence] should be accepted as true." *McGowan 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 its Open Records Officer, who attests that she “conducted a thorough examination of files in the possession, custody and control of the [County] for records responsive to the [R]equest[,] specially ... [looking] through the ordinances and the [C]ounty has none.” Hitchcock Attestation, ¶ 4. Additionally, Ms. Hitchcock attests that she contacted the Clerk of Courts to research its files for citations or fines filed against SCI-Forest between 2019 and 2024 and that there are “no record of any shareholders as it is a State Correctional Institution.” *Id.* at ¶ 4. As such, the County “made the determination that the requested records are not within the [County’s] possession, custody, or control.” *Id.* at ¶ 5.

Thus, based on the evidence provided, the County has met its burden of proof that a good faith search was performed and that no records responsive to Items 1-3 and part of Item 4 of the Request exist in its possession, custody or control. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep’t of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022) (concluding that, in the absence of countervailing evidence, an agency may satisfy its burden of proving a record does not exist by submitting “either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record”).

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 Forest 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.⁵ 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: June 10, 2024

/s/ Lyle Hartranft

APPEALS OFFICER
LYLE HARTRANFT, ESQ.

Sent to: Charles Talbert, #QA4727 (via U.S. mail only)
Jean Ann Hitchcock, AORO (via OOR e-file Portal only)

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