



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
FRANK CURRY and FOIABUDDY,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2024-1311
	:	
SOUTH WESTERN SCHOOL DISTRICT,	:	
Respondent	:	

FACTUAL BACKGROUND

On May 14, 2024, Frank Curry and FOIABuddy (collectively “Requester”) submitted ten requests (“Requests”) to South Western School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to IT operations, contracts, staff, and IT budgets.

On May 20, 2024, the District denied the Requests, notifying the Requester that they had been unable to confirm that he was a qualified requester under the RTKL, and that his requests would be denied as anonymous unless and until he provided the District with evidence that he is a qualified requester.

On May 21, 2024, the Requester filed an appeal with the OOR, stating only that the District had wrongly denied his Requests and seeking a finding of bad faith. The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On June 6, 2024, the District submitted a position statement explaining that none of the information provided by the Request or on appeal could confirm that the Requester was a qualified requester under the RTKL. The District additionally submitted exhibits demonstrating how FOIABuddy's system worked and could produce an anonymous or de-anonymized request, arguing that the information in the Requests and on appeal are consistent with FOIABuddy's anonymous requests. In support of this argument, the District submitted the verification of its solicitor, Christopher Harris, who explains how the FOIABuddy system works and attested that the District has printed policies on its website banning anonymous requests.

LEGAL ANALYSIS

The District 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 District 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)).

1. The District was permitted to deny the Request as anonymous

On appeal, the District argues that the Requester is anonymous, and therefore it has no duty to fulfill the Request. Section 702 of the RTKL provides that:

Agencies may fulfill verbal, written or anonymous verbal or written requests for access to records under this act. If the requester wishes to pursue the relief and remedies provided for in this act, the request for access to records must be a written request.

65 P.S. § 67.702. The OOR interprets this section as affording agencies the discretion to fulfill or ignore anonymous requests. A “requester” is defined by the RTKL as “[a] person that is a legal resident of the United States....” *See* 65 P.S. § 67.102. Thus, under the RTKL, a requester must both be a “person” and “a legal resident of the United States.” While not defined by the RTKL, the Statutory Construction Act of 1972 (“SCA”) defines the term “person” to “[i]nclude[] a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S. § 1991. Finally, Section 703 of the RTKL requires that all written requests under the RTKL “shall include the name and address to which the agency should address its response.” 65 P.S. § 703.

Here, the District argues that it cannot determine whether the Requester is, in fact, “Frank Curry”, a resident of the United States or his contact information because the Requester has used FOIABuddy’s anonymous request function. In support of this argument, the District submitted the attestation of Attorney Harris, who attests that:

3. After reviewing the Requests, it was determined that “Frank Curry” was an anonymous requester and therefore the District denied the requests.
4. I signed up for an account on the FOIA Buddy website using a personal Gmail account.
5. Upon signing up, I received one (1) free credit whereby I could submit one (1) personal request to any agency in the United States.
6. I elected to submit a request to the District.
7. Exhibit A of the Position Statement reflects the blank form used.
8. Exhibit A of the Position Statement provides the form used that I completed and submitted to the District.
9. Exhibit A of the Position Statement also contains an accurate “pop-up” of when I clicked “yes” to the question of anonymity.

10. I submitted the personal request to the District in order to show that personal requests contain more information than “Frank Curry,” the Ashland, PA P.O. Box address, the FOIA Buddy phone number, and the FOIA Buddy email address.

11. The redacted portions of the form contain a personal address, personal phone number, and personal email address.

12. I called the “833-527-8748” number to verify “Frank Curry” was a person and was unable to do so.

13. I was unable to create a “@foiabuddy.com” email account when I signed up on the website.

14. It is still my belief that “Frank Curry” is synonymous with “John Doe” or “anonymous.”

Under the RTKL, statements made under penalty of 18 Pa.C.S. § 4904 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 District has acted in bad faith, the District’s evidence “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 District has adopted a policy of fulfilling only RTKL requests made by a legal resident of the United States, and its website notifies requesters that anonymous requests will not be fulfilled. In this case, the District argues that the instant Requests and appeal filings bear the hallmarks of filings which have been made through FOIABuddy’s “anonymous request” functionality. To demonstrate this, the District created a FOIABuddy account and submitted screenshots of the process of submitting a RTKL request, highlighting the option to use a proxy function which is “is designed to conceal your identity by using [FOIA Buddy’s] to submit requests on your behalf” and warns users of other states that use of the proxy system may see their requests

rejected because FOIABuddy has a listed Pennsylvania residency. District's Exhibit A. Additionally, the District notes that the listed phone number simply results in an automated message from FOIABuddy itself, stating that no questions regarding FOIA requests would be returned. It appears, therefore, that none of the contact information presented is that of a regular user of FOIABuddy, but instead simply information generated by the FOIABuddy system itself.

In contrast, the District used FOIABuddy to file an example non-private request with itself, and the FOIABuddy system sent the District a RTKL request containing all of the contact and personal information which the District had entered. As a result, the District's evidence suggests that the Requests in this matter are, in fact, anonymous requests using FOIABuddy's system, which advertises itself as sending RTKL requests out under a proxy identity. Because the District has submitted evidence tending to show that the Requests are anonymous requests, it has met its burden of proof that the Requests are anonymous and it was not required to respond to them.¹ 65 P.S. § 67.708(a)(1); *Del. County v. Schaefer ex rel. Phila. Inquirer*, 45 A.3d 1149 (Pa. Cmmw. Ct. 2012) (explaining that the evidentiary standard is "tantamount to a more likely than not inquiry.")

2. There is no evidence of bad faith

The Requester asks, in addition, that the OOR make a finding of bad faith, arguing that the District's failure to provide the responsive records constitutes bad faith.² Under the RTKL, a finding of bad faith may be appropriate where an agency refuses to comply with its statutory duties under the RTKL. *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161, 1172 (Pa.

¹ Additionally, on May 22, 2024, when granting the District's request for an extension, the OOR highlighted the argument that the Requester was anonymous and asked the parties to brief it by June 6, 2024. However, the Requester has not participated on appeal, nor argued that any of the District's position or evidence is inaccurate.

² Although the OOR may make a finding of bad faith, only a court may impose related penalties. Specifically, Section 1304(a) of the RTKL states that a court "may award reasonable attorney fees and costs of litigation...if the court finds...the agency receiving the...request willfully or with wanton disregard deprived the requester of access to a public record...or otherwise acted in bad faith..." 65 P.S. § 67.1304(a). Similarly, Section 1305(a) authorizes a court to "impose a civil penalty of not more than \$ 1,500 if an agency denied access to a public record in bad faith." 65 P.S. § 67.1305.

Commw. Ct. 2018), aff'd, 243 A.3d 19 (Pa. 2020); *see also Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119, 1140-41 (Pa. Commw. Ct. 2017) (“An example of bad faith is a local agency’s failure to comply with the mandate of Section 901 of the RTKL, which requires that a local agency make a good faith search for information responsive to a request and determination of whether that information is public.”). Bad faith involves failing to perform a detailed search and review of records to ascertain if the requested material exists or if any exclusion applies prior to denial of access. *See Uniontown*, 185 A.3d at 1172.

The OOR has made a finding of bad faith where an agency fails to provide evidence that it conducted a good-faith search, repeatedly ignored deadlines set by the OOR and the by RTKL and declined to address the OOR’s requests for clarification. *See Towne v. Pittsburgh Water and Sewer Auth.*, OOR Dkt. AP 2021-0292, 2021 PA O.O.R.D. LEXIS 307. The OOR has also found that an agency acted in bad faith where it demonstrated a pattern of invoking extensions but failing to respond to requests or participate in the appeals. *See Hayden v. City of Reading*, OOR Dkt. AP 2018-0244, 2018 PA O.O.R.D. LEXIS 402.

Here, the OOR concludes that the Requests were anonymous requests which the District was not required to respond to under the RTKL. Because the District promptly notified the Requester of this issue, it does not appear that the District has acted in bad faith, nor have the District’s tactics on appeal delayed the resolution of the Requests in any way. Therefore, the OOR cannot conclude that the District has acted in bad faith in responding to the Requests.

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied**, and the District 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 York 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, but as the quasi-judicial tribunal that adjudicated 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: June 20, 2024

/s/ Jordan Davis

SENIOR APPEALS OFFICER
JORDAN C. DAVIS

Sent via OOR portal to: Frank Curry;
Jeff Mummert;
Christopher Harris, Esq.

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