



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
ARTIS CARROLL,	:
Requester	:
	:
v.	:
	:
	:
LANCASTER COUNTY,	:
Respondent	:

Docket No: AP 2024-1564

On June 10, 2024, Artis Carroll (“Requester”) submitted a request (“Request”) to Lancaster County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, with respect to the Lancaster Public Library, “the first and last name and work email address of the two present security guards and ... the email address of Lissa Holland[,] the Executive Director[,] and the email of Coreena Byrnes[,] the Manager of Library Services.” On June 11, 2024, the County denied the Request, stating that the records do not exist within the County’s possession, custody or control. The County also explained that “the Library Services is a separate agency from the County ... and the employees at the Library Services are not employed by the County.”

On June 13, 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 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 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 25, 2024, the County submitted a position statement and the affidavit made subject to the penalties set forth in 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), from Lawrence George (“George Affidavit”), the County’s Chief Clerk, who attests that a search was conducted and that no responsive records exist in the County’s possession, custody or control.¹ The George Affidavit further affirms that he has firsthand knowledge that the individuals referenced in the Request are not employees of the County and that the County of Lancaster

¹ Under the RTKL, an affidavit 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 County has acted in bad faith or that the requested records exist in the County’s possession, custody or control, “the averments in [the George 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)).

Library is not a department under the control of the County. *George* Affidavit, ¶ 5. The *George* Affidavit is authored by the County's Chief Clerk, and there is nothing in the record that would cause the OOR to question the veracity of the Affidavit.² See *Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the County has met its burden of proof that it does not possess the records sought in the Request. *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 Lancaster 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 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 July 2024

/s/ Joshua T. Young

JOSHUA T. YOUNG
SENIOR DEPUTY CHIEF COUNSEL

Sent via e-file portal to: Artis Carroll;
 Jacquelyn Pfursich, Esq.;;
 Tammy Bender, AORO

² The Requester did not make a submission during the appeal.

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