



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
SIMON CAMPBELL,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2017-0786
	:	
INQUIRY CHARTER SCHOOL,	:	
Respondent	:	

On March 23, 2017, Simon Campbell (“Requester”) mailed a request (“Request”) to the Inquiry Charter School¹ (“Charter School”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, among other items, information regarding the Charter School’s payroll and the payment of union dues. Having received no response from the Charter School, the Requester filed an appeal with the OOR on April 19, 2017, alleging that the Request was deemed denied. *See* 65 P.S. § 67.901. The OOR invited both parties to supplement the record and directed the Charter School to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On April 27, 2017, the Charter School submitted a position statement, providing certain information to the Requester and stating that no other records exist. On May 5, 2017, the OOR directed the Charter School to provide additional evidence in support of its allegations regarding

¹ Inquiry Charter School is a Belmont Charter Network school.

the nonexistence of records. On May 12, 2017, the Charter School submitted an attestation of non-existence, which was made under the penalty of perjury, from Jennifer Faustman, the Charter School's Open Records Officer, and a copy of a final determination issued by the OOR involving another Belmont Charter Network school.

Under the RTKL, an attestation made under the penalty of perjury may serve as sufficient evidentiary support for the nonexistence of records. *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 Charter School acted in bad faith or that additional responsive records exist, "the averments in [the attestation] 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)). Since the Charter School has provided certain information sought in the Request and met its burden of proving that other responsive records do not exist within its possession, custody or control, the appeal is **denied in part** and **dismissed as moot in part**.

For the foregoing reasons, the Charter School 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 Philadelphia 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. 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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: 23 May 2017

/s/ Joshua T. Young

JOSHUA T. YOUNG, ESQ.
APPEALS OFFICER

Sent to: Simon Campbell (via e-mail only);
 Bianca Feliciano (via e-mail only)