



FINAL DETERMINATION

IN THE MATTER OF :
 :
CARMENCITA MARIA PEDRO, :
Requester :
 :
v. : **Docket No.: AP 2020-2159**
 :
CITY OF PHILADELPHIA, :
Respondent :

On October 15, 2020, Carmencita Maria Pedro (“Requester”) submitted a request (“Request”) to the City of Philadelphia (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking contracts and written agreements between Community Behavioral Health (“CBH”) and the City, including related records. However, the City did not respond within five business days and the Request was, therefore, deemed denied on October 22, 2020.¹ *See* 65 P.S. § 67.901.

On October 23, 2020, the Requester appealed to the Office of Open Records (“OOR”), stating grounds for disclosure. The OOR invited both parties to supplement the record.

On November 2, 2020, the City provided a website link that would contain responsive information; however, the City states that it is still gathering information and that it is attempting

¹ On October 23, 2020, the City invoked a thirty day extension to respond pursuant to 65 P.S. § 67.902(b); however, the Request was deemed denied on October 22, 2020. The City explains that it incorrectly entered the date of receipt as October 16, 2020 in its case management system, rather than October 15, 2020.

to fully understand the Request. On November 6, 2020, the Requester stated that the website provided by the City linked to a contract that expired and that because CBH and the City are still conducting business, there should be a contract for 2020. The Requester also asserts that the City has not fully complied with the Request.

Here, the City submitted no evidence demonstrating that it provided all responsive records to the Requester. While the City claims that it granted access to some records responsive to the Request, the City has not submitted evidence, *e.g.*, a statement made under the penalty of perjury, demonstrating that all of the responsive records have been provided to the Requester. As a result, the Requester's appeal is granted, and the City must conduct a good faith search for additional responsive records.

The OOR is mindful that an agency cannot produce records that do not exist within its "possession, custody or control" and, accordingly, is not ordering the creation of any records listed in the Request. Absent the City providing a sufficient evidentiary basis that records have been provided, the OOR will order disclosure. *See generally Sindaco v. City of Pittston*, OOR Dkt. AP 2010-0778, 2010 PA O.O.R.D. LEXIS 755; *Schell v. Delaware County*, OOR Dkt. AP 2012-0598, 2012 PA O.O.R.D. LEXIS 641.

For the foregoing reasons, Requester's appeal is **granted**, and the City is required to provide all responsive records within thirty days to the Requester. 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>.

FINAL DETERMINATION ISSUED AND MAILED: November 20, 2020

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent to: Carmencita Maria Pedro;
Feige Grundman, Esq.;

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