



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:
	:
<b>RALPH MCCLAIN,</b>	:
<b>Requester</b>	:
	:
<b>v.</b>	: <b>Docket No: AP 2021-0198</b>
	:
<b>PENNSYLVANIA DEPARTMENT OF</b>	:
<b>EDUCATION,</b>	:
<b>Respondent</b>	:

On December 22, 2020, Ralph McClain (“Requester”), an inmate at SCI-Greene, submitted a five-item request (“Request”) to the Pennsylvania Department of Education (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records regarding the Community College of Philadelphia (“C.C.P.”), including an “official statement of philosophy,” the names of the board trustees, and various organizational documents. On January 12, 2021, after extending its time to respond by thirty days, 65 P.S. § 67.902(b), the Department denied the Request, stating that it does not possess any responsive records.

On January 28, 2021, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties

---

<sup>1</sup> Due to an administrative error, the OOR’s Notice of Appeal packet was initially sent to the Requester using the Department of Corrections’ Smart Communications system. However, upon recognizing this mailing issue, the Notice of Appeal was resent directly to the Requester’s correctional institution on February 10, 2021. As of the date of this Final Determination, the Requester has not submitted any additional legal argument or evidence.

to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On February 9, 2021, the Department submitted a position statement and affidavits, made under the penalty of perjury, from Angela Riegel, the Department's Open Records Officer, and Michael Dotts, a Higher Education Associate within the Department's Office of Postsecondary and Higher Education, both of whom affirm that the Department does not possess the records sought in the Request. More specifically, Ms. Riegel attests that, after consulting with Mr. Dotts, she confirmed that the Department does not possess responsive records. Mr. Dotts attests, in relevant part, as follows:

[The Department] does not have any records in its possession or under its custody or control that are responsive to the ... [R]equest. I have confirmed this by personally checking [the Department]'s records.

It is my understanding, and per C.C.P.'s website, that C.C.P. was founded in 1964.

I found no records responsive to item 4 ... of the RTKL [R]equest. 22 Pa. Code § 35.11(d) states that "A final plan for the college shall be prepared by the board of trustees and shall be submitted to the Department at least 120 days prior to the opening of the college." I am not aware if C.C.P. filed a "final plan" with [the Department] at the time the college was established. If one was submitted to [the Department], [the Department] no longer has the records that were submitted over 50 years ago.

I found no records responsive to items 1 and 3 ... of the RTKL [R]equest. The original records would have been submitted over 50 years ago and the original versions have been purged from [the Department's] records. [The Department] does not mandate that community colleges file up-to-date copies of these documents on an ongoing basis.

I found no records responsive to items 2 and 5 ... of the RTKL [R]equest. [The Department] does not mandate that community colleges file up-to-date copies of these documents on an ongoing basis. On the C.C.P. website, a list of the Board of Trustees is maintained.<sup>2</sup>

---

<sup>2</sup> Mr. Dotts' affidavit correctly notes that the names of C.C.P.'s Board of Trustees can be found on its website at <https://www.ccp.edu/about-us/college-leadership> (last accessed February 16, 2021).

Under the RTKL, a sworn affidavit or statement 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 Department has acted in bad faith or that the requested records exist, “the averments in [the affidavits] 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)). Based on the evidence provided, the Department 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 Department 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 Commonwealth Court. 65 P.S. § 67.1301(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 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.<sup>3</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: 26 February 2021**

*/s/ Joshua T. Young*

---

JOSHUA T. YOUNG  
APPEALS OFFICER

Sent to: Ralph McClain, NP-7661 (via email only);  
Julius Zeitlinger, Esq. (via email only);  
Angela Riegel, AORO (via email only)

---

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