



FINAL DETERMINATION

IN THE MATTER OF

**SCOTT MACNEIL,
Requester**

v.

**SHARON HILL BOROUGH,
Respondent**

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Docket No: AP 2021-0681

On March 25, 2021, Scott MacNeil (“Requester”) submitted a request (“Request”) to Sharon Hill Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the check register for the Borough and the Sharon Hill Library (“Library”) from 2017-2020. On March 30, 2021, the Borough partially denied the Request, providing the check register for the Borough but claiming that it does not possess the register for the Library.

On April 1, 2021, 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 Borough to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On April 29, 2021 the Borough submitted the statement made under the penalty of perjury of William Smith, the Borough’s Open Records Officer, who attests that a search was conducted and that all responsive records in the Borough’s possession were provided to the Requester. Furthermore, in its position statement, submitted the same day, the Borough explains that the

Library is a separate legal entity formed under the Public Library Code and with its finances controlled by its board. 24 Pa.C.S. § 9318(c).

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 Borough has acted in bad faith or that the records exist, “the averments in [the statement] 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 Borough has met its burden of proof that it does not possess the Library’s check register sought in the Request. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the Requester’s appeal is **denied**, and the Borough 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 Delaware County Court of Common Pleas. *See* 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 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.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: May 3, 2021

/s/ Erin Burlew

ERIN BURLEW, ESQ.
APPEALS OFFICER

Sent to: Scott MacNeil (via email only);
Michael Schleigh, Esq. (via email only);
William Smith (via email only);
Terrance Oliver (via email only)