



FINAL DETERMINATION

IN THE MATTER OF

**ERNEST THOMAS,
Requester**

v.

**LEBANON COUNTY,
Respondent**

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Docket No: AP 2021-0797

On March 23, 2021, Ernest Thomas, an inmate at SCI-Benner (“Requester”) submitted a request (“Request”) to Lebanon County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “County Commissioner meeting minutes/notes that reference Family Works or Keystone Children and Family Services.” On March 24, 2021, the County denied the Request, stating that it does not possess any responsive records.

On April 15, 2021,¹ the Requester filed an appeal with the Office of Open Records (“OOR”), arguing that the Request was deemed denied and asserting that the County has been using a “blocking tactic” for over a decade, by failing to respond to his requests. The Requester argues that the County has acted in bad faith. 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).

¹ The Requester’s appeal was placed in the Department of Corrections’ mail system on April 9, 2021, and, pursuant to the “prisoner mailbox rule,” is considered timely filed. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

On April 21, 2021, the County submitted a sworn attestation, made under the penalty of perjury, from Jamie Wolgemuth, the County's Chief Clerk, County Administrator and County Open Records Officer, who attests that a search was conducted and that no responsive records exist in the County's possession, custody or control. More specifically, Mr. Wolgemuth attests that a good faith search was conducted of County files and that an inquiry was made of relevant County personnel regarding the existence of records. In addition, attached to the attestation is a copy of the Request containing written notes that individuals named Beth and Erin provided information that no records exist. In response to the OOR's request for clarification, on May 7, 2021, the County identified Beth and Erin as, Beth Lazorcik, the County Controller's Office Payables Clerk and Erin Moyer, the County's Children and Youth Administrator. Under the RTKL, a sworn 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).

Because the County's evidence demonstrates that it did respond to the Request within one day of receiving the Request and because the Requester relies on his unsworn and uncorroborated statement to support his argument that the County has been "blocking" his requests for decades, the record does not support a finding of bad faith.

Here, the Requester has not submitted competent evidence to dispute the County's position that no responsive records exist in its possession, custody or control. In the absence of any evidence that the County has acted in bad faith or that the requested meeting minutes 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)). 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*, 29 A.3d at 1192.

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 Lebanon 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 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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: May 10, 2021

/s/ Kelly C. Isenberg

APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

Sent to: Ernest Thomas/GY 2149 (via US Mail only);
Jamie Wolgemuth (via email only)

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