



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**LEONARDO MOJICA-CARRION,
Requester**

v.

**PENNSYLVANIA PAROLE BOARD,
Respondent**

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Docket No: AP 2021-1306

On June 21, 2021, Leonardo Mojica-Carrion (“Requester”), an inmate at SCI-Mahanoy, submitted a request (“Request”) to the Pennsylvania Parole Board (“Board”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “to know if Berks County Senior Judge Stephen B. Lieberman, Berks County District Attorney’s Colin R. Boyer and/or Todd Maya make any recommendations to the ... Board ... on behalf” of an identified individual and to know “the cost of copy of such recommendations.” On June 28, 2021, the Board denied the Request, stating that it does not possess any responsive records.

On June 30, 2021, the Requester filed an appeal with the Office of Open Records (“OOR”), stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and

¹ Because he had not yet received the Board’s final response in the mail, the Requester argued on his appeal form that the Request had been deemed denied. Regardless, based upon the information contained in the appeal documents, as well as the Board’s submission, which included a copy of the Board’s final response dated June 28, 2021, the OOR will reach the merits of the appeal. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

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

On July 13, 2021, the Board submitted a position statement and an attestation, made under the penalty of perjury, from David Butts, the Board's Open Records Officer, who attests that a search was conducted and that no responsive records exist in the Board's possession, custody or control. More specifically, Mr. Butts attests that he "reviewed the subject's parole file, housed in OnBase, this Agency's electronic record repository" and the "[s]earches of the above-described systems produced no record of recommendations made by the individuals named in the [R]equest."²

Under the RTKL, a 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 Board has acted in bad faith or that the requested 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 Board 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 Board 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

² The Requester did not make a submission during the appeal.

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.³ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 21 July 2021

/s/ Joshua T. Young

JOSHUA T. YOUNG
DEPUTY CHIEF COUNSEL

Sent to: Leonardo Mojica-Carrion, LS-0964 (via U.S. Mail only);
Morgan Davis, Esq. (via email only);
David Butts, AORO (via email only)

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