



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

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|---------------------------|---|---------------------------------|
| IN THE MATTER OF | : | |
| | : | |
| JOSHUA MONIGHAN, | : | |
| Requester | : | |
| | : | |
| v. | : | Docket No.: AP 2021-1225 |
| | : | |
| CUMBERLAND COUNTY, | : | |
| Respondent | : | |

On June 14, 2021, Joshua Monighan (“Requester”) submitted a request (“Request”) to Cumberland County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a certified copy of each public financial record of any unpaid fine by Shawn Smith in the custody of the County.

On June 21, 2021, the County denied the Request, stating that the records are available online and directed the Requester to the Unified Judicial System of Pennsylvania website.

On June 23, 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 County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On June 28, 2021, the County submitted a position statement along with an attestation, made under the penalty of perjury, of Lisa Woodward, the County's Open Records Officer, who attests, in part, as follows:

3. I know that the records ... are properly maintained by the Court of Common Pleas of Cumberland County and its affiliated row office, the Clerks of Courts.

...

5. Cumberland County is not the custodian of financial records of the Court of Common Pleas of Cumberland County.

6. In an effort to assist Mr. Monighan, by my letter dated June 21, 2021, I directed him to Pennsylvania's Uniform Judicial System website (www.ujportal.pacourts.us) to easily enable him to locate the records he requested via publicly accessible means.

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 County has acted in bad faith or that it possesses the requested records, "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 requested records. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

During the appeal, the Requester made a submission challenging the County's assertion that it does not possess the records. The Requester states that the judicial website would not have the records unless the County created the records. However, we have no evidence that contradicts the County's position and evidence, which proves that the County is not the custodian of the requested financial records. Furthermore, in the appeal filing, the Requester included a copy of a

Traffic Citation issued to Shawn Smith, suggesting that he is seeking financial records associated with court-related fines and fees. The Commonwealth Court has stated that the OOR lacks jurisdiction over the records of a judicial agency, including those in the possession of an agency within the OOR's jurisdiction. *See Court of Common Pleas of Lackawanna County v. Office of Open Records*, 2 A.3d 810 (Pa. Commw. Ct. 2010) (finding that the OOR lacked jurisdiction to order disclosure of records of a county domestic relations director because he was a judicial employee despite being paid by the county and the county having access to the records).

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 Cumberland County 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.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: July 21, 2021

/s/ Bina Singh

BINA SINGH, ESQ.
APPEALS OFFICER

Sent to: Joshua Monighan (via email only);
Jennifer Hipp, Assistant Solicitor (via email only);
Lisa Woodward, AORO (via email only)

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