



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**CHRISTOPHER RODKEY,
Requester**

v.

**YORK COUNTY,
Respondent**

:
:
:
:
:
:
:
:
:
:
:
:

Docket No: AP 2022-0098

FACTUAL BACKGROUND

On January 3, 2022, Christopher Rodkey (“Requester”) submitted a request (“Request”) to York County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking an attachment to an email from November 20, 2020. On January 6, 2022, the County denied the Request, arguing that the Request was duplicative and that the requested information was governed by the Pennsylvania Election Code, 25 P.S. § 2648.

On January 14, 2022, the Requester appealed to the Office of Open Records (“OOR”). On January 26, 2022, the County submitted a position statement, reiterating its reasons for denial, and arguing that the Request seeks the same information as in *Rodkey v. York County*, OOR Dkt. AP 2021-2121, 2021 PA O.O.R.D. LEXIS 2397, as well as in a third request that was submitted to the County by the Requester. In support of its position, the County submitted the attestation of Michelle Pokrifka, Esq., Open Records Officer for the County. On January 26, 2022, the Requester submitted a position statement arguing that his Request is not duplicative and that the

requested record is public. The Requester also argues that the County’s attestation is not sufficient. On March 3, 2022, in response to the OOR’s request for clarification regarding the contents of the requested record, the County submitted a supplemental attestation from Attorney Pokrifka.

LEGAL ANALYSIS

1. The Request is not duplicative

The County argues that the Request is duplicative as “[t]he information contained in the document being requested is the same information that was in the listing of registered voters that was obtained by a State Representative and was the subject of the appeal in AP 2021-2121, *Rodkey v. York County*.” However, Attorney Pokrifka attests that the Request in this instant matter is for a different email attachment, but that the contents of the document are the same as the information requested in the previous appeal. *See* Attestation of Michelle Pokrifka, Esq., ¶ 4; Second Attestation of Michelle Pokrifka, Esq., ¶¶ 3-4. Additionally, Attorney Pokrifka attests that the Requester did file a third request seeking the exact document that was requested in this matter, and that the Requester did not appeal the County’s denial of that request. *Id.* at ¶ 5. The County also provided a copy of a September 20, 2021 request, in which the Requester sought an email attachment from November 16, 2020.

Section 506(a) of the RTKL provides that “[a]n agency may deny a requester access to a record if the requester has made repeated request for that same record and the repeated requests have placed an unreasonable burden on the agency.” 65 P.S. § 67.506(a). “Under this section ... an agency must demonstrate that (1) ‘the requester has made repeated requests for th[e] same record[(s)]’ and (2) ‘the repeated requests have placed an unreasonable burden on the agency.’” *Pa. Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011); *see also Borough of West Easton v. Mezzacappa*, No. C-48-CV-2012-7973 (North. Com. Pl. Jan. 9, 2013) (“[A]

request is not disruptive when a requester [seeks] the same records only twice”), *aff’d* 74 A.3d 417 (Pa. Commw. Ct. 2013).

Here, the County concedes that the Request in the instant matter is not identical to the request in *Rodkey v. York County*, OOR Dkt. AP 2021-2121, 2021 PA O.O.R.D. LEXIS 2397. Therefore, although the County argues that a third request submitted by the Requester is identical to this Request, the OOR has routinely held that, for purpose of Section 506(a), a request is not considered to be repeated unless the same records have been sought at least three times.¹ *Mezzacappa, supra*. Accordingly, the County has not proven that the Requester has made repeated requests for the same records.

2. The requested record is not accessible under the RTKL

The Request seeks “[t]he attachment to the email (November 20, 2020) from Solicitor Pokrifka to Commissioner Smith, which was then forwarded to Rep. Mike Jones, containing appropriately redacted information that she created to share.” The County argues that the requested record is a listing of registered voters, and that pursuant to the Election Code, the record is not subject to access under the RTKL.

When the RTKL conflicts with another state law, the other law’s provisions regarding access to records applies. *See* 65 P.S. § 67.3101.1 (“[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply”). When examining the conflict between the Election Code and the RTKL, the OOR has found that, while the Election Code makes many records in the custody of the Election Board subject to public inspection by qualified electors, 25 P.S. § 2648, it does not make these records unconditionally

¹ The County submitted a copy of a request received on September 20, 2021 that seeks “an email attachment to Commissioners on November 16, 2020,” while the instant Request seeks “[t]he attachment to the email (November 20, 2020).” Therefore, due to the different dates, the OOR is unable to determine that the requests are for same record. Regardless, the County has not proven that the Requester has made duplicate requests under the RTKL.

available to the public. *See Obernier v. Crawford Cnty.*, OOR Dkt. AP 2017-2107, 2018 PA O.O.R.D. LEXIS 110 (analyzing Section 2648 of the Election Code and noting that it “creates a separate process for obtaining these records and conditions the public inspection and copying: 1) to qualified electors of the county, 2) during ordinary business hours, and 3) when the records are not being used by the elections board”); *see also Bloch v. Adams Cnty.*, OOR Dkt. AP 2018-2227, 2019 PA O.O.R.D. LEXIS 95. Because the records are not unconditionally public under the Election Code, the OOR must examine any exemptions from disclosure under the RTKL that are asserted by the agency when records of a County Elections Board are sought. *See Pa. Dep’t of Labor & Indus. v. Heltzel*, 90 A.3d 823, 833 (Pa. Commw. Ct. 2014). In the instant matter, however, the County has not raised any RTKL exemptions; therefore, the Election Code controls access to the requested records. *See id.*; *see also* 65 P.S. § 67.3101.1.

Attorney Pokrifka attests that “[t]he attachment being requested [is] printouts from the SURE (Statewide Uniform Registry of Electors) System, which are governed by the Elections Code ... [and that][t]he SURE documents were obtained in an effort to investigate concerns raised in an email from Representative Jones, which email was previously provided to the [R]equester.” Pokrifka Attestation, ¶¶ 6-7. Attorney Pokrifka further attests that the requested record contains voter registration information, including name, address, date of birth, social security number, and signature, and that the dissemination of information of registered voters falls under the Code. *Id.* at ¶ 8; Pokrifka Second Attestation, ¶ 4. The Requester argues that he “do[es] not dispute this claim” that the dissemination of information of registered voters falls under the Election Code, but that the confidential information has been redacted and previously shared, and therefore, is subject to disclosure in the instant matter.

The RTKL is clear that when it conflicts with another state law, the other law's provisions regarding access to records applies. *See* 65 P.S. § 67.3101.1. Therefore, the access provisions of the Election Code apply and, to access the requested records, the Requester must be a qualified elector of the county. There is no evidence presented that shows the Requester is a qualified elector of the County. Accordingly, although the records are accessible to qualified electors of the County, because there is no evidence that the Requester is a qualified elector, the records would not be accessible under the Election Code and are not, therefore, accessible under the RTKL. *See* 65 P.S. § 67.305(a)(3); 65 P.S. § 67.3101.1; *Bennett v. Lycoming Cty.*, OOR Dkt. AP 2021-2616, 2021 PA O.O.R.D. LEXIS 2680 (the RTKL does not apply since access to the records is governed by the Election Code, 25 Pa.C.S. § 2648). Additionally, as the requested information is not accessible under the RTKL, the County is not required to provide the record, even if redacted.²

CONCLUSION

For the foregoing reasons, the Requester's 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 to the York 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 as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper

² The Requester sought a finding of bad faith, arguing that “[t]he claim about multiple requests regarding this document is being made by the County in bad faith.” Section 1305(a) of the RTKL states that “[a] court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith.” 65 P.S. § 67.1305(a); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119, 1140-41 (Pa. Commw. Ct. 2017) (“An example of bad faith is a local agency’s failure to comply with the mandate of Section 901 of the RTKL, which requires that a local agency make a good faith search for information responsive to a request and determination of whether that information is public.”). Here, the record demonstrates that the County complied with the mandates of Section 901. Accordingly, based on the evidence presented, the record does not support a finding of bad faith.

party to any appeal and should not be named as a party.³ This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: March 8, 2022

/s/ Kathleen A. Higgins

KATHLEEN A. HIGGINS
DEPUTY CHIEF COUNSEL

Sent to: Christopher Rodkey (via email only);
Michelle Pokrifka, Esq. (via email only)

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