



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:
	:
<b>CAROL COLANGELO,</b>	:
<b>Requester</b>	:
	:
<b>v.</b>	: <b>Docket No.: AP 2022-0862</b>
	:
<b>CHESTER COUNTY,</b>	:
<b>Respondent</b>	:

On March 1, 2022, Carol Colangelo (“Requester”) submitted a request (“Request”) to Chester County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[ ] The Statement of Financial Interest forms on the entire Oxford Area School board for years. 2018, 2019,2020,2021,2022.

Kristen E Dean, Jennifer M Harrison, Howard s. Robinson, Mark V. Patterson, Robert F Tenga, Joseph E Tighe, Michael P. Blessington, Jennifer L Kehs, William C. Kloss.

On April 7, 2022, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County partially denied the Request, claiming that it does not possess certain records and providing records that were redacted of home addresses pursuant to the constitutional right to privacy.

On April 8, 2022, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the partial denial and stating grounds for disclosure.<sup>1</sup> 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. *See* 65 P.S. § 67.1101(c).

On April 19, 2022, the County submitted the statement made under the penalty of perjury of Lauren Remaley, the County’s Open Records Officer.

On April 20, 2022, the OOR sought clarification from the Requester as to whether she specifically objects to the redaction of home addresses, as her appeal form asserts only that the year block is incorrect and that 33 forms are missing.<sup>2</sup> However, the Requester has not provided any clarification to date. The Requester used the OOR’s standard appeal form, which provides that by submitting the form, the Requester is asserting that the “records do not qualify for any exemption under § 708 of the RTKL....” *See Barnett v. Pa. Dep’t of Public Welf.*, 71 A.3d 399, 406 (Pa. Commw. Ct. 2013). The OOR has found that this statement is sufficient to satisfy a requester’s burden under Section 1101(a). *See, e.g., Phillips and WHYY v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2016- 1782, 2017 PA O.O.R.D. LEXIS 222; *Tomassi v. Municipality of Mt. Lebanon*, OOR Dkt. AP 2017-0644, 2017 PA O.O.R.D. LEXIS 896. As such, the OOR interprets this to challenge all the reasons for denial, including redactions.

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<sup>1</sup> The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

<sup>2</sup> Insofar as two of the records provided read 2021 in the year block, rather than 2020; it appears this was a mistake by the person filling out the form, as both forms were signed in early 2021. Regardless, the Requester also sought the forms for 2021 so if these are forms for 2021, they are responsive to the Request.

**1. The County has demonstrated that no additional responsive records exist in its possession, custody or control**

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort” as used in Section 901 of the RTKL, in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020); *see also Rowles v. Rice Twp.*, OOR Dkt. AP 2014-0729, 2014 PA O.O.R.D. LEXIS 602 (citing *Judicial Watch, Inc. v. United States Dep’t of Homeland Sec.*, 857 F.Supp. 2d 129, 138-139 (D.D.C. 2012)) (citations omitted).

In sum, an agency must show that it has conducted a search reasonably calculated to uncover all relevant documents; an agency may do so by providing relatively detailed and non-conclusory affidavits submitted in good faith by officials or employees with knowledge of the records and the search for the records. *See Burr v. Pa. Dep’t of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011); *In re Silberstein*, 11 A.3d 629, 634 (Pa. Commw. Ct. 2011) (holding that it is “the open-records officer’s duty and responsibility” to both send an inquiry to agency personnel concerning a request and to determine whether to deny access).

Here, Ms. Remaley describes the search. She contacted Chester County Voter Services Department (“Department”), the Department that stores the requested records and directed them

to search for responsive records. Attestation ¶ 4. The Department gathered the responsive records in its possession and provided them to Ms. Remaley, who in turn redacted certain information before providing the records to the Requester. Attestation ¶¶ 6, 10-12. Ms. Remaley explains that the Department informed her that there are no responsive records for 2018, 2020, and 2022 and, following an additional search, they were unable to locate records for 2019. Attestation ¶ 7-9.

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 County has acted in bad faith or that additional responsive 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 County has demonstrated that it conducted a good faith search for responsive records and that no additional records exist in the County’s possession, custody or control. *See Hays v. Pa. State Police*, OOR Dkt. AP 2015-0193, 2015 PA O.O.R.D. LEXIS 294 (finding that an agency conducted a good faith search by “contact[ing] the Bureau most likely to possess responsive records, and ... explain[ing] why that Bureau is most likely to possess those records”); *Yakim v. Municipality of Monroeville*, OOR Dkt. AP 2017-1946, 2017 PA O.O.R.D. LEXIS 1685.

## **2. The County may not redact home addresses**

The County redacted home addresses on the statements of financial interest. The Pennsylvania Supreme Court has held that an individual possesses a constitutional right to privacy in certain types of personal information. *Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142

(Pa. 2016). When a request for records implicates personal information not expressly exempt from disclosure under the RTKL, the OOR must balance the individual's interest in informational privacy with the public's interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest. *Id.*; see also *Pennsylvania State Univ. v. State Employees' Retirement Bd.*, 935 A.2d 530 (Pa. 2007) (employing a balancing test with respect to home addresses sought under the former Right-to-Know Act).

Although the Pennsylvania Supreme Court did not expressly define the types of "personal information" subject to the balancing test, the Court recognized that certain types of information, including home addresses, by their very nature, implicate privacy concerns and require balancing. *Pa. State Educ. Ass'n*, 148 A.3d at 156-57; see also *Tribune-Review Publ. Co. v. Bodack*, 961 A.2d 110, 117 (Pa. 2008) (finding telephone numbers to constitute personal information subject to the balancing test); *Pa. State Univ.*, 935 A.2d at 533 (finding home addresses, telephone numbers and social security numbers to be personal information subject to the balancing test); *Sapp Roofing Co. v. Sheet Metal Workers' International Assoc.*, 713 A.2d 627, 630 (Pa. 1998) (plurality) (finding names, home addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test).

To determine whether the constitutional right to privacy precludes disclosure of an individual's personal information, the OOR must apply the balancing test enunciated in *Denoncourt v. Pa. State Ethics Comm'n*, 470 A.2d 945 (Pa. 1983), and applied in the public records context in *Times Publ. Co., Inc. v. Michel*, 633 A.2d 1233, 1237 (Pa. Commw. Ct. 1993), "weighing privacy interests and the extent to which they may be invaded, against the public benefit which would result from disclosure." The County asserts that the redacted addresses are not held

out to the public and that the Requester has not argued or shown that there is a public interest that would outweigh the privacy interest. Verified Position Statement p. 5.

The Ethics Act requires that statements of financial interests be filed by public officials and employees of the Commonwealth and that all statements of financial interests shall be available for public inspection and copying. 65 Pa.C.S. §§ 1104(a),(e). Additionally, Section 1105 of the Ethics Act provides that the statements of financial interests include an address. 65 Pa.C.S. § 1105. Notably, the Ethics Act does not require that individuals list their home addresses. In light of the provisions of the Ethics Act, there can be little, if any, expectation of privacy in any address provided on a statement of financial interests. As a result, it is unclear whether the OOR needs to conduct a balancing test in the instant matter. However, recognizing the importance of the constitutional right to privacy, the OOR will conduct the balancing test.

By clearly making the statements of financial interests public and requiring individuals to provide specific information, the General Assembly, through the Ethics Act, has made clear that there is a public interest in knowing certain details of public officials and employees. *See* 65 Pa.C.S. § 1101.1(a) (“Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this chapter [of the Ethics Act] shall be liberally construed to promote complete financial disclosure....”). While there is a recognized privacy interest in the home addresses of certain individuals, i.e., Section 708(b)(6)(i)(C) of the RTKL exempts from disclosure “[t]he home address of a law enforcement officer or judge,” such interest is outweighed by the public’s interest in the information contained in the statements of financial interests of public officials and employees. In *Snider v. Thornburgh*, 436 A.2d 593, 599 (Pa. 1981), the Supreme Court stated:

[T]he financial disclosure requirements of the [Ethics] Act do in fact require that they abdicate some measure of their privacy interests in their financial histories

which might, under different circumstances, be successfully invoked by private persons. We are constrained to observe, however, ... that appellants have to some extent voluntarily surrendered those interests.

Moreover, the intrusion into appellants' private affairs under the [Ethics] Act is not great; the Legislature's interest in securing public confidence in the government, at all levels, is not small. The financial disclosure requirements of the [Ethics] Act are reasonably tailored to fit a legitimate legislative function.

Based on the above, and after balancing the privacy interests and public interests at stake, the OOR concludes that the addresses included on the responsive statements of financial interests may not be redacted. *See Butler Area Sch. Dist. v. Pennsylvanians for Union Reform*, 172 A.3d 1173, 1184 (Pa. Commw. Ct. 2017) ("The statutory public nature of the information precludes a subjective or objective expectation that addresses contained therein are personal. In essence, the General Assembly already determined the necessity for access to property tax records outweighs any right to shield the addresses from view.").

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**, and the County is required to provide the forms without home address redacted. 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 Chester 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.<sup>3</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

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

**FINAL DETERMINATION ISSUED AND MAILED: May 3, 2022**

*/s/ Erin Burlew*

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APPEALS OFFICER

Sent via email to: Carol Colangelo; Faith Mattox-Baldini, Esq.