



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**STEVEN HOFFMAN,
Requester**

v.

**SLATINGTON BOROUGH,
Respondent**

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**Docket No: AP 2022-0912
Consolidated appeal of Dkt. Nos:
AP 2022-0912 and 2022-0913**

On April 6, 2022, Steven Hoffman (“Requester”) submitted a request (“Request 1”) to Slatington Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. Names of all full time and part time employees of the Borough of Slatington as of January 28, 2022.
2. Names of all current full time and part time employees of the Borough of Slatington.

On April 11, 2022, the Borough denied Request 1, stating that it does not possess any responsive records.

On April 13, 2022, the Requester submitted a second RTKL request (“Request 2”) to the Borough, seeking:

1. List of names of all full time and part time employees of the Borough of Slatington as of January 28, 2022.
2. List of names of all current full time and part time employees of the Borough of Slatington.

On April 13, 2022, the Borough denied Request 2, stating it had already been answered as it was identical to Request 1, and under Section 506 of the RTKL the Borough argued it is not required to address repeated requests for the same record. 65 P.S. § 67.506(a).¹ The Borough also argued that while responsive records may exist, the Request must request them by name.

On April 18, 2022, the Requester filed a separate appeal for each Request 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 Borough to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).²

On April 27, 2022, the Requester submitted a position statement arguing that the records do exist. The same position statement was sent for both cases.

On April 28, 2022, the Borough submitted an unsworn position statement from Daniel Stevens, the Borough’s Open Records Officer. The same position statement was submitted for both cases.

Mr. Stevens argues that satisfying the Requests would require a record to be created. Mr. Stevens states that a record with the requested information may exist but the record was not specifically identified. Statement ¶4-5. The Borough contends that a specific document with the information must be requested, and that supplying the information itself would be compiling or creating a new record. Statement ¶1. There is no mention of a search being conducted by the

¹ The Borough improperly denied Request 2 arguing it is a repeated request, exempt under Section 506 of the RTKL. The second Request does not meet the burden necessary to qualify as a repeated request under Section 506(a)(1) of the RTKL. *See 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).

² The Requester filed two appeals docketed as OOR Dkt. AP 2022-0912 and OOR Dkt. AP 2022-0913. Because the appeals involved the same agency, requester and near identical request, the appeals were consolidated into OOR Dkt. AP AP 2022-0912. *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”).

Borough or its representatives.³ It appears that the Borough is arguing that a document must be specifically requested by name or title; however, there is no requirement in the RTKL stating such. Section 703 of the RTKL merely requires a request to “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested....” 65 P.S. § 67.703. To the extent that the Borough challenges the specificity of either Request, the names of Borough employees are, by themselves, “records” of the Borough, as the RTKL specifically defines “record” to include “[i]nformation, regardless of physical form or characteristics....” 65 P.S. § 67.102.

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). Unsworn statements do not constitute evidence. *Office of the Governor v. Davis*, 122 A.3d 1185, 1193 (Pa. Commw. Ct. 2015) (*en banc*) (“Position statements are akin to briefs or proposed findings of fact, which, while part of the record, are distinguishable from the *evidentiary* record”) (citations omitted). No competent evidence has been submitted by the Borough to support an argument that it does not possess the requested information; further, it would defy logic for the Borough to not maintain the names of its employees. Therefore, the Borough has not met its burden of proof that it does not possess the records sought in Request 1 and 2. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **granted**, and the Borough is required to provide the requested information to the Requester within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may

³ The Requester made a submission and argues that the records should exist. It is not within the OOR’s purview to determine whether records should exist; only if said records do or do not exist.

appeal to the Washington 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. 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.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: MAY 16, 2022

/s/ Matthew Eisenberg

APPEALS OFFICER
MATTHEW EISENBERG, ESQ.

Sent to: Steven Hoffman (via email only);
Daniel Stevens (via email only)

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).