



**FINAL DETERMINATION**

IN THE MATTER OF	:
	:
BRUCE WISHNEFSKY,	:
Requester	:
	:
v.	: Docket No: AP 2022-0961
	:
PENNSYLVANIA DEPARTMENT OF	:
CORRECTIONS,	:
Respondent	:

On April 18, 2022, the Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* Upon review of the file, the appeal is **denied** for the reasons explained below.

By letter dated March 18, 2022, and date-stamped by the Pennsylvania Department of Corrections (“DOC”) March 22, 2022, Bruce Wishniefsky (“Requester”), an inmate at SCI-Laurel Highlands, submitted a RTKL request (“Request”) to the DOC, seeking “the schedule at SCI Laurel Highlands, that shows the date or dates, each week, that inmates are scheduled to receive, or pick up the commissary they have purchased.” *See Request.* On March 30, 2022, the DOC issued a response that denied the Request, stating it does not possess any responsive records and explaining there is no set schedule for commissary pick up.

On April 18, 2022,<sup>1</sup> the Requester filed an appeal with the OOR, asserting that there was a set commissary schedule in the past, and Requester attached a document to support this assertion. The OOR invited both parties to supplement the record and directed the DOC to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On May 4, 2022, the DOC submitted a position statement, along with a sworn declaration made under the penalty of perjury from Kimberly Grant, the DOC's Deputy Open Records Officer ("Ms. Grant"), who attests a search was conducted in this case and no responsive records exist in the DOC's possession, custody or control. Ms. Grant further attests that upon receipt of the Request, she contacted the record holder, the DOC's Superintendent's Assistant at SCI-Laurel Highlands, who confirmed no responsive records exist because there is no set schedule, and commissary pick up is variable depending upon the housing unit involved, the inmate status, the needs of the institution, and the order delivery/processing of the ordered items involved. Declaration at ¶¶ 4 – 6.

On May 5, 2022, the Requester filed a sworn affidavit made under the penalty of perjury, indicating he has been an inmate at SCI-Laurel Highlands since July 2004, and "[t]o the best of my knowledge and other than during the COVID-19 Pandemic, which ended April 4<sup>th</sup>, 2022, there has been a published notice of when inmates can order and receive purchased commissary items through that entire time period." The Requester also submitted a Memo dated July 8, 2016 from the DOC ("Requester Exhibit A") that he claimed represents a typical commissary schedule.

Under the RTKL, a sworn 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).

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<sup>1</sup> The appeal was postmarked April 18, 2022, and pursuant to the "prisoner mailbox rule," is considered filed on that date. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

In the absence of any evidence that the DOC has acted in bad faith or that the 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)). Initially, based on the evidence provided, the DOC met its burden of proof that it does not possess the records sought in this Request. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). The DOC provided specific information obtained directly from the record holder, a DOC employee, who has actual knowledge based on job responsibilities that no responsive records exist.

The Requester, in turn, affirmed he has been an inmate at SCI-Laurel Highlands since 2004, to the best of his knowledge the responsive records exist, and he attached a DOC memo from 2016 that he claimed represents a typical commissary schedule. However, the Requester’s general affirmations do not rise to the level that would shift the burden back to the DOC to provide additional evidence to show no responsive records exist. The Requester, as an inmate at the facility since 2004, affirmed the records exist to the best of his knowledge but he did not provide any affirmations to demonstrate actual knowledge that the records exist. Also, the Requester did not provide information to demonstrate the reasons he reached the conclusion that responsive records exist. In contrast, Ms. Grant provided an affirmation that specified exactly why no records exist.

Accordingly, based on the evidence submitted, the DOC demonstrated that a good faith search was conducted for responsive records and that no responsive records exist because there is no set schedule and commissary pick up is variable and dependent upon the particular housing unit involved, the status of the inmate involved, the needs of the institution, and the order delivery/processing of the ordered items involved. *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; *Hodges*, 29 A.3d at 1190.

For the foregoing reasons, the appeal is **denied**, and the DOC 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 of Pennsylvania. 65 P.S. § 67.1301(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.<sup>2</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: May 16, 2022**

/s/ *Lois P. Lara*

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APPEALS OFFICER  
LOIS P. LARA, ESQ.

Sent to: Bruce Wishnefsky, DQ4829 (via US Mail only)  
Joseph Gavazzi, Esq., Counsel for the DOC (via email only)  
Kimberly Grant, AORO (via email only)

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<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).