



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>SHANE RALSTON,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2016-1315</b>
	:	
<b>HARRISBURG AREA COMMUNITY</b>	:	
<b>COLLEGE,</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

Shane Ralston (“Requester”) submitted a request (“Request”) to Harrisburg Area Community College (“HACC”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records regarding an investigation into claims that an identified individual violated HACC’s academic integrity policy. HACC denied the Request, stating that among other reasons, that responsive records are exempt from disclosure under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and HACC is not required to take any further action.

**FACTUAL BACKGROUND**

On August 1, 2016, the Request was filed, seeking:

[P]ublic records that document the investigation of claims that Jennifer Ralston violated HACC’s academic integrity policy and committed fraud as a student at

[HACC]. These shall include all communications (letters and e-mails), reports, interviews and evidence that either corroborate or undermine these claims.

On August 2, 2016, HACC denied the Request, asserting that responsive records are exempt from disclosure under FERPA.

On July 5, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed HACC to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c). On August 17, 2016, HACC submitted a position statement and an exemption log, along with two sworn attestations from Linne Carter, Open Records Officer, who attests that the only responsive records are academic transcripts, which are exempt from disclosure under FERPA and the RTKL. Additionally, Ms. Carter attests besides the withheld academic transcripts, no other responsive records exist within HACC's possession, custody or control. On August 17, 2016, the Requester submitted a position statement, arguing that he is not seeking educational records such as transcripts, but rather communications and evidence regarding an investigation into a violation of HACC's integrity policy.

### **LEGAL ANALYSIS**

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing in this matter; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

HACC is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821,

827 (Pa. Commw. Ct. 2010)). “The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

HACC asserts that other than withheld academic transcripts, no responsive records exist in its possession, custody or control. In his position statement, the Requester states that “[w]hat has been requested are not educational records, e.g. transcript, but instead all communications and evidence (e.g. coursework).” In support of its position, HACC submits the attestation of Linnie Carter, Open Records Officer, who attests the following:

After conducting a good faith search of the Agency’s files and inquiring with relevant Agency personnel, I have made the determination that, aside from those responsive records withheld and identified on the Agency’s separately submitted RTKL Exemption Log, the records requested do not exist within the Agency’s possession, custody or control.

Additionally, Ms. Carter attests that the withheld records are academic transcripts. Under the RTKL, a statement made under the penalty of perjury may serve as sufficient evidentiary support to sustain an agency’s burden of proof. *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 competent evidence that HACC acted in bad faith or that the records exist, “the averments in [the attestations] 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, as well as the Requester’s position statement in which he indicates that he is not seeking academic transcripts, HACC has demonstrated that no responsive records exist within its possession, custody or control.<sup>1</sup>

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<sup>1</sup> To the extent that the Request seeks academic transcripts, such records are expressly exempt under Section 708(b)(15) of the RTKL. *See* 65 P.S. § 67.708(b)(15).

## CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and HACC 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. 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 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>2</sup> This Final Determination shall be placed on the website at: <http://www.openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: September 2, 2016**

/s/ Kathleen A. Higgins

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APPEALS OFFICER  
KATHLEEN A. HIGGINS, ESQ.

Sent to: Shane Ralston (via e-mail only);  
Linnie Carter (via e-mail only);  
Joshua Knapp, Esq. (via e-mail only)

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