



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
TAYLOR MILLARD AND THE DELAWARE VALLEY JOURNAL, Requester	:	Docket No: AP 2024-0491
	:	(Consolidated appeals of OOR Dkts.
v.	:	AP 2024-0491 and AP 2024-0492)
	:	
DELAWARE COUNTY, Respondent	:	

FACTUAL BACKGROUND

On February 5, 2024, Taylor Millard and the Delaware Valley Journal (“Requester”) submitted a request (“Request 1”) to Delaware County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

(a) any documents created by the county administration from the dates of Jan 01, 2021 to Feb 01, 2024, on Diversity, Equity and Inclusion (DEI) hiring numbers, targeted numbers, and salary information within the county; and

(b) any correspondence (written letters or emails, and all email attachments), between the dates of June 1, 2021, to Jan 31, 2024, on DEI hiring numbers, targeted numbers, and salary information.

On February 12, 2024, the County denied Request 1, arguing that no records responsive to the Request exist in the County’s possession, custody, or control.

On February 15, 2024, the Requester submitted a second request (“Request 2”) to the County seeking the resignation letter of Lauren Footman as Director of Diversity, Equity, and

Inclusion. On February 20, 2024, the County denied Request 2, arguing that no records responsive to the Request exist in the County's possession, custody, or control.

On February 22, 2024, the Requester appealed the denial of both Requests to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.¹ 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. 65 P.S. § 67.1101(c).

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 identified record[.]" 65 P.S. § 67.901. While the RTKL does not define the term "good faith effort," 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 all 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). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *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).

¹ The Requester filed two separate appeals which were docketed as OOR Dkt. Nos. AP 2024-0491 and AP 2024-0492. Because the appeals involve the same parties and similar records, they are hereby consolidated into the above-referenced docket number, OOR Dkt. No. AP 2024-0491 for purposes of disposition.

On March 1, 2024, the County submitted a position statement reiterating its grounds for denial. The County claims that County conducted a search for both the specified resignation letter and records related to DEI hiring numbers, targeted numbers, and salary information and that the County does not possess any records responsive to the Requests. In support of its position, the County submitted the affidavit of Joshua Lichtenstein, Esq. (“Lichtenstein Affidavit”), the Deputy County Solicitor. The Lichtenstein Attestation states in relevant part:

4. On February 16, 2024, the County ORO inquired of the County’s Chief Human Resources Officer as to whether she had any responsive records for Request [#2]. She replied that the County did not have such records as Lauren Footman did not submit a resignation letter.
5. On February 20, 2024, the County ORO responded in writing to Requester denying Request [#2] as the County did not have any responsive records.
6. On February 6, 2024, the County ORO inquired of the County’s Chief Human Resources Officer as to whether she had any responsive records for Request [#1]. She replied that she did not have such records.
7. On February 12, 2024, the County ORO responded in writing to Requester denying Request [#1] as the County did not have any responsive records.

See Lichtenstein Affidavit ¶¶ 4-7. The evidence relating to Request 2 is dispositive as the County Chief Human Resources Officer stated that Ms. Footman did not submit a letter of resignation; accordingly, no such letter exists.

The County’s evidence related to Request 1, however, is insufficient to prove that a good faith search was conducted and no responsive records exist in the County’s possession, custody, or control. Request 1 seeks (1) any documents created by County administration between January 1, 2021 to February 1, 2024, and (2) any emails, letters, or other written correspondence from June 1, 2021 to January 31, 2024 related to DEI hiring numbers, targeted numbers, and salary information. The evidence submitted states that the Open Records Officer inquired of the Chief Human Resources Officer and was told that the Chief Human Resources Officer did not have any responsive records. While the Chief Human Resources Officer is a government official who may

have been included in any conversations and initiatives related to DEI, given the scope and breadth of Request 1, one cannot logically infer that every responsive record flows through only her. The evidence submitted by the County is devoid of detail which would permit the OOR to conclude that a good faith search was conducted as there is no detail related to what record locations were searched or which potential custodians were contacted in search for records responsive to Request 1.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the County is required to conduct a good faith search for records responsive to Request 1 and provide any responsive records within 30 days. If no records responsive to Request 1 exist, the County is required to provide the Requester with a detailed affidavit or attestation describing the search for responsive records and affirming their non-existence. 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 Delaware 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 according to court rules as per 65 P.S. § 67.1303, but 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.² All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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

FINAL DETERMINATION ISSUED AND MAILED: April 19, 2024

/s/ Catherine R. Hecker

APPEALS OFFICER
CATHERINE R. HECKER

Sent via the OOR Portal to: Taylor Millard
Anne Coogan
Joshua Lichtenstein, Esq.