



**FINAL DETERMINATION**

**IN THE MATTER OF**

**DAVID PERRETTA,  
Requester**

**v.**

**BLAIR COUNTY DISTRICT  
ATTORNEY'S OFFICE,  
Respondent**

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**Docket No.: AP 2024-0938**

On March 27, 2024, David Perretta (“Requester”) submitted a request (“Request”) to the Blair County District Attorney’s Office (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating: “I would like to know if ex District Attorney Consiglio is currently receiving any form of compensation for work done with the ... [O]ffice. This could potentially include monetary payments for Blair County or Operation Our Town.”<sup>1</sup> The Office did not respond within five business days of receiving the Request, and the Request was, therefore, deemed denied on April 3, 2024.<sup>2</sup> *See* 65 P.S. § 67.901.

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<sup>1</sup> The Request was originally submitted to the Blair County Commissioner’s Office, who then forwarded the Request to the Office. While the Request was not sent directly to the Office’s Open Records Officer by the Requester, because the Office acknowledges receipt of the Request on March 27, 2024, the appeal cannot be considered premature. *See* Wilt Supplemental Attestation, ¶¶ 5-6.

<sup>2</sup> The Office states that it did not believe that it had a duty to respond to the Request because the Request was not legally sufficient under the RTKL as it was not directed to the Office’s Open Records Officer. Wilt Supplemental Attestation, ¶¶ 7-11.

On April 5, 2024, the Requester appealed to the Office of Open Records (“OOR”). The OOR invited both parties to supplement the record and directed the Office 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 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 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).

On April 17, 2024, the Office submitted the attestation made under the penalty of unsworn falsification to authorities of Julia Wilt, Esq., Assistant District Attorney and Open Records Officer for the Office.<sup>3</sup> Assistant District Attorney Wilt attests that she conducted a good faith search for

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<sup>3</sup> Under the RTKL, an attestation or statement made under the penalty of perjury is competent evidence 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 evidence that the Office has acted in bad faith or that the requested records exist, “the averments in [the attestation] 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)).

the requested records, which included searching all electronic and paper records of the Office, as well as consulting with the Office Manager, and determined that no responsive records exist within the Office's possession, custody or control. *See* Wilt Attestation, ¶ 5. Therefore, based on the evidence provided, the Office has proven that no responsive records exist within its possession, custody or control. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022); *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **denied**, and the Office 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 Blair 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 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>4</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: April 26, 2024**

*/s/ Kathleen A. Higgins*

KATHLEEN A. HIGGINS  
DEPUTY CHIEF COUNSEL

Sent via portal to: David Perretta;  
Julia B. Wilt, Esq.

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