



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**CARRIE HAHN,  
Requester**

**v.**

**LAWRENCE COUNTY,  
Respondent**

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**Docket No.: AP 2020-2540**

### INTRODUCTION

Carrie Hahn (“Requester”) submitted a request (“Request”) to Lawrence County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records surrounding the closure of the County’s Courthouse. The County denied the Request, asserting that the Request was not specific. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the County is not required to take any further action.

### FACTUAL BACKGROUND

On November 23, 2020, the Request was filed, seeking “a copy of the statute, order, or mandate which grants the ... County Board of Commissioners the legal authority to close the County Government Building from November 30, 2020 through January 8, 2021, due to COVID-19.” On December 1, 2020, the County denied the Request, stating that the Request is not specific.

Also, on December 1, 2020, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The Requester also contends that the County acted in bad faith. 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. *See* 65 P.S. § 67.1101(c).

On March 3, 2021, the County submitted the sworn affidavit of Carolyn Flannery-Lang, Esq., the County's Solicitor and Open Records Officer, who affirms that responding to the Request would require the County to perform legal research.

### **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.* Here, the parties did not request a hearing.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local 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 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)(1). 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)).

### **1. Responding to the Request would require the County to perform legal research**

The County argues that responding to the Request would require legal research. An agency cannot be required to perform legal research for a requester. *See Lerner v. City of Phila. Dep’t of Revenue*, OOR Dkt. AP 2016-1470, 2016 PA O.O.R.D. LEXIS 1306; *Neal v. Pa. Dep’t of State*, OOR Dkt. AP 2014-1470, 2014 PA O.O.R.D. LEXIS 1189; *Whitaker v. Pa. Dep’t of State*, OOR Dkt. AP 2014-1463, 2014 PA O.O.R.D. LEXIS 1191 (holding that the agency is not required to perform legal research to locate laws and identify officials involved in the creation of Title 18). The Commonwealth Court has found that “[a] request that explicitly or implicitly obliges legal research is not a request for a specific document; rather it is a request for someone to conduct legal

research with the hopes that the legal research will unearth a specific document that fits the description of the request.” *Askew v. Pa. Office of the Governor*, 65 A.3d 989, 993 (Pa. Commw. Ct., 2013); *see also* 65 P.S. § 67.703.

In this instance, the County maintains that the Request is insufficiently specific because responding to the Request would require the County “to conduct legal research into the County Commissioners’ authority over the ... County Courthouse.” The Request seeks a “statute, order, or mandate” that gives the County Commissioners the “legal authority” to perform a specific action. In essence, the Request would require the County to make legal judgments about what constitutes the proper legal authority and what statutes apply to the County Board of Commissioners. This is not a request for any specific existing record. The OOR has previously held that requests that seek the legal authority governing specific actions are insufficiently specific. *See* 65 P.S. § 67.703; *Biesecker v. Pa. Dep’t of Human Servs.*, OOR Dkt. AP 2020-1940, 2020 PA O.O.R.D. LEXIS \_\_\_; *Saunders v. Penn Hills Sch. Dist.*, OOR Dkt. AP 2019-0108, 2019 PA O.O.R.D. LEXIS 261; *Dolente v. Clifton Heights Borough*, OOR Dkt. AP 2017-1509, 2017 PA O.O.R.D. LEXIS 1517; *St. Hilaire v. Lower Paxton Twp.*, OOR Dkt. AP 2015-2618, 2015 PA O.O.R.D. LEXIS 2122. Therefore, the Request seeks to compel the County to perform legal research and is not sufficiently specific under the RTKL.

## **2. The OOR declines to make a finding of bad faith**

The Requester argues that the County acted in bad faith in responding to the Request because it did not provide the requested information. While the OOR may make findings of bad faith, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a) (noting that a court “may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived

the requester of access to a public record ... or otherwise acted in bad faith....”); 65 P.S. § 67.1305(a) (“A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith”). Here, the OOR finds no evidence that the County acted in bad faith and, accordingly, declines to make a finding of bad faith.

### CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied**, and the County 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 to the Lawrence 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. 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>1</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: March 22, 2021**

*/s/ Magdalene C. Zeppos-Brown*

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MAGDALENE C. ZEPPOS-BROWN, ESQ.  
APPEALS OFFICER

Sent to: Carrie Hahn (via email only); and  
Carolyn Flannery-Lang, Esq. (via email only)

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<sup>1</sup> See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).