

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

ROGER MITCHELL RIERA,	:	
Petitioner,	:	No. CV-23-00,409
	:	
vs.	:	CIVIL – STATUTORY APPEAL
	:	
LYCOMING COUNTY,	:	
Respondent.	:	Right to Know Appeal

OPINION AND ORDER

AND NOW, this 13th day of July, 2023, upon consideration of the administrative appeal filed by the Petitioner, Roger Mitchell Riera, from the Final Determination of the Pennsylvania Office of Open Records, it is hereby ORDERED and DIRECTED that the appeal is DENIED in part and otherwise DISMISSED as moot, for the reasons explained below.

I. BACKGROUND.

Petitioner Roger Mitchell Riera submitted a request¹ to the County of Lycoming² (the “County”) pursuant to the Right to Know Law (“RTKL”)³ on January 13, 2023, seeking certified copies of:

The most recent version of[:] County of Lycoming, PA[,] Articles of Incorporation[,] which includes the official certificate of Incorporation and notice published in a periodical.

(Pursuant to Law of Pennsylvania No. 164 Page 384 Lycoming “Recorder of Deeds” recorded said documents; see codification in Title 53 Municipality Act of 1945.⁴

¹ A “requester” under the RTKL is “[a] person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency.” 65 P.S. § 67.102.

² A “local agency” under the RTKL includes “[a]ny political subdivision.” 65 P.S. § 67.102. As a political subdivision, the County is a “local agency” within the meaning of the RTKL. See, *infra*, Part II.B.

³ 65 Pa. C.S. § 67.101, *et seq.*

⁴ Petitioner’s Right to Know Request, appended to Petitioner’s Appeal to the Office of Open Records attached as Exhibit “C” to Petitioner’s Appeal.

The County requested a thirty day extension during which to respond,⁵ and on February 2, 2023, the County denied Petitioner's Request, as follows:

Your request is denied. The county is unable to determine what record you seek. The provision of corporate power to Lycoming County is presently vested pursuant to the county Code, 16 P.S. 201, et seq., as a political subdivision of the Commonwealth of Pennsylvania. See, e.g., 16 P.S. 201 ('The State shall be divided into the following sixty-seven named counties, as now established by law: Lycoming....') see also 16 P.S. 202 ('Each County shall have capacity as a body corporate to [powers listed in statute]') and 16 P.S. 203 ('the corporate power of each county shall be vested in a board of county commissioners').⁶

Petitioner appealed to the Pennsylvania Office of Open Records ("OOR")⁷ on February 15, 2023, challenging the County's denial of his request⁸ and stating, among other things, that the County's denial "failed to include the specific reasons for their denial including citations of Supporting Legal Authority" and "failed Chapter 9 RTKL Procedure as the agency did not contact their Recorder of Deeds Dpt. to see if they were in possession of the requested records."⁹ Petitioner also asked OOR to find that the County acted in bad faith.¹⁰

On February 28, 2023, the County submitted to OOR an attestation from an Assistant County Solicitor¹¹ attesting, under penalty of perjury,¹² that the County is not an incorporated entity; that it is a political subdivision of the Commonwealth of

⁵ See 65 Pa. C.S. § 67.902(b).

⁶ Lycoming County's denial of Petitioner's RTKL Request, attached as Exhibit "B" to Petitioner's Appeal.

⁷ See 65 P.S. § 67.1101.

⁸ Petitioner's Appeal to the Office of Open Records, attached as Exhibit "C" to Petitioner's Appeal.

⁹ Petitioner's Affidavit of Roger Mitchell Riera, appended to Petitioner's Appeal to the Office of Open Records attached as Exhibit "C" to Petitioner's Appeal.

¹⁰ *Id.*

¹¹ The Attestation of Assistant Solicitor Austin White is appended to the County's Response to Petitioner's Appeal to the Office of Open Records attached as Exhibit "E" to Petitioner's Appeal. Subject to certain conditions, a statement made under penalty of perjury may serve as evidence under the RTKL. *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. 2010).

¹² *Id.*, ¶ 12.

Pennsylvania that derives its corporate powers from applicable statutes; that it is not a municipal authority or similar entity that has articles of incorporation and published notice of the same; that inquiries made with pertinent employees, including the County's Open Records Officer and its Recorder of Deeds failed to disclose any responsive record; that the only record the County believed was remotely responsive to Petitioner's request is the original 1795 deed that reflects the original land grant creating Lycoming County out of a portion of Northumberland County;¹³ and that the County searched its records to the best of its ability and believes that no record exists responsive to the Petitioner's Request.¹⁴

On March 13, 2023, OOR issued its Final Determination.¹⁵ OOR recited the relevant history of the case and concluded that

This evidence demonstrates that the County provided all potentially responsive records to the Requester on February 28, 2023, and no other records exist in its possession, custody or control. The Requester has not submitted any evidence to the contrary. Therefore, because the County provided all potentially responsive records to the Requester and has demonstrated that no Articles of Incorporation exist, the appeal is denied in part and dismissed as moot in part.¹⁶

In making its decision, the OOR declined to find that the County acted in bad faith.¹⁷ As the OOR explained:

¹³ A copy of that deed was attached to the attestation and, thereby, was provided to Petitioner on appeal. *Id.*, ¶ 10.

¹⁴ *Id.*

¹⁵ Final Determination of the Office of Open Records, attached as Exhibit "A" to Petitioner's Appeal.

¹⁶ *Id.*, p.2. A case becomes moot if no actual controversy exists. In the context of the RTKL, a case becomes moot when the agency provides the requested records in full to the requester. *Phila. Pub. Sch. Notebook v. Sch. Dist. of Phila.*, 49 A.3d 445, 448-49 (Pa. Commw. 2012).

¹⁷ Section 1304 of the RTKL permits an award of attorneys fees and costs if "(1) the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of this act; or (2) the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law." 65 P.S. § 67.1304.

The OOR declines to find that the county acted in bad faith. Based on a review of the record as a whole, the circumstances do not demonstrate an intent to knowingly deprive the Requester. Rather, the only records remotely responsive to the Request were provided on appeal and the County cannot provide what does not exist, i.e., Articles of Incorporation. The County is a political subdivision, not an incorporated entity.¹⁸

OOR advised Petitioner that its file was now closed and that he had a right to appeal to the Court of Common Pleas of Lycoming County within thirty days after mailing of the Final Determination.¹⁹

Petitioner filed his appeal to this Court²⁰ on April 5, 2023. The Court heard argument on Petitioner's Appeal on June 20, 2023.²¹ At the request of the Petitioner, the Court held the record open to permit Petitioner to submit additional evidence by mail. On June 26, 2023, Petitioner filed his "Petition for Judicial Notice" asking the Court to take judicial notice of the County's IRS Form W-9 and instructions thereto. The Court has admitted those documents to the record before it and will consider them as evidence.

As the parties have had a full and fair opportunity to submit testimony and evidence, the record is now closed and this matter is ripe for decision.

II. LAW AND ANALYSIS.

A. The Right to Know Law.

The RTKL is designed to ensure that citizens have access to the records of their government. Under Section 305 of the RTKL, "[a] record in the possession of

¹⁸ *Id.*, p.2, n.2.

¹⁹ *Id.*, p.3.

²⁰ 65 P.S. § 67.1302(a): "Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under section 1101(b) ... a requester or local agency may file a petition for review ... with the court of common pleas for the county where the local agency is located...."

²¹ The hearing originally was scheduled for May 19, 2023 but was rescheduled to June 20, 2023. As Petitioner was incarcerated at the time of the hearing, he participated by video conference.

a Commonwealth agency or local agency shall be presumed to be a public record,"²² unless (1) it is exempt under Section 708²³ of the RTKL, (2) it is privileged, or (3) it is exempt from disclosure under another federal or state law or regulation or judicial order or decree.²⁴ Because the RTKL presumes an agency record is public and subject to disclosure, the agency has the burden of proving, by a preponderance of the evidence, that it is exempt and falls under one of the aforementioned exceptions.²⁵ As the Commonwealth Court has explained

The RTKL is remedial in nature and "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." ... Thus, the RTKL must be construed to maximize access to public records that are in an agency's possession. In keeping with the RTKL's goal of promoting government transparency and its remedial nature, the exceptions to disclosure of public records must be narrowly construed.²⁶

Section 901 of the RTKL requires an agency to "make a good faith effort to determine if the record requested is a public record ... and to respond as promptly as possible under the circumstances existing at the time of the request."²⁷ Each agency must designate an open-records officer, who is charged with the duty of receiving, tracking and responding to open records requests.²⁸ The agency must respond within five business days after the written request²⁹ is received by the

²² 65 P.S. § 67.305(a).

²³ 65 P.S. § 67.708.

²⁴ 65 P.S. § 67.305(a).

²⁵ *West Chester University of Pennsylvania v. Schackner*, 124 A.3d 382, 393 (Pa. Commw. 2015) (citing *County of York v. Pennsylvania Office of Open Records*, 13 A.3d 594, 597–98 (Pa. Commw. 2011)).

²⁶ *State Employees' Retirement System v. Fultz*, 107 A.3d 860, 866 (Pa. Commw. 2015) (citing and quoting *Pennsylvania State Police v. McGill*, 83 A.3d 476, 479 (Pa. Commw. 2014)).

²⁷ 65 P.S. § 67.901.

²⁸ 65 P.S. § 67.502.

²⁹ "Agencies may fulfill verbal, written or anonymous verbal or written requests for access to records under this act. If the requester wishes to pursue the relief and remedies provided for in this act, the request for access to records must be a written request." 65 P.S. § 67.702.

open-records officer,³⁰ and "if the agency fails to send the response within ... [that time period], the written request for access shall be deemed denied."³¹ Under certain circumstances, an agency may extend the time for response by up to 30 days; however, the agency must notify the requester in writing within the original five business day period for a response that the time for response has been extended.³² If the agency does not respond by the end of the extension period, the request is deemed denied.³³

If the request is granted, the record must be made available for inspection and duplication in accordance with the RTKL during the regular business hours of the agency.³⁴ It must be provided in the medium requested if it exists in that medium; if it does not exist in that medium, however, it must be produced in the medium in which it exists.³⁵ "When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record."³⁶ An agency

³⁰ 65 P.S. § 67.901; *Commonwealth Office of the Governor v. Donahue*, 98 A.3d 1223, 1238 (Pa. 2014) ("[A]gencies must respond to RTKL record requests within five business days after the agencies' respective open-records officer first receives the request. The five business day period plainly begins when the open-records officer receives a request"). If a request is received by an employee other than the open-records officer, that employee must forward it to the open records officer as soon as practicable. 65 P.S. § 67.703 ("Employees of an agency shall be directed to forward requests for records to the open-records officer").

³¹ 65 P.S. § 67.901.

³² 65 P.S. § 67.902(b)(1).

³³ 65 P.S. § 67.902(b)(2). If the date that a response is expected to be provided is in excess of 30 days, the requester may agree in writing to an extension to the later date specified by the agency, and if the agency fails to respond by that day the request is deemed denied on the following day. 65 P.S. § 67.902(b)(3).

³⁴ 65 P.S. § 67.701(a). Note, however, that "[n]othing in [the RTKL] ... shall be construed to require access to any computer either of an agency or individual employee of an agency." 65 P.S. § 67.701(b).

³⁵ 65 P.S. § 67.701(a).

³⁶ 65 P.S. § 67.705.

may charge a fee in accordance with the fee schedule established in the RTKL.³⁷ If a request is denied, the agency must explain the specific reason(s) for issuing the denial.³⁸

B. The County.

The County of Lycoming is one of the sixty-seven named counties established by law in Pennsylvania.³⁹ It is a political subdivision of the Commonwealth of Pennsylvania, not a municipal corporation.⁴⁰ "A county is merely a creature of the sovereign created for the purpose of carrying out local governmental functions."⁴¹ As such, all of its powers and functions are derived from and are an extension of the general policies of the state.⁴² Even though it is not a corporation, state law grants certain corporate powers to the County.⁴³

Petitioner points to the Municipality Authorities Act of 1945⁴⁴ for the proposition that the County must have and file articles of incorporation. The Municipality Authorities Act of 1945 was repealed⁴⁵ and replaced by the Municipality Authorities Act.⁴⁶ The Municipality Authorities Act applies to "authorities," which are "bodies corporate and politic" created under the

³⁷ See 65 P.S. § 67.1307.

³⁸ 65 P.S. § 67.903.

³⁹ 16 P.S. § 201 ("The State shall be divided into the following sixty-seven named counties, as now established by law: ... Lycoming....").

⁴⁰ *Hartness v. Allegheny County*, 37 A.2d 18, 19 (Pa. 1944) ("[C]ounties ... are political subdivisions of the State, not municipal corporations.")

⁴¹ *In re Incorporation of Borough of Valley-Hi*, 381 A.2d 204, 207 (Pa. Commw. 1977) (citing *Snelling v. Department of Transportation*, 366 A.2d 1298 (Pa. Commw. 1976); *Philadelphia v. Fox*, 64 Pa. 169 (1870)).

⁴² "[I]n fact, 'all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the state, and are in fact but a branch of the general administration of that policy.'" *Chester County v. Philadelphia Elec. Co.*, 218 A.2d 331, 332 (Pa. 1966) (quoting *Garr v. Fuls*, 133 A. 150, 153 (Pa. 1926)).

⁴³ See, e.g., 16 P.S. § 202.

⁴⁴ Formerly codified at 53 P.S. §§ 301, *et seq.*

⁴⁵ See Act 2001-22, § 3.

⁴⁶ Codified at 53 Pa. C.S. §§ 5601, *et seq.*

Municipality Authorities Act, the Municipality Authorities Act of 1945, and the Municipality Authorities Act of 1935.⁴⁷ Authorities are “public corporations, being corporate agencies engaged in the administration of civil government,”⁴⁸ that “are not the creatures, agents or representatives of the municipalities which organize them, but rather are ‘independent agencies of the Commonwealth, and part of its sovereignty.’”⁴⁹ An authority can be created when one or more municipalities adopt resolutions and file articles of incorporation with the Secretary of the Commonwealth.⁵⁰ An authority and a county “are separate legal entities and derive their authority from different statutes.”⁵¹

In other words, Petitioner is pointing to a statute that mandates that a *municipal authority*, not a *county*, file articles of incorporation with the Recorder of Deeds;⁵² however, the statute Petitioner cites (1) has been repealed, (2) applies to authorities, and (3) does not apply to counties, which are not the same as authorities. The County was created by statute⁵³ and is organized and exists

⁴⁷ 53 Pa. C.S. § 5602.

⁴⁸ *Application of Municipal Authority of Upper St. Clair Tp.*, 184 A.2d 695, 697-98 (Pa. 1962).

⁴⁹ *Commonwealth v. Erie Metropolitan Transit Authority*, 281 A.2d 882, 884 (Pa. 1971) (quoting *Whitemarsh Township Authority v. Elwert*, 196 A.2d 843, 845 (Pa. 1964)).

⁵⁰ 53 Pa. C.S. § 5603.

⁵¹ *O'Hare v. County of Northampton*, 782 A.2d 7, 13 (Pa. Commw. 2001).

⁵² 53 Pa. C.S. § 5603(c) (emphasis added): (“[T]he *municipal authorities* shall file with the Secretary of the Commonwealth articles of incorporation....”). Petitioner specifically cites to a portion of the former Municipality Authorities Act of 1945, which required an *authority* to file its certificate of incorporation with the Recorder of Deeds. The current Municipality Authorities Act provides for the issuance of a certificate of incorporation to an *authority* but now provides that it be filed with the Secretary of the Commonwealth. See 53 Pa. C.S. § 5603(e) (emphasis added) (“If the Secretary of the Commonwealth finds that the articles of incorporation conform to law, he shall ... endorse his approval of them and ... shall file the articles and issue a certificate of incorporation to which shall be attached a copy of the approved articles. Upon the issuance of a certificate of incorporation by the Secretary of the Commonwealth, the corporate existence of the *authority* shall begin....”). A “county” is not an “authority,” although it is a “municipality” that can form an “authority” under the Municipality Authorities Act. See 53 Pa. C.S. § 5602 (defining “authority” and “municipality”) and 53 Pa. C.S. § 5603 (pertaining to formation of an “authority” by one or more “municipalities”).

⁵³ 16 P.S. § 201 (“The State shall be divided into the following sixty-seven named counties, as now established by law: ... Lycoming....”).

pursuant to the County Code.⁵⁴ It is not a municipal authority created pursuant to the Municipality Authorities Act or either of its predecessors, the Municipality Authorities Act of 1945 and the Municipality Authorities Act of 1935.

C. The County's denial of Petitioner's RTKL Request.

On January 13, 2023, Petitioner submitted a RTKL request to the County seeking a copy of the most recent version of the County's Articles of Incorporation, which includes the official Certificate of Incorporation and notice published in a periodical.⁵⁵ On February 2, 2023, following invocation of a thirty day extension pursuant to the RTKL,⁵⁶ the County denied Petitioner's Request, asserting that it is a political subdivision vested with corporate power pursuant to the County Code,⁵⁷ and that it was unable to determine the record sought by Petitioner.⁵⁸ Thus, the County's denial was timely, and it stated a correct legal reason for the denial of Petitioner's RTKL request, *i.e.*, that the County is a political subdivision granted corporate powers by law and not a corporation having articles of incorporation.

Petitioner submitted the County's IRS Form W-9 dated June 1, 2023 with his "Petition for Judicial Notice" filed June 26, 2023. Petitioner asserts this establishes the County is a corporation with articles of incorporation:

Petitioner attaches the Respondent's IRS Form W-9 that the acting controller of said party issued. Marked as "Exhibit A". Said Form W-9 establishes the "County of Lycoming" (Not Lycoming County)⁵⁹ is a

⁵⁴ 16 P.S. §§ 101, *et seq.*

⁵⁵ Petitioner's Right to Know Request, appended to Petitioner's Appeal to the Office of Open Records attached as Exhibit "C" to Petitioner's Appeal.

⁵⁶ 65 P.S. § 67.902(b).

⁵⁷ 16 P.S. §§ 101, *et seq.*

⁵⁸ Lycoming County's denial of Petitioner's RTKL Request, attached as Exhibit "B" to Petitioner's Appeal.

⁵⁹ The County is often referred to as "Lycoming County" in ordinary usage; however, its legal name is "County of Lycoming." 16 P.S. § 202(2) ("Each county shall have capacity as a body corporate to ... [s]ue and be sued and complain and defend in all proper courts by the name of the county of"). The two names refer to the same entity and are often used interchangeably.

corporation with Articles of Incorporation. Line 1 of the W-9 instructions state this name should match the name on the entity Corporate Charter or other legal document creating such entity. [S]ee instructions of W-9 attached as "Exhibit B". due to the fact that Line 1 of Respondent's completed IRS Form W-9 states "County of Lycoming" it should match their Corporate Charter i.e. their Articles of Incorporation.⁶⁰

Initially, it bears mentioning that the IRS Form W-9 Instructions state, "[t]his name should match the name shown on the charter or other legal document creating the entity."⁶¹ The name stated on the County's IRS Form W-9⁶² is "County of Lycoming," which matches the name on the *other legal document* creating the County, namely the County Code.⁶³ Secondly, the County identifies its "federal tax classification" as "Other: Political Sub-Division of the Commonwealth of Pennsylvania"⁶⁴ and identifies its "Exempt payee code" as "3,"⁶⁵ which is the code for a political subdivision of a state.⁶⁶ As such, the County's IRS Form W-9 establishes that the County is a political subdivision, not a corporation.

On appeal, the County submitted an attestation,⁶⁷ made under penalty of perjury, which may serve as evidence in a proceeding under the RTKL in appropriate circumstances,⁶⁸ that it had made diligent search for the County's

There are not two distinct entities, a governmental entity named "Lycoming County" and a corporate entity named "County of Lycoming."

⁶⁰ Petitioner's "Petition for Judicial Notice" filed June 26, 2023, ¶ 4.

⁶¹ *Id.*, Exh. "B," "Specific Instructions," Line 1, ¶ d (emphasis added).

⁶² *Id.*, Exh. "A."

⁶³ See 16 P.S. § 202(2) (emphasis added): "Each county shall have capacity as a body corporate to ... [s]ue and be sued and complain and defend in all proper courts by the name of the *county of*"

⁶⁴ "Petition for Judicial Notice," Exh. "A," Line 3.

⁶⁵ "Petition for Judicial Notice," Exh. "A," Line 4.

⁶⁶ "Petition for Judicial Notice," Exh. "B," "Line 4, Exemptions" (emphasis added): "3—A state, the District of Columbia, a U.S. commonwealth of possession, or any of their political subdivisions or instrumentalities."

⁶⁷ The Attestation of Assistant Solicitor Austin White is appended to the County's Response to Petitioner's Appeal to the Office of Open Records attached as Exhibit "E" to Petitioner's Appeal.

⁶⁸ *Moore v. Office of Open Records*, *supra*, 992 A.2d at 909.

“articles of incorporation” and was unable to find the same. Appended to the attestation was a copy of the 1795 deed that reflects the original land grant creating Lycoming County out of a portion of Northumberland County, which the County identified as the only document even vaguely responsive to Petitioner's request and which was provided to Petitioner on Appeal.⁶⁹ As the only *evidence* in the record indicates that the County searched diligently and was unable to find its “articles of incorporation,” the Court finds that the County diligently attempted to find records responsive to Petitioner's RTKL request. The Court especially finds the County's statement that it is unable to locate its “articles of incorporation” believable because the Court generally would not expect a county, which is created by statute, to have articles of incorporation. Thus, the Court does not find any evidence in the record indicating that the County failed to produce documents responsive to Petitioner's RTKL request.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

A. Findings of Fact.

1. On January 13, 2023, Petitioner Roger Mitchell Riera submitted a request to the County of Lycoming for a copy of the most recent version of the County's articles of incorporation, including its official certificate of Incorporation and notice published in a periodical.⁷⁰
2. After invoking the thirty day extension to respond, the County denied Petitioner's request on February 2, 2023.⁷¹
3. Petitioner appealed to the Pennsylvania Office of Open Records on February 15, 2023.⁷²

⁶⁹ The Court does not believe that the County was *required* to provide a copy of the 1795 deed to Petitioner in response to Petitioner's RTKL request, as it is not directly responsive to the request.

⁷⁰ *See, supra*, Part I.

⁷¹ *Id.*

⁷² *Id.*

4. The County submitted the Attestation of Assistant Solicitor Austin White to the OOR on February 28, 2023. A copy of the original 1795 deed that reflects the original land grant creating Lycoming County out of a portion of Northumberland County was attached to the Attestation and served upon the Petitioner along with the Attestation.⁷³
5. Prior to responding to Petitioner's request, the County diligently searched for responsive records, including making inquiries with its Open Records Officer and its Recorder of Deeds. The only potentially responsive record the County found is the 1795 deed, a copy of which was provided to Petitioner.⁷⁴

B. Conclusions of Law.

1. This appeal was properly and timely filed, and the Court has jurisdiction over the subject matter of this dispute.⁷⁵
2. Petitioner Roger Mitchell Riera is a "Requester" within the meaning of the RTKL.⁷⁶
3. The County of Lycoming is a political subdivision of the Commonwealth of Pennsylvania⁷⁷ and a "Local Agency" within the meaning of the RTKL.⁷⁸
4. The County is not a corporation, but it has corporate powers conferred upon it by applicable law, including the County Code.⁷⁹
5. Pursuant to the RTKL, the Petitioner made a proper request to the County, and the County timely and completely denied Petitioner's request and provided all arguably responsive documents to the Petitioner.⁸⁰
6. Prior to responding to Petitioner's request, the County diligently searched for responsive records and otherwise substantially complied with the RTKL in investigating and formulating its response.⁸¹

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ 65 P.S. § 67.1302(a).

⁷⁶ *See, supra*, Part I.

⁷⁷ *See, supra*, Part II.B.

⁷⁸ *See, supra*, Part I.

⁷⁹ *See, supra*, Part II.B.

⁸⁰ *See, supra*, Parts I & II.

⁸¹ *Id.*

7. The County did not knowingly make an effort to deprive Petitioner of responsive records and, therefore, did not act in bad faith.⁸²
8. Petitioner properly and timely appealed the County's denial of his request to the Pennsylvania Office of Open Records.⁸³
9. The attestation submitted to OOR by the County is proper evidence within the meaning of the RTKL.⁸⁴
10. The attachments to the "Petition for Judicial Notice" submitted by the Petitioner to this Court are proper evidence within the meaning of the RTKL.⁸⁵
11. Both parties had a full and fair opportunity to submit relevant testimony and evidence in support of their respective positions.⁸⁶
12. The County proved by a preponderance of the evidence that it does not have articles of incorporation, a certificate of incorporation, and notice published of the same in a periodical and that it provided all potentially responsive documents in its possession to the Petitioner.⁸⁷
13. The OOR properly denied and dismissed the Petitioner's appeal.⁸⁸
14. Petitioner's appeal is hereby denied in part and is otherwise dismissed as moot.⁸⁹

IV. CONCLUSION.

Petitioner has requested a copy of the County's articles of incorporation. The County has asserted that it does not have articles of incorporation, as it is a political subdivision of the Commonwealth of Pennsylvania and not a corporation; however, the County did provide an affidavit indicating it searched its records and provided any potentially responsive documents. Based on this, the Office of Open

⁸² *Id.*

⁸³ 65 P.S. § 67.1101(a)(1): "If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records...." *See also, supra*, Part I.

⁸⁴ *See, supra*, Part I.

⁸⁵ *Id.*

⁸⁶ *See, supra*, Parts I & II.

⁸⁷ *Id.*

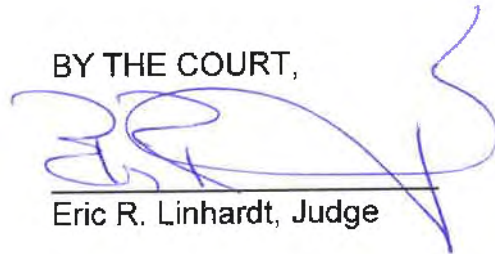
⁸⁸ *Id.*

⁸⁹ *See, supra*, n.16.

Records, found against the Petitioner and denied his appeal. Because it is unlikely that the document that Petitioner seeks exists and because the County has attested that it nevertheless made diligent search for the same and thereafter provided the only responsive document it could find to Petitioner, the decision of the Office of Open Records is AFFIRMED. As such, Petitioner's appeal is hereby DENIED in part and otherwise DISMISSED as moot. The Prothonotary is directed to mark the file CLOSED.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

cc: Roger Mitchell Riera, KV-2520
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