



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**FRED SHICK,
Requester**

v.

**MADISON TOWNSHIP,
Respondent**

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Docket No.: AP 2016-1458

On July 18, 2016, Fred Shick (“Requester”) submitted a request (“Request”) to Madison Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking log book entries documenting time worked by Township employees. On July 19, 2016, the Township invoked a thirty-day extension to respond to the Request. *See* 65 P.S. § 67.902. On August 17, 2016, the Township denied the Request, stating that that the responsive records do not exist within the Township’s possession, custody or control. In support of this assertion, the Township provided the affidavit of Nancy Murray, the Open Records Officer for the Township. On August 19, 2016, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Neither party made a submission on appeal.

Under the RTKL, an affidavit may serve as sufficient evidentiary support for the nonexistence of records. *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 the Township acted in bad faith or that the records exist in the possession of the Township, “the averments in [the affidavit] 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, the Township has met its burden of proving that the requested records do not exist in the Township’s possession, custody or control. Accordingly, the appeal is **denied**.

For the foregoing reason, the Township 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 Clarion 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.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 7, 2016

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Fred Shick (via e-mail only);
Nancy Murray (via e-mail only)

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