

Under the RTKL, an affidavit may serve as sufficient evidentiary support. *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 Department acted in bad faith or that additional records exist in the possession of the Department, “the averments in [the statement] 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 Department has met its burden of proving that additional records do not exist in the Department’s possession, custody or control.

However, the Requester did not just ask for copies of the records, but also asked to inspect the originals. On appeal, the Requester asserts that she was never permitted to do so. In accordance with Section 701 of the RTKL, public records “shall be available for inspection and duplication.” 65 P.S. § 67.701(a). Accordingly, the Department must make the original records available for inspection.

For the foregoing reasons, the Request is **granted in part** and **denied in part** and the Department is required to make the original records available for inspection within thirty days. 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 Philadelphia 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.⁴ 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: Mary King (via e-mail only);
Alethia Dessus (via e-mail only);
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⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).