

or that additional 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 no additional records exist in the Township’s possession, custody or control. The OOR makes no determination as to whether these records should exist, only that the Township does not possess responsive records. See, e.g., *Troupe v. Borough of Punxsutawney*, OOR Dkt. AP 2010-0743, 2010 PA O.O.R.D. LEXIS 731 (“ While ... evidence may establish that a [record] should exist, the OOR lacks jurisdiction to rule on the propriety of the lack of such [record] – the OOR may only determine whether a responsive record does, in fact, exist”). Accordingly, the appeal is **denied**.

For the foregoing reasons, 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 Montgomery 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.³ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 17, 2016

/s/ Charles Rees Brown

Charles Rees Brown
Chief Counsel

Sent to: William Creelman (via e-mail only);
Tommy Ryan (via e-mail only);

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