



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MICHELLE GROVE,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2018-0090
	:	
CENTRE COUNTY,	:	
Respondent	:	

On January 11, 2018, Michelle Grove (“Requester”) submitted a request (“Request”) to Centre County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[a]ll comments posted to ‘Centre County Sheriff’s Office’ FB page (published/hidden/deleted/removed) between 1/1/2017-1/11/2018.” On January 17, 2018, the County stated it was granting the Request, but that no records responsive to the Request exist.

On January 18, 2018, the Requester appealed to the Office of Open Records (“OOR”), arguing that the records exist. On January 27, 2018, the Requester submitted a position statement, arguing that it submitted the Request to the County because the sheriff’s office does not have an open records officer listed on its website. On January 29, 2018, the County submitted its position statement, along with an affidavit from Natalie Corman, Human Services Administrator and temporary Open Records Officer for the County, attesting that:

3. The requester contacted me via email...and she was advised that the Sheriff was his own Right to Know Officer.

4. The requester subsequently contacted the Sheriff with a Right to Know [request] and received a response from the Sheriff with documentation....

5. [The County] has a Social Media Policy...which allows offices to maintain their own Facebook pages and/or social media provided that notice of the persons maintaining the same is provided.

6. The Centre County Sheriff's Office has advised the County that the Sheriff is also the party responsible for maintain the Centre County Sheriff's Office Facebook page.

7. The County of Centre has no records responsive to the 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 County acted in bad faith or that the records exist, "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 County has met its burden of proving that no responsive records exist in the County's possession, custody or control. *See Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). Accordingly, the appeal is **denied**.¹

For the foregoing reasons, 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 or petition for review to the Centre County Court of Common

¹ The Sheriff's website does not contain any reference to the RTKL or the contact information of its Open Records Officer. Further, the Sheriff has not registered an Open Records Officer with the OOR. Section 504 requires the Sheriff to post certain information on its website, including contact information for its Open Records Officer. *See* 65 P.S. § 67.504(b). Notwithstanding the Sheriff's failure to publicly post the required RTKL information, as the Requester has been advised that the Sheriff serves as his own Open Records Officer, the Requester is not precluded from submitting a request directly with the Sheriff.

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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 13, 2018

/s/ Jill S. Wolfe, Esq.

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent to: Michelle Grove (via e-mail only);
Elizabeth Dupuis, Esq. (via e-mail only)

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n. 5 (Pa. Commw. Ct. 2013).