



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
KEVIN WILLIAMS,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2018-0219
	:	
LANCASTER COUNTY,	:	
Respondent	:	

On January 9, 2018, Kevin Williams (“Requester”), an inmate at SCI-Forest, submitted a request (“Request”) to Lancaster County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking bond information related to Docket No. CP-36-CR-00044395-1999. On January 17, 2018, the County denied the Request, stating that no records responsive to the Request exist.

On February 6, 2018, the Requester appealed to the Office of Open Records (“OOR”), arguing that the record exists. On February 28, 2018, the County submitted its position statement, along with affidavits made under the penalty of perjury from Tammy Bender, County Open Records Officer, Danette Burkholder, Chief Deputy for the County Clerk of Courts, and Amara Riley, Assistant District Attorney, attesting that they searched the County’s files and that no records responsive to the Request exist within the County’s possession, custody or control. The Requester did not submit any evidence to challenge the County’s affidavit.

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**.

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 Lancaster 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>.

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

FINAL DETERMINATION ISSUED AND MAILED: March 12, 2018

/s/ Jill S. Wolfe, Esq.

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent to: Kevin Williams, EF-1167;
Tammy Bender (via e-mail only)