



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>JOHN VOLZ,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2016-1045</b>
	:	
<b>CITY OF PHILADELPHIA</b>	:	
<b>LAW DEPARTMENT,</b>	:	
<b>Respondent</b>	:	

On May 10, 2016, John Volz (“Requester”), an inmate at SCI-Somerset, submitted a request (“Request”) to the City of Philadelphia Law Department (“Department”), seeking a photograph that was introduced as evidence in his criminal proceeding. On June 3, 2016, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b), the Department denied the Request, stating, among other reasons, that the Request was misdirected and that the record would be in the possession of the First Judicial District of Philadelphia, a judicial agency.

On June 15, 2016, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c). On June 17, 2016 and June 22, 2016, the Requester made submissions in support of his appeal. On July 1, 2015, the Department submitted a position statement, along with the affidavit of Jeffrey Cohen, Esq., Open Records Officer for the Department, who attests that a search was conducted and that no responsive records exist within the Department’s possession, custody or control.<sup>1</sup>

On appeal, Mr. Cohen attests that a search was conducted and that no responsive records were located. Under the RTKL, an attestation made under made under the penalty of perjury may serve as sufficient evidentiary support of the nonexistence of records. *See Sherry v. Radnor*

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<sup>1</sup> Mr. Cohen notes that the Requester’s four criminal cases were prosecuted by the Philadelphia District Attorney’s Office before the Philadelphia Court of Common Pleas, and that the Department had no involvement with these matters.

*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). Based on the evidence provided, the Department has met its burden of proving that no responsive records exist. See 65 P.S. § 67.708(a)(1); *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **denied**, and the Department 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 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 according to court rules 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.<sup>2</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: July 13, 2016**

/s/ Kyle Applegate

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APPEALS OFFICER  
KYLE APPLGATE, ESQ.

Sent to: John Volz, #DJ-1533;  
Russell Crofts, Esq. (via e-mail only)

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