



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>ANGELA GROMLEY,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP 2016-0905</b>
	:	
<b>INDIANA COUNTY SEWAGE</b>	:	
<b>ENFORCEMENT AGENCY,</b>	:	
<b>Respondent</b>	:	

On April 26, 2016, Angela Gromley (“Requester”) filed four requests (“Request”) with Indiana County Sewage Enforcement Agency (“Agency”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

- [1.] Total wages paid to Mindy Shay as Sewage Enforcement Officer in Indiana County PA in 2015.
- [2.] Explanation of why Joel Galloway is no longer Indiana County Sewage Enforcement Officer and the date his position ended.
- [3.] Total wages paid to Joel Galloway as Sewage Enforcement Officer in 2013, in Indiana County PA.
- [4.] Detailed list of all Attorney fees & court costs, along with total cost to Indiana County Sewage Enforcement Agency regarding Docket 11677-CD-2013.

The Agency failed to respond within five business days, and the Requests were, therefore, deemed denied on May 3, 2016. *See* 65 P.S. § 67.902(b).<sup>1</sup>

On May 24, 2016, the Requester appealed to the OOR challenging the denials and stating grounds for disclosure.<sup>2</sup> The OOR invited both parties to supplement the record. On June 13,

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<sup>1</sup> The Agency did send letters on May 5, 2016 and revised letters on May 6, 2016, providing certain information responsive to the Request.

2016, the Agency submitted a position statement providing information responsive to the Requests, but stating that it was withholding confidential proprietary information. On June 29, 2016, the Agency submitted affidavits from Ms. Shay after the OOR sought clarification on whether records were withheld from the Requester. Ms. Shay affirms that all information sought in the Requests were provided and that it did not withhold responsive records.

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 Agency 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 Agency has met its burden of proof that it has provided all information responsive to the Request. Accordingly, this appeal is **dismissed as moot**.

For the foregoing reasons, the Agency 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 Indiana 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 as per Section 1303. 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>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: July 20, 2016**

/s/ Jill S. Wolfe, Esq.

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APPEALS OFFICER  
JILL S. WOLFE, ESQ.

Sent to: Angela Gromley (via e-mail only);  
Linda Ziembicki, Esq. (via e-mail only);  
Mindy Shay (via e-mail only)

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<sup>2</sup> The Requester filed four appeals with the OOR which were docketed at OOR Dkt. Nos. AP 2016-0905; 2016-0906; 2016-0908; 2016-0900. On June 13, 2016, the OOR consolidated the four appeals into OOR Dkt. AP 2016-0905.

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