



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

**IN THE MATTER OF**

**DARNELL DIXON,  
Requester**

**v.**

**ALLEGHENY COUNTY,  
Respondent**

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**Docket No.: AP 2016-1147**

On May 9, 2016, Darnell Dixon (“Requester”), an inmate at the State Correctional Institution at Dallas (“SCI-Dallas”), submitted a request (“Request”) to the County of Allegheny (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking his medical records while housed at the Allegheny County Jail between November of 2008 and June of 2009. On June 9, 2016, after invoking a thirty-day extension of time to respond pursuant to 65 P.S. § 67.902, the County denied the Request, stating that a search was conducted and no records responsive to the Request exist.

On July 1, 2016, the Requester appealed to the Office of Open Records (“OOR”), stating that the records must exist. On July 13, 2016, the County submitted a position statement supporting the denial of the Request and the steps taken to determine that no records exist. The County also provided the affidavit of Dr. Aloysius Joseph, who attests that a search was conducted and that no records responsive to the Request exist in 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 in the possession of the County, “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 the medical records do not exist in the County’s possession, custody or control. 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 Allegheny County Court of Common Pleas. 65 P.S. § 67.1301(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.<sup>1</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: July 28, 2016**

*/s/ Charles Rees Brown*

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Charles Rees Brown  
Chief Counsel

Sent to: Darnell Dixon (JX 7274) SCI-Dallas;  
Rachel M. Cipolat, Esq. (via e-mail only);  
Jerry Tyskiewicz (via e-mail only)

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