



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>ABIDIK GONZALEZ,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2016-1141</b>
	:	
<b>PENNSYLVANIA DEPARTMENT OF</b>	:	
<b>REVENUE,</b>	:	
<b>Respondent</b>	:	

On May 31, 2016, Abidik Gonzalez (“Requester”), an inmate at the State Correctional Institution at Huntingdon (“SCI-Huntingdon”), submitted a request (“Request”) to the Pennsylvania Department of Revenue (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking complaint information regarding a York County Police Officer (Detective Scott Nadzom) forwarded to Internal Affairs (Inspector Craig Losty) of the York County Police Department. On June 7, 2016, the Department denied the Request, stating that the Department does not possess any records responsive to the Request.

On June 30, 2016, the Requester appealed to the Office of Open Records (“OOR”), stating that the records must exist. On July 12, 2016, the Department submitted a position statement, arguing that no records responsive to the Request exist in the Department’s possession, custody or control. The Department also submitted the affidavit of its Director of Human Resources, who attests that a search was conducted and that no records responsive to the Request exist in the Department’s possession, custody or control.<sup>1</sup> The Requester did not submit any evidence to challenge the Department’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 Department acted in bad

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<sup>1</sup> Ms. Miller attests that after searching Department records, she found no evidence that either Scott Nadzom or Craig Losty are employees of the Department of Revenue.

faith or that the record exists in the possession of the Department, “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 Department has met its burden of proving that the records requested do not exist in the Department’s possession, custody or control. Accordingly, the appeal is **denied**.

For the foregoing reasons, 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 or petition for review to the Commonwealth Court. 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>2</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: Abidik Gonzalez (KZ 5688) SCI-Huntingdon;  
Jeff Kaylor, Esq. (via e-mail only);  
Pamela McGranaghan (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).