



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**HEATHER STANTON,
Requester**

v.

**COUNTY OF MONTGOMERY,
Respondent**

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Docket No.: AP 2016-1165

On June 8, 2016, Heather Stanton (“Requester”), submitted a request (“Request”) to the County of Montgomery (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records relating to incident #K1407139 filed in Douglass Township. On June 15, 2016, the County denied the Request, stating that no records exist in its possession, custody or control.

On July 7, 2016, the Requester appealed to the Office of Open Records (“OOR”), stating that the Township advised her that the records were turned over to the District Attorney’s Office for criminal determination. On July 18, 2016, the County provided the affidavit of Joshua Stein, First Assistant Solicitor, who attests that a search was conducted and that no records responsive to the Request exist in the County’s possession, custody or control.¹ 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

¹ The affidavit further states that the District Attorney is a separately elected, autonomous row office, over which the County Commissioners have no direct oversight or control.

of proving that the incident report does 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 Montgomery 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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 4, 2016

/s/ Charles Rees Brown

Charles Rees Brown
Chief Counsel

Sent to: Heather Stanton (via e-mail only);
Joshua M. Stein, Esq. (via e-mail only)

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