



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>ALAYNE MORENA,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2016-1245</b>
	:	
<b>BOROUGH OF WEST HAZLETON,</b>	:	
<b>Respondent</b>	:	

On July 11, 2016, Alayne Morena (“Requester”) submitted three requests (“Requests”) to the Borough of West Hazleton (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking,

[Request 1] Documents showing how many residential and commercial properties are in West Hazleton and how many possess a certificate of occupancy.

[Request 2] Photos of the inner working of electrical panel box at 1012 E. Oak St....

[Request 3] Documentation pertaining to where in the West Hazleton Ordinance it states a vacant building is required to have a certificate of occupancy.

On July 11, 2016, the Borough denied Request 1, stating that no records responsive to the Request exist. With respect to Requests 2 and 3, the Borough failed to respond within five business days; therefore, Request 2 and 3 were deemed denied on July 18, 2016. *See* 65 P.S. § 67.901.

On July 25, 2016, the Requester appealed the three Requests to the Office of Open Records (“OOR”), arguing that the record exists.<sup>1</sup> On August 3, 2016, the Borough submitted a position statement, along with an attestation from Jane Mikulca, Open Records Officer, stating that the records responsive to Request 1 and 2 do not exist. With respect to Request 3, the

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<sup>1</sup> The OOR hereby consolidates the appeals docketed at OOR Dkts. AP 2016-1245, AP 2016-1246 and AP 2016-1247 into OOR Dkt. AP 2016-1245.

Borough provided a copy of the responsive records on appeal. The Requester did not submit any evidence to challenge the Borough's affidavits.

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 Borough 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 Borough has met its burden of proving that no responsive records exist in the Borough's possession, custody or control with respect to Requests 1 and 2; and, that records responsive to Request 3 have been provided on appeal. Accordingly, the appeal is **denied in part** and **dismissed as moot in part**.

For the foregoing reasons, the Borough 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 Luzerne 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 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: August 17, 2016**

/s/ Jill S. Wolfe, Esq.

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APPEALS OFFICER  
JILL S. WOLFE, ESQ.

Sent to: Alayne Morena (via e-mail only);  
Christopher Slusser, Esq. (via e-mail only);  
Jane Mikulca (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).