



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**KRISTINA BUREK,
Requester**

v.

**BOROUGH OF SLATINGTON,
Respondent**

:
:
:
:
:
:
:
:
:
:
:
:

Docket No.: AP 2016-1295

On July 25, 2016, Kristina Burek (“Requester”) submitted a request (“Request”) to the Borough of Slatington (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a copy of a survey that caused her fence permit to be revoked. On July 26, 2016, the Borough denied the Request, asserting that it did not have a copy of the survey.

On August 3, 2016, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial. On August 9, 2016, the Borough submitted a position statement, explaining that the zoning permit was revoked on the basis of a survey submitted by a private citizen. Since the Borough did not have the capacity to copy the survey, as it was on a large sheet of paper, the survey was returned to its owner after the permit was revoked. Accompanying the submission was the sworn statement of the Borough’s Manager, who also serves as its Zoning Officer and Building Code Official, and who issued the permit revocation. He attests to the foregoing.

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 record exists in the possession of the Borough, “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 the requested record does not exist in the Borough’s possession, custody or control. Accordingly, the appeal is **denied**.

For the foregoing reason, 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 Lehigh 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.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 29, 2016

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Kristina Burek (via e-mail only);
Thomas Dinkelacker, Esq. (via e-mail only);
Charissa Chamuras (via e-mail only);
David Schnaars (via e-mail only);
Duane Dellecker (via e-mail only)

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