pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JEVON EVERETT,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2016-1310**
	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS,	:	
Respondent	:	

On July 7, 2016, Jevon Everett ("Requester"), an inmate at the State Correctional Institution at Fayette ("SCI-Fayette"), submitted a request ("Request") to the Pennsylvania Department of Corrections ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking a contract between the Department and Union Supply Direct, Inc. On July 21, 2016, after invoking a thirty-day extension of time to respond pursuant to 65 P.S. § 67.902, the Department denied the Request, stating that the Department does not possess the requested record.

On August 5, 2016, the Requester appealed to the Office of Open Records ("OOR"), stating that the record must exist. On August 10, 2016, the Department submitted a position statement and the affidavit of its Open Records Officer, who attests that a search was conducted and that the requested record does not exist in the Department's possession, custody or control. 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 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 Envtl. 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 record 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.[1] This Final Determination shall be placed on the website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: September 1, 2016

/s/ Charles Rees Brown

Charles Rees Brown
Chief Counsel

Sent to: Jevon Everett (HW 1387) SCI-Fayette;
Chase Defelice, Esq. (via e-mail only);
Andrew Filkosky (via e-mail only)

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