



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF :  
 :  
 ALTON BROWN, :  
 Requester :  
 :  
 v. : **Docket No: AP 2016-1334**  
 :  
 PENNSYLVANIA DEPARTMENT OF :  
 CORRECTIONS, :  
 Respondent :

On July 14, 2016, Alton Brown (“Requester”), an inmate at SCI-Green, filed a request (“Request”) with the Pennsylvania Department of Corrections (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the Annual Management Review Audit of SCI-Green’s medical department and the proposal submitted by Correct Care Solutions. On July 19, 2016, the Department denied the Request due to the fact that the Requester has an outstanding balance of \$6.32 for copy charges.

On August 11, 2016, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On August 12, 2016, the Department submitted a statement made under penalty of perjury by its Open Records Officer, who attests that the Requester was granted records in a previous case, the records were copied and prepared, but no payment has been received.

An agency may refuse to process a request if a requester has an outstanding balance due for previous RTKL requests. *Pa. Dep’t of Transp. v. Drack*, 42 A.3d 355, 363 (Pa. Commw. Ct. 2012); *see also* OOR Advisory Opinion issued Jan. 12, 2016.<sup>2</sup>

<sup>1</sup> Pursuant to the prisoner mailbox rule, the appeal was timely, as it was postmarked August 9, 2016.

<sup>2</sup> This Advisory Opinion is available at [http://www.openrecords.pa.gov/Documents/RTKL/2016-01-12\\_Smith-Payment\\_when\\_requester\\_has\\_not-received-records.pdf](http://www.openrecords.pa.gov/Documents/RTKL/2016-01-12_Smith-Payment_when_requester_has_not-received-records.pdf).

Under the RTKL, an affidavit may serve as sufficient evidentiary support. *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 evidence that the Department has acted in bad faith, “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 is justified in refusing to process the Request. Accordingly, the appeal is **denied**.

For the foregoing reason, 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 according to court rules 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>3</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: September 12, 2016**

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

Sent to: Alton Brown DL-4686;  
Chase Defelice, Esq. (via e-mail only);  
Andrew Filkosky (via e-mail only)

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