



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

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| IN THE MATTER OF | : | |
| | : | |
| JOHN YAKIM, | : | |
| Requester | : | |
| | : | |
| v. | : | Docket No.: AP 2016-1357 |
| | : | |
| MUNICIPALITY OF MONROEVILLE, | : | |
| Respondent | : | |

On August 8, 2016, John Yakim (“Requester”) filed a request (“Request”) with the Municipality of Monroeville (“Municipality”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “invoices, statements and work orders from Krisson Technology for January 1, 2016 - July 31, 2016.” On August 15, 2016, the Municipality granted the Request and provided the Requester with responsive monthly invoices for January of 2016 through May of 2016.

On August 17, 2016, the Requester appealed to the OOR, challenging the sufficiency of the Municipality’s response and stating grounds for disclosure. The Requester argues that the Municipality must possess additional records for the months of May, June and July. The OOR invited both parties to supplement the record and directed the Municipality to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On August 17, 2016, the Requester submitted a position statement arguing that additional “bills” exist. On August 17, 2016, the Municipality submitted an unsworn position statement, asserting that no other bills exist, and that all responsive records have been provided to the Requester. On August 24, 2016, the Municipality submitted the sworn affidavit of Timothy Little, Manager for the Municipality, who attests that the annual contract with Krisson Technology ended on May 31, 2016, but that the Municipality is continuing its relationship with the company on a month to month, as needed basis. Mr. Little further attests that “[s]ince June 1, 2016, the Municipality has not issued any work orders or checks to Krisson, nor has Krisson submitted any invoices to the Municipality.”

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support to sustain an agency’s burden of proof. *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). The Requester argues that additional records exist; however, in the absence of any competent evidence that the Municipality acted in bad faith or that additional 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 Municipality has demonstrated that no additional responsive records exist within its possession, custody or control. See *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **denied**, and the Municipality is not required to take any further action. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Allegheny 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 OOR website at: <http://www.openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 14, 2016

/s/ Kathleen A. Higgins

APPEALS OFFICER
KATHLEEN A. HIGGINS, ESQ.

Sent to: John Yakim (via e-mail only);
Joe Sedlak (via e-mail only)

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