



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ROBERT DAVIS,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2016-1358
	:	
MUNICIPALITY OF MONROEVILLE,	:	
Respondent	:	

On July 5, 2016, Robert Davis (“Requester”) submitted a request (“Request”) to the Municipality of Monroeville (“Municipality”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking applications and building permits for several sheds and a pool. On July 12, 2016, the Municipality invoked a thirty-day extension to respond to the Request. *See* 65 P.S. § 67.902. On August 10, 2016, the Municipality denied the Request, asserting that the requested records do not exist in the Municipality’s possession, custody or control.

On August 17, 2016, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. On August 9, 2016, the Municipality submitted the sworn and notarized statement of Paul Hugus, the Municipality’s Director of Building, Engineering and Community Development, who attests that the Municipality searched for the records and that they do not exist in the Municipality’s possession, custody or control.

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 Municipality 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 Municipality has met its burden of proving that the requested records do not exist in the Municipality’s possession, custody or control. Accordingly, the appeal is **denied**.

For the foregoing reason, the Municipality 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 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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 16, 2016

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

Sent to: Robert Davis (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).