pennsylvania
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

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| **IN THE MATTER OF** | : | |
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| **DAVID L. GEORGE,** | : | |
| **Requester** | : | |
| | : | |
| **v.** | : | **Docket No.: AP 2016-1459** |
| | : | |
| **PENNSYLVANIA DEPARTMENT OF** | : | |
| **CORRECTIONS,** | : | |
| **Respondent** | : | |

On August 3, 2016, David L. George ("Requester"), an inmate at the State Correctional Institution at Graterford ("SCI-Graterford"), 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 his sentencing order; any documents relied upon to create the DC-300B form; and, all documents used to tabulate the costs displayed on report "BR521RPT" titled Act 84 Log. On August 12, 2016, after invoking a thirty-day extension of time to respond pursuant to 65 P.S. § 67.902, the Department granted the Request and provided a redacted version of the DC-300B and stated that no other records responsive to the Request exist.

On August 29, 2016, the Requester appealed to the Office of Open Records ("OOR"), stating that the sentencing order and cost information must exist. On August 31, 2016, the Department submitted a position statement and the affidavit of its Open Records Officer, who attests that a search was conducted and that no other responsive records 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 records exist 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 records requested do not exist in the Department's possession, custody or control.[1] 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.[2] This Final Determination shall be placed on the website at: http://openrecords.pa.gov.

**FINAL DETERMINATION ISSUED AND MAILED: September 20 2016**

***/s/ Charles Rees Brown***

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Charles Rees Brown
Chief Counsel

Sent to: David L. George (HS 7181) SCI-Graterford;
Chase Defelice, Esq. (via e-mail only);
Andrew Filkosky (via e-mail only)

[1] While the Department does not possess the requested sentencing order, there exists a common law right of access to judicial records. *Commonwealth v. Upshur*, 924 A.2d 642 (Pa. 2007). The common law right of access to public judicial records and documents arose from the presumption that judicial proceedings will be open to the public. As the Supreme Court has stated, "[i]t is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Communications, Inc*., 435 U.S. 589, 591 (1978) (footnotes omitted). The Pennsylvania Supreme Court has viewed the common law right of access as compelled by many of the considerations that underlie the presumption of public trials. *See Commonwealth v. Fenstermaker*, 530 A.2d 414, 417-18 (Pa. 1987). The records sought, if they exist, may be requested from the issuing court.
[2] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n. 5 (Pa. Commw. Ct. 2013).