



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**RICHARD STACKHOUSE,
Requester**

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:

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v.

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Docket No: AP 2016-1432

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**PENNSYLVANIA DEPARTMENT OF
CORRECTIONS,
Respondent**

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On August 4, 2016, Richard Stackhouse (“Requester”), an inmate at SCI-Benner Township, 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 criminal complaint filed against him and his “rap sheet,” “certified by C.H.R.I.A.” On August 8, 2016, the Department denied the Request, asserting that the criminal complaint does not exist within the Department’s possession and that the dissemination of the Requester’s “rap sheet” is controlled by the Criminal History Record Information Act (“CHRIA”), 18 Pa.C.S. §§ 9101 *et seq.*

On August 25, 2016, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging only the Department’s denial of access to the criminal complaint and stating grounds for disclosure. On August 30, 2016, the Department submitted a statement made under penalty of perjury by its Open Records Officer, who attests that the Department conducted a search and that no criminal complaints responsive to the Request exist within the Department’s possession, custody or control.

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 or that the records do, in fact, 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 Department has met its burden of proving that it does not possess the criminal complaint responsive to the Request. *See* 65 P.S. § 67.705; *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the Requester's appeal is **denied**, and 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.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 23, 2016

/s/ Blake Eilers

Blake Eilers, Esq.

Appeals Officer

Sent to: Richard Stackhouse, FW-8744;
Chase Defelice (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).