

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN THE MATTER OF :  
DONNIE DOZIER, :  
Petitioner : No. 3576 CR 2012  
 :  
vs. :  
 :  
COMMONWEALTH OF PENNSYLVANIA :  
PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, ET AL., :  
Respondents :

NOTICE OF APPEAL

Notice is hereby given that Donnie Dozier, petitioner named above, hereby appeals to the Commonwealth Court of Pennsylvania from the Final Determination/Order entered in this matter on the 13th day of September 2016. This final determination/order has been entered in the docket as evident by the attached copy of the final determination/order.

Date: 09/19 /2016

(S) Donnie Dozier  
Donnie Dozier, pro se  
Pa. DOC No. CV-1420  
SCI-Dallas  
1000 Follies Road  
Dallas, PA 18612



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 record exists in the possession of the Department, “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 the requested records have been provided, and that to the extent the Request seeks other records, those records do not exist in the Department’s possession, custody or control. 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.<sup>2</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: September 13, 2016**

*/s/ Charles Rees Brown*

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Charles Rees Brown  
Chief Counsel

Sent to: Donnie Dozier (CV 1420) SCI-Dallas;  
Valerie Janosik-Nehilla, Esq. (via e-mail only);  
Andrew Filkosky (via e-mail only)

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*Fenstermaker*, 530 A.2d 414, 417-18 (Pa. 1987). The record sought, if it exists, may be requested from the issuing court.

<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n. 5 (Pa. Commw. Ct. 2013).

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PROOF OF SERVICE

I hereby verify that I have on this date served a true and correct copy of the Notice of Appeal upon the persons and in the manner indicated below which service satisfies the requirements.

TYPE OF SERVICE BY U.S. FIRST CLASS MAIL TO:

Office of the Chief Clerk  
Commonwealth Court  
601 Commonwealth Avenue  
Suite 2100  
Harrisburg, PA 17106  
(1) copy

PA Department of Corrections  
Office of General Counsel  
1920 Technology Parkway  
Mechancisburg, PA 17050  
(1) copy

Office of Open Records  
Commonwealth Keystone Build.  
400 North Street, 4th Floor  
Harrisburg, PA 10102  
(1) copy

Clerk of Courts of  
Dauphin County  
Dauphin County Courthouse  
Harrisburg, PA 17101  
(1) copy

Office of the Attorney General of Pennsylvania  
1600 Strawberry Square, 16th Floor  
Harrisburg, PA 17101  
(1) copy

Date: 09/19 /2016

/s/ Donnie Dozier  
Donnie Dozier