



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DANIEL ANGELUCCI,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2016-1485
	:	
PENNSYLVANIA OFFICE OF	:	
OPEN RECORDS,	:	
Respondent	:	

On August 25, 2016, Daniel Angelucci (“Requester”) filed a request (“Request”) with the Office of Open Records (“OOR”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the “current employment status or the date of separation from state employment” for 203 identified individuals. On August 31, 2016, the OOR responded to the Request, stating that the Request was misdirected and that the OOR “does not possess, maintain or control” the requested records. The OOR also provided contact information for the Pennsylvania Office of Administration, which the OOR stated may possess the requested records.

On August 31, 2016, the Requester appealed to the OOR Appeals Officer¹ (“Appeals Officer”), challenging the denial and stating grounds for disclosure.² The Appeals Officer invited both parties to supplement the record. On September 13, 2016, the OOR submitted a position statement and the attestation made under the penalty of perjury of George Spiess, the OOR’s Open Records Officer, who attests that a good faith search of the OOR’s files was conducted and no records responsive to the Request exist within the OOR’s possession, custody or control. Mr. Spiess further attests that “[t]he OOR is not a custodian of records for local or Commonwealth agencies” and “[t]he only records in the possession, custody or control of the OOR pertain to the statutorily imposed duties of the OOR.”

¹ Because the RTKL establishes that the OOR, along with the Attorney General, the General Assembly, the Auditor General and certain other agencies, shall hear appeals of their own denials, this Final Determination distinguishes the OOR from the undersigned Appeals Officer for clarity. *See* 65 P.S. § 67.503(a); 65 P.S. § 67.503(d).

² The Requester also asserts that the OOR’s response was not appropriate; however, the OOR appropriately provided the Requester with the contact information for the agency that would most likely possess the requested records, while also addressing all information necessary for a proper denial. *See* 65 P.S. § 67.502(b); 65 P.S. § 67.903.

Under the RTKL, an attestation 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). In the absence of any competent evidence that the OOR acted in bad faith or that additional records exist, "the averments in [the attestation] 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 OOR has demonstrated that no responsive records exist within its possession, custody or control. *See* 65 P.S. § 67.705; *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **denied**, and the OOR 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 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.³ This Final Determination shall be placed on the OOR website at: <http://www.openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 28, 2016

/s/ Kathleen A. Higgins

APPEALS OFFICER
KATHLEEN A. HIGGINS, ESQ.

Sent to: Daniel Angulucci (via e-mail only);
George Spiess (via e-mail only);
Benjamin Lorah, Esq. (via e-mail only)

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