



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**TIM GLASSPOOL,
Requester**

v.

**PLUM BOROUGH SCHOOL DISTRICT,
Respondent**

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Docket No.: AP 2016-1396

On July 14, 2016, Tim Glasspool (“Requester”), submitted a request (“Request”) to Plum Borough School District (“School District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking e-mails from a member of the School District’s Board. On August 18, 2016, after invoking a thirty-day extension of time to respond pursuant to 65 P.S. § 67.902, the School District granted the Request, provided three e-mails and stated that no other records exist.

On August 22, 2016, the Requester appealed to the Office of Open Records (“OOR”), stating that he believes other e-mails exist. On August 30, 2016, the School District provided a position statement indicating that the School District has provided three e-mails and that no other records exist. The School District also provided the affidavit of its Open Records Officer, who attests that a search was conducted and that no additional records responsive to the Request exist in the School District’s possession, custody or control.¹ The Requester did not submit any evidence to challenge the School District’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 School District acted in bad faith or that additional records exist in the possession of the School District, “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,

¹ The Open Records Officer details her efforts to retrieve the e-mails from the School Board member.

the School District has met its burden of proving that no additional records not exist in the School District's possession, custody or control. Accordingly, the appeal is **denied**.

For the foregoing reasons, the School District 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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 5, 2016

/s/ Charles Rees Brown

Charles Rees Brown
Chief Counsel

Sent to: Tim Glasspool (via e-mail only);
Andrew Evankovich, Esq. (via e-mail only);
Cynthia Vento (via e-mail only)

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