



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
SEAN MOFFITT,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2016-1618
	:	
PENNSYLVANIA DEPARTMENT	:	
OF CONSERVATION & NATURAL	:	
RESOURCES,	:	
Respondent	:	

On September 6, 2016, Sean Moffitt (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Conservation and Natural Resources (“Department”), asking questions regarding an identified property. On September 13, 2016, the Department denied the Request, arguing that it does not possess any responsive records.

On September 23, 2016, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On September 30, 2016, the Department submitted a position statement, along with the attestation of Connie Plonowski, Open Records Officer for the Department, who attests that a search was conducted and that no responsive records were located.¹ On October 3, 2016, the Requester also submitted a position statement, made under the penalty of perjury, stating that he believes that the Department possesses the requested information.

Under the RTKL, an attestation made under made under the penalty of perjury may serve as sufficient evidentiary support of 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

¹ The Department explains that it “does not currently own or manage, nor since its creation in 1995, has it previously owned or managed” the property in question.

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, “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)). While the Requester submitted evidence that he “believes” the Department possesses the requested information, the Requester has submitted no evidence to substantiate that belief or to contradict the Department’s evidence. Based on the evidence provided, the Department has met its burden of proving that no responsive records exist.² *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 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 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.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 5, 2016

/s/ Kyle Applegate

APPEALS OFFICER
KYLE APPLGATE, ESQ.

Sent to: Sean Moffitt;
Mark Baldwin, Esq. (via e-mail only);
Connie Plonowski (via e-mail only)

² Additionally, while not raised by the Department, a request must seek records, rather than answers to questions. *See Moll v. Wormleysburg Borough*, OOR Dkt. AP 2012-0308, 2012 PA O.O.R.D. LEXIS 197; *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at * 14 (Pa. Commw. Ct. 2012) (noting that the portion of a request “set forth as a question” did not “trigger a response”); *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (“The [RTKL] did not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens *access* to existing public records”).

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