



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**R. JUDE ROME,
Requester**

v.

**EXETER BOROUGH,
Respondent**

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Docket No.: AP 2016-1569

On September 5, 2016, R. Jude Rome (“Requester”), submitted a request (“Request”) to Exeter Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking permits to purchase fireworks. On September 9, 2016, the Borough denied the Request asserting that no records exist within its possession, custody or control.

On September 19, 2016, the Requester appealed to the Office of Open Records (“OOR”), stating that the records exist. On September 26, 2016, the Borough submitted the affidavit of Debra Serbin, Secretary/Treasurer, who attests that a search was conducted and that no records responsive to the Request exist in the Borough’s possession, custody or control. The Requester submitted additional information arguing that the affidavit is not sufficient.¹

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 Borough acted in bad faith or that the records exist in the possession of the Borough, “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 Borough

¹ Although the Requester argues that the Borough’s notarized affidavit should not be treated as competent evidence because it was not made under penalty of perjury, the OOR treats notarized submissions and submissions made under penalty of perjury the same for evidentiary purposes. *See Baxter v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2010-0139, 2010 PA O.O.R.D. LEXIS 639.

has met its burden of proving that the requested records do not exist in the Borough's possession, custody or control. Accordingly, the appeal is **denied**.

For the foregoing reasons, the Borough 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 Luzerne County Court of Common Pleas. 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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 18, 2016

/s/ Charles Rees Brown

Charles Rees Brown
Chief Counsel

Sent to: R. Jude Rome (via e-mail only);
Raymond Hassey, Esq. (via e-mail only)

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