



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
R. JUDE ROME,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2016-1615
	:	
EXETER BOROUGH,	:	
Respondent	:	

On September 12, 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 records used by the Borough in its hiring process for the position of Borough Manager. As the Borough did not respond within five business days, the Request was deemed denied on September 19, 2016. *See* 65 P.S. § 67.901.

On September 23, 2016, the Requester appealed to the Office of Open Records (“OOR”), stating grounds for disclosure. On September 27, 2016, the Borough submitted the sworn affidavit of Thomas Shannon, Borough Council Chairman, attesting that the Borough “decided not to seek outside applicants to fill the position of Borough Manager,” and, instead, appointed Debra Serbin, a long-term employee of the Borough, as Borough Manager. Chairman Shannon further attests that the Borough “is not in possession of any application for employment, electronic communication, letter of interest ... [or] documents in the nature of a resume or similar documents regarding Debra Serbin.”

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, “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 has met its burden of proving that no responsive records 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 to the Luzerne 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.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 21, 2016

/s/ Magdalene C. Zeppos

APPEALS OFFICER
MAGDALENE C. ZEPPOS, ESQ.

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

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).