



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>WILLIAM ANDREWS,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2016-1648</b>
	:	
<b>CITY OF CARBONDALE,</b>	:	
<b>Respondent</b>	:	

**INTRODUCTION**

On September 14, 2016, William Andrews (“Requester”) submitted a request (“Request”) to the City of Carbondale (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a copy “of the agreement between the [City] and the landowner or previous landowners for the use of roads running from Gordon Ave. through the Andrews’ property to Griffin Ave.” On September 14, 2016, the City denied the Request, claiming that the requested record does not exist.

On September 30, 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.

On October 21, 2016, the City submitted a copy of its denial from September 14, 2016, along with a printout of the Requester’s home address property details from the Lackawanna County Assessor’s Office. It is unclear from the City’s submission how the printout relates to the Request. The City did not make a further submission.

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a). “The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). An affidavit or statement made under the penalty of perjury is competent evidence 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). Given that the City has not presented competent evidence on appeal to prove that the responsive record does not exist, the City has failed to meet its burden of proof to withhold the responsive record. *See Hodges*, 29 A.3d at 1192.

For the foregoing reasons, the Requester appeal is **granted**, and the City is required to provide the responsive record within thirty days. This Final Determination is binding on the parties. Within thirty days of the mailing date of this determination, either party may appeal to the Lackawanna County Court of Common Pleas. *See* 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served with 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.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: October 28, 2016**

/s/ Bina Singh

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BINA SINGH  
APPEALS OFFICER

Sent to: William Andrews;  
Michele Bannon (via e-mail only)

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