



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**RALPH GROSSO,
Requester**

v.

**PENNSYLVANIA DEPARTMENT OF
REVENUE,
Respondent**

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Docket No.: AP 2016-1574

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”). Upon review of the file, the appeal is dismissed as premature for the following reason:

On August 22, 2016, Ralph Grosso (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Revenue (“Department”), seeking “the actual amount [percentage] wise that the lottery actually gives ‘older Penn’s’ on a daily basis as put forth in their advertisement....”

On September 19, 2016, the Requester appealed to the OOR, claiming that the Request was deemed denied. *See* 65 P.S. § 67.901. On September 28, 2016, the Department submitted a statement made under penalty of perjury by Christin Heidingsfelder, the Department’s Deputy Secretary for Administration, who attests that the Department never received the Request prior to the appeal being filed.¹

Under the RTKL, an affidavit may serve as sufficient evidentiary support. *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 evidence that the Department has acted in bad faith, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. 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

¹ The Department also submitted a print-out from the Pennsylvania Lottery’s website explaining the benefits provided by the Lottery.

evidence submitted, the Department has established that it did not receive the Request until receiving the Official Notice of Appeal in this matter. Accordingly, the appeal is **dismissed as premature**. See, e.g., *Gilliam v. Allegheny Cnty. Police Dep't*, OOR Dkt. AP 2014-1096, 2014 PA O.O.R.D. LEXIS 869 (dismissing an appeal as premature where an agency provided evidence that it did not receive a request prior to an appeal being filed); *Conci v. Allegheny Cnty. Jail*, OOR Dkt. AP 2011-0401, 2011 PA O.O.R.D. LEXIS 919 (same). The Requester is not prohibited from refileing the Request with the Department, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

For the foregoing reason, the Department is not required to take any further action at this time. 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 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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 3, 2016

/s/ Blake Eilers

Blake Eilers, Esq.

Appeals Officer

Sent to: Ralph Grosso (via e-mail only);
Pamela McGranaghan (via e-mail only);
Jeff Kaylor, Esq. (via e-mail only)

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