pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
CHRISTOPHER RODLAND,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2016-1696**
	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS,	:	
Respondent	:	

On August 24, 2016, Christopher Rodland ("Requester"), an inmate at SCI-Benner Township, submitted a request ("Request") to the Pennsylvania Department of Corrections ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking "the policy, writing, or other document which specifically covers the procedures employed for 'Support Team' hearing." On August 26, 2016, the Department invoked a thirty-day extension of time to respond to the Request. *See* 65 P.S. § 67.902(b). On September 16, 2016, the Department denied the Request, stating that the Request is insufficiently specific, 65 P.S. § 67.703, and that no records responsive to the Request exist.

On October 11, 2016, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.[1] On October 19, 2016, the Department submitted a position statement, asserting that the requested records do not exist. The Department also submitted a statement made under the penalty of perjury from Andrew Filkosky, the Department's Open Records Officer, attesting that he conducted a search and concluded that no responsive records exist in the Department's possession, custody or control.

Under the RTKL, a statement made under the penalty of perjury 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 Department acted in bad faith or that the records exist, "the averments in [the statement] should be accepted as

[1] The Requester's appeal was placed in the Department's mail system on October 6, 2016, and, pursuant to the "prisoner mailbox rule," is considered timely filed. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

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 evidence provided, the Department has met its burden of proving that no responsive records exist in the Department's possession, custody or control. Accordingly, the appeal is **denied**.

For the foregoing reasons, 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 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 9, 2016

/s/ Magdalene C. Zeppos

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APPEALS OFFICER
MAGDALENE C. ZEPPOS, ESQ.

Sent to: Christopher Rodland, EN-0058;
Chase Defelice, Esq. (via e-mail only);
Andrew Filkosky (via e-mail only)

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