

responsive records and provided records responsive to the Request. Specifically, Attorney Klatt states, “[t]he client’s file was retrieved from archival storage and the contents – paper files/copies – were reviewed. This included discovery materials, letters, emails, and various reports generated by the underlying investigation. There were no electronic records.” Attorney Klatt continues to state that the only record unable to be provided to the Requester is a copy of a pre-sentence investigation, which is not in the possession, custody or control of the Office, as it is maintained by the court. Furthermore, Attorney Klatt states that the Office mailed responsive records in the Office’s possession to the Requester on August 31, 2022. *See Klatt Attestation ¶¶ 4-5.*

However, on September 13, 2022, the OOR received a submission from the Requester indicating that there were pages missing from the records provided. The Requester explained that page numbers were out of order and it appeared that an error in printing may have occurred.¹

On September 13, 2022, the OOR reached out to the Office asking for clarification regarding the possibility that pages were missed in error when making copies for the Requester.

On September 19, 2022, the Office provided the supplemental attestation of Attorney Klatt, stating that a copying error was made and upon further review, the Office recopied a portion of the responsive records and then provided those to the Requester via USPS on September 19, 2022. Attorney Klatt further states that the Office has now provided all responsive records to the Requester. *See Klatt Supplemental Attestation.*

Under the RTKL, an attestation or statement made under penalty of perjury 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).

¹ Due to the OOR receiving this information the day before the Final Determination was originally set to be issued, and because the OOR was unable to obtain consent from the Requester in a timely manner, the OOR unilaterally stayed this matter to allow the Office to respond and provide clarification.

In the absence of any competent evidence that the Office acted in bad faith, “the averments in [the attestations] 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)).

Accordingly, based on the evidence submitted, the Office has proved that responsive records were provided to the Requester during the course of the appeal and that no additional records are within the Office’s possession, custody or control. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the Requester’s appeal is **denied in part** and **dismissed as moot in part**, and the Office 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 Dauphin 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.² This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 22, 2022

/s/ Ryan W. Liggitt

RYAN W. LIGGITT, ESQ.
APPEALS OFFICER

Sent to: Craig Ice (via US mail only); and
Mary Klatt, Esq., AORO (via email only)

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