



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**CHEYENNE PRESCOTT,
Requester**

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:

:

v.

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Docket No.: AP 2020-2180

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**LOWER BUCKS COUNTY JOINT
MUNICIPAL AUTHORITY,
Respondent**

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On October 1, 2020, Cheyenne Prescott (“Requester”) submitted a request (“Request”) to the Lower Bucks County Joint Municipal Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

List all property addresses that water has been disconnected for two months or longer. Properties that have been disconnected for one year or longer are also wanted. If you do not have properties that are disconnected please provide addresses with zero water usage.

On October 5, 2020, the Authority denied the Request, arguing that it does not possess responsive records and is not required to create a record that does not currently exist.

On October 27, 2020, the Office of Open Records (“OOR”) received the Requester’s appeal,¹ challenging the records provided and stating grounds for disclosure. On November 5, 2020, the Authority submitted the affidavits of Vijay Rajput, the Authority’s Open Records

¹ The OOR received the appeal on October 27, 2020, and because of the Columbus Day holiday on October 12, 2020, this appeal was timely filed. 65 P.S. § 67.1101(a)(1).

Officer, and Colleen Dunn, the Authority's Finance Director. Both Authority representatives attest that the records do not exist within the possession, custody or control of the Authority. Specifically, Mr. Rajput attests that Ms. Dunn was the person "most familiar with the information requested," and this matter was directed to her for a response. Ms. Dunn attests that "[u]pon review of the [R]equest, I advised that the Authority does not have such records, does not produce such records, nor does it have the ability to produce such records."

Under the RTKL, a sworn affidavit may serve as sufficient evidentiary support for the nonexistence of a record. *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 Authority acted in bad faith or that the records exist, "the averments in [the affidavits] 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 Authority has met its burden of proof that it does not possess responsive records. *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**, and the Authority 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 Bucks 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: November 24, 2020

/s/ Ryan W. Liggitt

RYAN W. LIGGITT, ESQ.
APPEALS OFFICER

Sent to: Cheyenne Prescott (via email only);
Colleen Dunn, (via email only);
Vijay Rajput, AORO (via email only);
James Downey, III, Esq. (via email only)

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