



**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>LEONARDO MOJICA-CARRION,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2020-2724</b>
	:	
<b>BERKS COUNTY DISTRICT</b>	:	
<b>ATTORNEY'S OFFICE,</b>	:	
<b>Respondent</b>	:	

On December 3, 2020, Leonardo Mojica-Carrion (“Requester”), an inmate at SCI-Mahanoy, submitted a request (“Request”) to the Berks County District Attorney’s Office (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a “copy of Estiben K. Manso immunity agreement or oral immunity agreement [for] case # CP-06-CR-5209-2013.” Having received no response from the Office, the Requester filed an appeal with the OOR on December 29, 2020, asserting that the Office failed to timely respond and that the Request was, therefore, deemed denied. *See* 65 P.S. § 67.901.

On January 8, 2021, the Office submitted a position statement, stating that it timely issued a response to the Request on December 4, 2020. The Office also provided a copy of its response. The Office further asserts that no responsive records exist in the Office’s possession, custody or

control.<sup>1</sup> In support of its position, the Office submitted the sworn affidavit of Alisa Hobart, Esq., the Office's Open Records Officer, who affirms that she "reviewed the Office's file in *Commonwealth v. Estiben Manso*, CP-06-CR-0005209-2013" and that "[n]o records which constitute a written or oral immunity agreement were contained within that file." On January 10, 2021, the Requester made a submission, stating that that requested immunity agreement is subject to public access. The Requester did not submit any evidence challenging the affidavit submitted by the Office.

Under the RTKL, a sworn affidavit 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 Office acted in bad faith or that responsive records exist, "the averments in [the affidavit] 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 submitted, the Office has met its burden of proving that no records exist in the Office's possession, custody or control that are responsive to the Request. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **denied**, 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 or petition for review to the Berks 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

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<sup>1</sup> The Office also maintains that even if such records did exist, they would be exempt from public access because they relate to a criminal investigation, 65 P.S. § 67.708(b)(16).

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>2</sup> This Final Determination shall be placed on the OOR's website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: January 26, 2021**

/s/ Magdalene C. Zeppos-Brown

MAGDALENE C. ZEPPOS-BROWN, ESQ.

APPEALS OFFICER

Sent to: Leonardo Mojica-Carrion, LS-0964 (via U.S. mail only); and  
Alisa Hobart, Esq., AORO (via email only)

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