



FINAL DETERMINATION

IN THE MATTER OF

**MONICA STROUD,
Requester**

v.

**CECIL TOWNSHIP,
Respondent**

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Docket No.: AP 2020-2657

On December 14, 2020, Monica Stroud (“Requester”) filed a request (“Request”) with Cecil Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “police report for an assault arrest: [name omitted] of Birmingham, AL. The arrest was made in September 2017.” On December 15, 2020, the Township responded stating that no records responsive to the Request exist.

On December 15, 2020, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating that records must exist. The OOR invited both parties to supplement the record.

On January 4, 2021, the Township provided an affidavit made under the penalty of perjury from Lieutenant Guy Kuzak of the Township’s Police Department, attesting that:

2. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.

Upon receipt of the [R]equest, I conducted a thorough examination of files in the possession, custody and control of the Agency for records responsive

to the [R]equest underlying this appeal, specifically Police report for an assault arrest that was made in Sept. 2017. Ref: Matthew V. Stroud. Those records have been expunged per court order. Dated 3/5/2018.,

3. Based upon the above-described search of the Agency's files and inquiries with relevant Agency personnel, I have made the determination that the records requested are not within the Agency's possession, custody or control.

Under the RTKL, an 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 Township acted in bad faith or that the requested 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 provided, the Township has met its burden of proving that no responsive records exist in the Township's possession, custody or control. Accordingly, the appeal is **denied**.

For the foregoing reasons, the Township 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 Washington 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.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: February 9, 2021

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent via email to: Monica Stroud;
 Lt. Guy Kuzak