



FINAL DETERMINATION

IN THE MATTER OF

**CHRISTOPHER THORNHILL,
Requester**

v.

**PENNSYLVANIA DEPARTMENT OF
STATE,
Respondent**

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Docket No.: AP 2022-0978

On April 25, 2022, the Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* Upon review of the file, the appeal is **denied** for the reason explained below.

On March 31, 2022, Christopher Thornhill (“Requester”), an inmate at SCI-Forest, submitted a RTKL request (“Request”) to the Pennsylvania Department of State (“DOS”), seeking “(1) Sentencing Order; (2) DC-300B; and (3) DC-301 Act 84 Information Transmitted Form” under docket numbers CP-33-CR-0000579-2011 and CP-33-CR-0000471-2012. *See Request.* On April 7, 2022, the DOS issued a response denying the Request because it determined it does not have the records sought in the Request. *See Response.* On April 25, 2022, the Requester filed an appeal with the OOR, challenging the denial and asserting grounds for disclosure. The OOR

invited both parties to supplement the record and directed the DOS to notify any third parties of their ability to participate in the appeal. 65 P.S. § 67.1101(c).

On April 29, 2022, the DOS submitted a position statement, along with a declaration, made under penalty of perjury, of Janelle S. Hawthorne (“Ms. Hawthorne”), Open Records Officer for the DOS. Ms. Hawthorne declares that a good faith search was conducted, and the records sought do not exist within the DOS. The Requester did not submit additional evidence on appeal.

Under the RTKL, a sworn affidavit or attestation 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). In the absence of any evidence that the DOS acted in bad faith or that the requested records exist, “the averments in [the declaration] 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 upon the evidence provided, the DOS met its burden of proving that the requested records do not exist within its possession, custody or control.¹ *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (“The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request”).

For the foregoing reasons, the appeal is **denied**, and the DOS 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

¹ Additionally, in *Philadelphia Dist. Attorney’s Office v. Stover*, the Commonwealth Court held “a sentencing order is a record ‘of’ the judiciary and, as such, ...is not disclosable under the RTKL.” 176 A.3d 1024, 1028 (Pa. Commw. Ct. 2017).

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: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: May 16, 2022

/s/ Lois P. Lara
LOIS P. LARA, Esq.
Appeals Officer

Sent to: Christopher. Thornhill, KV-0597 (via US Mail only)
Jason McMurry, Esq. (via email only)

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