



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>MAX MITCHELL AND THE LEGAL INTELLIGENCER, Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2019-0071</b>
	:	
<b>PHILADELPHIA COUNTY DISTRICT ATTORNEY’S OFFICE, Respondent</b>	:	
	:	

On November 28, 2018, Max Mitchell, a reporter for The Legal Intelligencer, (collectively, “Requester”) submitted a request (“Request”) to the Philadelphia County District Attorney’s Office (“Office”), pursuant to the Right-to-Know-Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “an itemized list of all the District Attorney’s travel expenses for the past six years.” On December 4, 2018, the Office requested a thirty-day extension of time to respond. 65 P.S. § 67.902(b). On January 3, 2019, the Office denied the Request, claiming that the record does not exist.

On January 17, 2019, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Office to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On February 5, 2019, the Office submitted the attestation, made under penalty of perjury, of Jan Bass, an employee within the Office's finance unit who is "familiar with the records of travel expenses of the [Office]." Ms. Bass attests that:

4. The [Office] does not maintain an itemized list of travel expenses incurred by the District Attorney.
5. Accordingly, I have made the determination that the requested documents do not exist within the [Office's] possession, custody, or control.

Under the RTKL, a sworn affidavit 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). In the absence of any evidence that the Office has acted in bad faith or that the records exist, "the averments in [this attestation] 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 Office has met its burden of proof that it does not possess any responsive lists. *See Hodges v. Pa. Dep't of Health*, A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the Requester's 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 to the Philadelphia 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 according to 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.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: February 8, 2019**

*/s/ Ryan W. Liggitt*

---

RYAN W. LIGGITT, ESQ.  
APPEALS OFFICER

Sent to: Max Mitchell (via email only);  
Douglas Weck (via email only);  
Benjamin Jackal (via email only);  
Benjamin Waxman (via email only)

---

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