

the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On September 4, 2020, the District submitted a position statement and the sworn affidavit of Sharon Berkshire, the District's Open Records Officer, who attests that she is familiar with the District's records and, after "inquir[ing] with the relevant District personnel search who conducted a thorough examination" of the District's files related to the Request, the responsive records were identified and provided to the Requester. Ms. Berkshire further attests that no additional responsive records exist within the District's possession, custody or control.²

The Requester argues that the District should have to identify and provide the responsive policies rather than directing her to the District's website. Section 704(b) of the RTKL permits an agency to respond to a request for records "by notifying the requester that the record is available through publicly accessible electronic means[.]" 65 P.S. § 67.704(b)(1); *see also Citizens for Pennsylvania's Future v. Pa. Turnpike Comm'n*, OOR Dkt. AP 2015-0276, 2015 PA O.O.R.D. LEXIS 856 (finding that agencies may direct requesters to publicly accessible internet websites for responsive records pursuant to Section 704 of the RTKL). Furthermore, there was no evidence presented to establish that the Requester submitted a written request to the District within the requisite time period, asking to have the records converted to paper. *See* 65 P.S. § 67.704(b)(2) ("If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following agency notification, submit a written request to the agency to have the

on the ... District website...." More specifically, the Requester argues that the "District's general referral to the ... District's website is deficient" because "[i]f there is a specific board policy or [D]istrict policy, it should have been identified and produced."

² Under the RTKL, a sworn affidavit 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 District has acted in bad faith or that additional 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)).

record converted to paper”). An appeal to the OOR does not constitute “a written request to the agency to have a record converted” that triggers further action on behalf of the agency. *See, e.g., Stookey v. Unionville-Chadds Ford Sch. Dist.*, OOR Dkt. AP 2019-0484, 2019 PA O.O.R.D. LEXIS 378. Therefore, based on the evidence provided, the District has proven that it provided the Requester with all responsive records in the District’s possession, custody or control. *See 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 District 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 Fayette 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 court rules as per Section 1303 of the RTKL. 65 P.S. § 67.1303. 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.³ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 16 October 2020

/s/ Joshua T. Young

JOSHUA T. YOUNG
APPEALS OFFICER

Sent to: Charity Grimm Krupa, Esq. (via email only);
Andrew Evankovich, Esq. (via email only);
Sharon Berkshire, AORO (via email only)

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