



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**FOREST HILLS VOLUNTEER FIRE  
DEPARTMENT,  
Complainant**

v.

**BOROUGH OF FOREST HILLS  
Respondent**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Docket No.: AP 2014-0594**

On February 18, 2014, the Forest Hills Volunteer Fire Department (“Requester”) submitted a request (“Request”) to the Borough of Forest Hills (“Borough”) pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”) seeking the proposal from Swissvale Fire Department for fire protection in the Borough. On March 24, 2014, after extending the response period by thirty (30) days pursuant to 65 P.S. § 67.902, the Borough responded, claiming that the Borough does not possess any records responsive to the Request.

On April 14, 2014, the Requester filed a timely appeal with the Office of Open Records (“OOR”), arguing that the requested record exists. On April 23, 2014, the Borough submitted the affidavit of the Borough Manager/Open Records Officer, attesting that, if the requested record was in the possession of the Borough, it would be retained as an official record within his custody. He further attested that no such record exists within his possession, custody or control. The Requester did not submit any evidence to challenge the Borough’s affidavit.

Under the RTKL, an 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). Based on the materials provided, the Borough has met its burden of proof that it does not possess the record sought in the Request. An agency is not required to create a record that does not exist, or maintain a record it does not currently maintain. 65 P.S. § 67.705. In addition, there is no evidence that the requested record is in the possession of a third party under contract with the Borough to perform a governmental function on behalf of the Borough. *See* 65 P.S. § 67.507(d)(1). Accordingly, the appeal is **denied**.

For the foregoing reasons, the Borough is not required to take any further action. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal or petition for review 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 notice and have an opportunity to respond as per Section 1303. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: May 13, 2014**



SENIOR ATTORNEY  
CHARLES REES BROWN, ESQ.

Sent to: Diane Colella, Forest Hills Volunteer Fire Department  
Stephen Korbelt, Esq., Solicitor  
Steven Morus, Borough Manager/Open Records Officer