



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF:	:	
	:	
DALE GARDNER	:	
Complainant	:	
	:	
v.	:	Docket No.: AP 2009-1142
	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS	:	
Respondent	:	

INTRODUCTION

Dale Gardner (the “Requester”) filed a right-to-know request (the “Request”) with the Department of Corrections (the “Department”) seeking documents regarding the transition from analog to digital cable for inmate subscribers. The Department denied the Request stating that responsive records did not exist. The Requester appealed to the Office of Open Records (the “OOR”).

For the reasons set forth in this Final Determination, the appeal is **denied** and Department is not required to take any further action.

FACTUAL BACKGROUND

On November 6, 2009, the Requester filed the Request which sought:

Any memoranda detailing direction on how the Department of Corrections will complete the transition from analog to digital cable for inmate subscribers. This

memoranda shall include communications between correctional cable Television (CCTV”) and DOC’s central office and central office with the individual SCI’s.

The Department timely responded on November 16, 2009, as November 11 was a legal holiday. It invoked a 30-day extension pursuant to 65 P.S. § 67.902. The Department denied the Request on December 10, 2009, stating that the records do not exist.

On December 28, 2009, the Requester filed an appeal to the OOR. In response to the appeal, the Department provided the OOR with the sworn affidavit of Andrew Filkosky, the Department’s Open Record Officer, who affirmed that the requested records did not exist.

LEGAL ANALYSIS

The Office of Open Records is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. §67.503(a). The Department is a Commonwealth agency subject to the RTKL. See 65 P.S. § 67.301.

A record in the possession of a Commonwealth or local agency is presumed to be a public record unless protected by privilege, exemption, statute or court order, See 65 P.S. 67.305. However, an agency cannot provide a record that does not exist, 65 P.S. § 67.305. See *Fugit v. Lancaster County Sheriff’s Office*, OOR Dkt. AP 2009-0050; *Faust v. DOC*, OOR Dkt. AP 2009-0266; *Moore v. DOC*, OOR Dkt. AP 2009-0533.

The Department has established by affidavit that the requested records do not exist and satisfied its responsibilities under the RTKL.

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **denied** and the Department is not required to take any further action.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the Commonwealth Court. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S. §67.1301. The parties are further advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

FINAL DETERMINATION ISSUED AND MAILED: January 27, 2010



APPEALS OFFICER
NATHANAEL J. BYERLY, Esquire

Final Determination Sent To:
Dale Gardner
Maria G. Macus-Bryan, Esquire