



FINAL DETERMINATION

IN THE MATTER OF

**MICHELLE GROVE,
Requester**

v.

**GREGG TOWNSHIP,
Respondent**

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Docket No.: AP 2018-1103

On June 11, 2018, Michelle Grove (“Requester”) submitted a request (“Request”) to Gregg Township (“Township”), seeking “August-November 2017 Emails to/from Snyder, Bierly, Myers regarding the collaboration on Joel Myers’ ‘personal’ endorsement ad in the Grapevine, including the [T]ownship’s final edits to the ad.” On June 18, 2018, the Township granted the Request and provided two responsive emails, none of which were sent by Mr. Myers.

On June 21, 2018, the Requester appealed to the Office of Open Records (“OOR”), arguing that the Township did not provide all responsive records. The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On June 27, 2018, the Township submitted a position statement, as well as the attestation, made under penalty of perjury, of Jennifer Snyder, the Township’s Open Records Officer. Ms. Snyder attests, in relevant part:

4. Upon receipt of [the Request], I conducted a thorough examination of files in the possession, custody, and control of the Township for records responsive to the request underlying this appeal, including a keyword search of the requested emails for the keyword “Grapevine.”
5. Additionally, I have inquired with relevant Township personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession, and in particular, I asked Mr. Bierly and Mr. Myers to perform a search of their email accounts for any responsive records.
6. After conducting a good-faith search of the Township’s files and inquiring with relevant Township personnel, I identified all records within the Township’s possession, custody, or control that are responsive to this request and provided them to Ms. Grove.

On June 30, 2018, the Requester submitted correspondence, arguing that “there seems to be some correspondence missing,” specifically emails documenting changes made to the ad and emails from Mr. Myers.

Under the RTKL, an attestation made under the penalty of perjury may serve as sufficient evidentiary support of the nonexistence of records. *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 competent evidence that the Township acted in bad faith or that additional records exist, “the averments in [the 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)). While the Requester alleges that additional records exist, there is no competent evidence rebutting the Township’s attestation.¹ Based on the evidence provided, the Township has met its burden of

¹ The OOR notes that agencies are required to provide public records in their possession at the time of a request. Here, the Request was submitted in June 2018 and seeks records generated from September 2017 onward. It is certainly possible that while additional records may have existed at one point, they no longer existed at the time of the Request. The OOR makes no determination as to whether records should exist. *See, e.g., Troupe v. Borough of Punxsutawney*, OOR Dkt. AP 2010-0743, 2010 PA O.O.R.D. LEXIS 731 (“While ... evidence may establish that a [record] should exist, the OOR lacks jurisdiction to rule on the propriety of the lack of such [record]—the OOR may only determine whether a responsive record does, in fact, exist”).

proving that additional responsive records do not exist in the Township'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 Township 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 Centre 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. 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: July 12, 2018

/s/ Kyle Applegate

APPEALS OFFICER
KYLE APPLGATE, ESQ.

Sent to: Michelle Grove (via email only);
David Gaines, Esq. (via email only)

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