



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MICHELLE GROVE,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2018-1653
	:	
GREGG TOWNSHIP,	:	
Respondent	:	

On August 7, 2018, Michelle Grove (“Requester”) submitted a request (“Request”) to Gregg Township (“Township”), pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, among other items, timecards for employees from April 2018 to the date of the Request and all issues of the “Gregg Township News.” The Township invoked a thirty-day extension to respond on August 14, 2018. *See* 65 P.S. § 67.902(b). On September 7, 2018 the Township granted the Request and provided all responsive records.

On September 13, 2018, the Requester filed an appeal with the Office of Open Records (“OOR”), arguing that the Township did not conduct a good faith search. 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 September 25, 2018, the Township submitted a position statement, as well as the attestation made under the penalty of perjury of Jennifer Snyder, the Township’s Open Records Officer. Ms. Snyder attests, in relevant part:

5. 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 [R]equest underlying this appeal.
6. It was not necessary to speak to someone else regarding this [R]equest, because, in my role as the secretary for the Township's board of supervisors, I maintain files that contain the profit and loss reports, time cards, sewage enforcement officer records, tax income reports, and the Gregg Township News.
7. 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 [R]equest and provided them to Ms. Grove; put differently, I provided all of the documentation that Ms. Grove requested.

On September 25, 2018, the Requester submitted a statement made under penalty of perjury that some issues of the Gregg Township News and some time cards are missing. She also noted that she was unsure if the Township provided all the records requested as she has not had time to examine all of the records.

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 Envtl. 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

¹ Agencies are required to provide public records in their possession at the time of a request. Here, the Request was submitted in August 2018 and seeks time cards generated from April 2018 to the date of the Request, and all issues of the "Gregg Township News" regardless of date created. While additional records may have existed at one point in time, the Township has submitted uncontradicted evidence that they no longer existed at the time of the Request.

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort” as used in Section 901 of the RTKL, in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court recently stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted); *see also* *Rowles v. Rice Twp.*, OOR Dkt. AP 2014-0729, 2014 PA O.O.R.D. LEXIS 602 (citing *Judicial Watch, Inc. v. United States Dep’t of Homeland Sec.*, 857 F. Supp. 2d 129, 138-139 (D.D.C. 2012)) (citations omitted).

Ms. Snyder attests that she is the custodian of the records at issue and that she provided all responsive records to the Requester. Based on the evidence provided, the Township has met its burden of proving that a good faith search was performed and 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 Requester’s 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 or petition for review to the Centre County Court of Common Pleas. *See* 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 website at:
<http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 28, 2018

/s/ Erin Burlew

Erin Burlew, Esq.
APPEALS OFFICER

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).