



FINAL DETERMINATION

IN THE MATTER OF

**JOHN YAKIM,
Requester**

v.

**GREGG TOWNSHIP,
Respondent**

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Docket No.: AP 2018-1512

On August 16, 2018, John Yakim (“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 all emails sent to or received from an identified email address for December of 2017. On August 23, 2018, the Township denied the Request, stating that the requested emails do not exist within the Township’s possession, custody or control.

On August 23, 2018, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record. On September 4, 2018, the Township submitted a position statement and the attestations, made under the penalty of perjury, of Jennifer Snyder, the Township’s Open Records Officer, and Keri Miller, the Chair of the Board of Supervisors of the Township and the individual whose emails were requested. Both Ms. Snyder and Ms. Miller attest that no records responsive to the Request exist within Township’s possession, custody or control. Ms. Snyder

further attests, and Ms. Miller confirms, that the email address identified in the Request was not “opened and active ... until after December of 2017” and, therefore, no emails could possibly exist that would be responsive to the Request.

Under the RTKL, a statement made under the penalty of perjury may serve as competent evidence to sustain an agency’s burden of proof. *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 Township has acted in bad faith or that the requested emails exist, “the averments in [the attestations] 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)). Based upon the evidence provided, the Township has met its burden of proving that the requested records do not exist within its possession, custody or control. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190 (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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: 21 September 2018

/s/ Joshua T. Young

JOSHUA T. YOUNG
APPEALS OFFICER

Sent to: John Yakim (via email only);
 David Gaines, Esq. (via email only);
 Jennifer Snyder, AORO (via email only)