



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>THOMAS CASEY,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2016-0868</b>
	:	
<b>WEST GOSHEN TOWNSHIP,</b>	:	
<b>Respondent</b>	:	

On March 25, 2016, Thomas Casey (“Requester”) filed a request (“Request”) with West Goshen Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking e-mails between Township employees and Township managers and supervisors involving the “WG Sewer Plant since 2001” and “safety, maintenance & equipment issues regarding the sewer plant.” On March 31, 2016, the Township invoked a thirty-day extension of time to respond to the Request. *See* 65 P.S. § 67.902. On April 29, 2016, the Township granted the Request.

On May 17, 2016, the Requester appealed to the OOR, alleging that additional records exist and stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record. On May 25, 2016, the Township provided a position statement, along with an attestation signed under penalty of perjury by its Open Records Officer, who affirms that a search was conducted and that no responsive records exist within the Township’s possession, custody or control other than the records provided to the Requester prior to the appeal.<sup>2</sup> The Township argues that, other than the written correspondence provided, the communications concerning the sewer plant were verbal. On June 21, 2016, the Requester provided a position statement with various attachments, arguing that additional records exist. The Requester also provided correspondence from various individuals that are not employed by the Township discussing issues involving the sewer plant.<sup>3</sup>

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<sup>1</sup> The parties participated in the OOR’s Informal Mediation Program. On June 7, 2016, mediation was discontinued.  
<sup>2</sup> As this submission was made during the mediation process, the Township re-submitted these materials on June 9, 2016.  
<sup>3</sup> Because the correspondence provided by the Requester was not sent between Township employees, managers or supervisors, it is not responsive to the Request as written.

Under the RTKL, an attestation signed under penalty of perjury may serve as sufficient evidentiary support for 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, “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)). Based on the materials provided, the Township has established that no responsive records exist.

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 or petition for review to the Chester 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.<sup>4</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: July 27, 2016**

/s/ J. Chadwick Schnee, Esq.

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APPEALS OFFICER / ASSISTANT CHIEF COUNSEL  
J. CHADWICK SCHNEE, ESQ.

Sent to: Thomas Casey (via e-mail only);  
Alexandra Trunzo, Esq. (via e-mail only)

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<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).