pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
STEVEN BURDA,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2016-1137**
	:	
TREDYFFRIN TOWNSHIP,	:	
Respondent	:	
	:	

INTRODUCTION

Steven Burda ("Requester") submitted a request ("Request") to Tredyffrin Township ("Township") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking records related to a complaint of a zoning violation. The Township denied the Request, stating that no complaint exists. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **denied**, and the Township is not required to take any further action.

FACTUAL BACKGROUND

On June 28, 2016, the Request was filed, seeking "documents/records of who had filed a complaint, or submitted a complaint, relating to the location of property in alleged violation: 1411 Berwyn-Paoli Road, Paoli, PA 19031." On June 28, 2016, the Township's Senior Building/Fire Official, Michael Pilotti, sent the Requester an e-mail explaining that there was no formal complaint relating to 1411 Berwyn-Paoli Road. Mr. Pilotti stated that the Township

received a complaint about another property in the same vicinity through a voicemail message, and, when Mr. Pilotti went to investigate, he noted a violation at 1411 Berwyn-Paoli Road, which resulted in the Violation Enforcement Final Notice. On June 29, 2016, the Township denied the Request, stating that the complaint is related to a non-criminal investigation. *See* 65 P.S. § 67.708(b)(17).

On June 30, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On July 13, 2016, the Township submitted a position statement, explaining Mr. Pilotti's actions. The position statement was accompanied by Mr. Pilotti's statement, made under penalty of perjury, affirming the narrative proffered by the Township. On July 13, 2016, in response to the Township's submission, the Requester also submitted a position statement, requesting a hearing and an *in camera* review of the withheld records. On July 26, 2016, the Requester again requested a hearing and an *in camera* review.

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the request." 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id*. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id*. Here, while the Requester has requested a hearing and an *in camera* review, both requests are denied because the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Township is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: "(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence." 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as "such proof as leads the fact-finder … to find that the existence of a contested fact is more probable than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct.

2011) (quoting *Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Township has submitted the affidavit of Mr. Pilotti, who avers that he did not receive a formal complaint regarding the identified property, as he, instead, noticed the violation while investigating a different property. Under the RTKL, an affidavit may serve as sufficient evidentiary support. *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 records do, in fact, exist, "the averments in [the affidavit] 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 on the evidence provided, the Township has established that no complaint exists.

CONCLUSION

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 to the Montgomery 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 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: August 1, 2016

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Steven Burda (via e-mail only);
Scot Withers (via e-mail only);
Regina Moster (via e-mail only);
William Martin (via e-mail only)