pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MARK FRIEDMAN,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2016-1299**
	:	
WEST HEMPFIELD TOWNSHIP,	:	
Respondent	:	

On August 1, 2016, Mark Friedman ("Requester") submitted a request ("Request") to West Hempfield Township ("Township"), seeking a "Federal Government mandated Americans with Disabilities Act (ADA) self-evaluation plan, transition plan and grievance plan." On August 3, 2016, the Township denied the Request, stating that it does not possess any responsive records.[1]

On August 3, 2016, the Requester appealed to the Office of Open Records ("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 this appeal. *See* 65 P.S. § 67.1101(c).

On August 9, 2016, the Township submitted a position statement, along with the attestation of Kent Gardner, who attests that "[t]o my knowledge, the Township has not prepared and does not maintain any ADA self-evaluation plan, transition plan or grievance plan."

Under the RTKL, an attestation made under 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, "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*

[1] The Township's response, signed by the Township's open-records officer, was made under the penalty of perjury.

Governor v. Scolforo, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Based on the evidence provided, the Township has met its burden of proving that no responsive records exist. *See* 65 P.S. § 67.708(a)(1); *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 Lancaster 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: August 19, 2016

/s/ Kyle Applegate

APPEALS OFFICER
KYLE APPLEGATE, ESQ.

Sent to: Mark Friedman (via e-mail only);
Josele Cleary, Esq. (via e-mail only)

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