



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>NANCY LOVAGLIO,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP 2016-1469</b>
	:	
<b>CLIFTON TOWNSHIP,</b>	:	
<b>Respondent</b>	:	

On August 1, 2016, Nancy Lovaglio (“Requester”) submitted a request (“Request”) to Clifton Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking financial records related to the Township’s expenses. The Township did not respond within five (5) business days of receiving the Request, and the Request was, therefore, deemed denied. *See* 65 P.S. § 67.901.

On August 29, 2016, the Requester filed an appeal with the Office of Open Records (“OOR”), 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 appeal, the Township made several e-mail submissions consisting of unsworn statements, and did not provide any grounds for denying access to the requested records. While an affidavit or statement made under the penalty of perjury is 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), unsworn statements may not be relied upon as competent evidence to withhold records under the RTKL. *See Hous. Auth. of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209 (Pa. Commw. Ct. 2012) (holding that statements of counsel are not competent evidence); *City of Phila. v. Juzang*, July Term 2010, No. 2048 (Phila. Com. Pl. June 28, 2011) (“Because the letter written by City’s counsel is a legal brief, it cannot be ... evidence at all”). Here, the Township has not submitted sufficient evidence, *e.g.* a statement made under the penalty of perjury, establishing that it provided all responsive records to the Requester or that the requested records are otherwise exempt from public access.

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a). In the present case, the Township did not comply with the RTKL by timely responding to the Request, nor did it

provide any factual or legal support for denying access to responsive records. Based on the Township's failure to comply with the statutory requirements of the RTKL or provide a sufficient evidentiary basis in support of an exemption under the RTKL, the Township did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305.

For the foregoing reasons, Requester's appeal is **granted**, and the Township is required to provide all responsive records within thirty days. 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 Lackawanna 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 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>1</sup> This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: September 22, 2016**

*/s/ Kelly C. Isenberg*

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APPEALS OFFICER  
KELLY C. ISENBERG, ESQ.

Sent to: Nancy Lovaglio (via e-mail only);  
Donna Stefanski, AORO (via e-mail only)

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<sup>1</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 fn. 5 (Pa. Commw. Ct. 2013).