



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
HOLLY DULSKY	:
Requester	:
	:
v.	:
	:
	:
FAIRMOUNT TOWNSHIP,	:
Respondent	:

Docket No.: AP 2016-1510

On August 10, 2016, Holly Dulsky (“Requester”) submitted a request (“Request”) to Fairmount Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a “copy of [the] new Fairmount Township policy which includes [the] [d]ate and [t]ime of new policy of Right to Know Request Form/copies.” On August 19, 2016, the Township granted the Request, providing the Requester a copy of the minutes from the June 6, 2016 Township meeting, where one of the agenda items covered the procedure for obtaining RTKL responses. On September 6, 2016, the Township provided the Requester with the date and time of the new RTKL procedure.¹

On September 7, 2016, the Requester filed an appeal to the Office of Open Records (“OOR”), challenging the Township’s response and stating grounds for disclosure. The OOR invited both parties to supplement the record, and directed the Township to notify third parties of their ability to participate in the appeal. 65 P.S. § 67.1101(c).

The Township submitted a position statement on September 12, 2016, and on September 15, 2016, it provided an attestation of Lyle Harvey, Open Records Officer for the Township.

Here, the Township avers that it provided the sole responsive record to the Requester. However, the Requester asserts that the Township has failed to provide her with the new RTKL policy. Under the RTKL, an attestation made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa.

¹ Section 504 of the RTKL requires “[r]egulations, policies and procedures of [an] agency relating to [the RTKL]” at the agency, as well as on the agency’s website, if it maintains one. 65 P.S. § 67.504(b)(4). Here, it is unclear whether the Township’s policy/procedure is posted according to Section 504.

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)). On appeal, the Township provided an attestation affirming that the sole responsive record has been provided. Accordingly, the Township has met its burden of proof in showing that no other responsive record exists, other than the responsive record provided to the Requester. *See 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 the parties. Within thirty days of the mailing date of this determination, either party may appeal to the Luzerne County Court of Common Pleas. *See* 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served with 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: October 5, 2016

/s/ Bina Singh

BINA SINGH
APPEALS OFFICER

Sent to: Holly Dulsky (via e-mail only);
Lyle Harvey (via e-mail only)

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