



**FINAL DETERMINATION**

**IN THE MATTER OF**

**JERRY GELEFF,  
Requester**

**v.**

**EXETER TOWNSHIP,  
Respondent**

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**Docket No.: AP 2022-1492**

On May 6, 2022, Jerry Geleff (“Requester”) submitted a request (“Request”) to Exeter Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

Please provide the invoice from [Township’s] former Solicitor, HVM&L, Liz Magovern, in the matter of Speece v, Hughes, in which the Supervisors voted to assign HVM&L to represent them. I ask that if you are not in possession of the invoice, that HVM&L provide it, along with proof of payment. Thank you.

On May 13, 2022, the Township denied the Request, arguing that records responsive to the Request do not exist.

On June 2, 2022, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. On July 1, 2022, the Township submitted the attestation of Tina Stephens, the Township’s Open Records Officer, who affirms that she conducted a good faith search for records responsive to the Request and that no documents were located because “[t]he Township received no invoices and did not make any payments in

connection with the *Speece v. Hughes* matter referenced in the Request.” *See* Stephens Attestation. Ms. Stephens further attests that based on her search and knowledge that no invoices were received or paid in reference to the Request, it was determined that no records exist that would be responsive to the Request. *Id.*

Under the RTKL, an attestation made 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 or that the records exist, “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 evidence provided, the Township has met its burden of proving that responsive records are not within its possession, custody or control. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

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 Berks 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.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

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

**FINAL DETERMINATION ISSUED AND MAILED: August 18, 2022**

*/s/ Ryan W. Liggitt*

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RYAN W. LIGGITT, ESQ.  
APPEALS OFFICER

Sent to: Jerry Geleff (via email only);  
J. Chadwick Schnee, Esq. (via email only);  
Tina Stephens, AORO (via email only)