



**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>CHARLES MATHEWSON,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2021-0005</b>
	:	
<b>KNOX TOWNSHIP,</b>	:	
<b>Respondent</b>	:	

On December 15, 2020, Charles Mathewson (“Requester”) submitted a request (“Request”) to Knox Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking a “[c]opy of the Resolution adding Pleasant Hill Road ... to [the] Township[,]” as well as “the minutes from the meeting where the Resolution ... [was] approved” and the “minutes of the meeting where Pleasant Hill Road was added to the [T]ownship.” On December 21, 2020, the Township denied the Request, stating that the requested records do not exist.

On January 4, 2021, the Requester appealed to the Office of Open Records (“OOR”), stating grounds for disclosure.<sup>1</sup> Specifically, the Requester argues that “the information [requested] is required.” On January 14, 2021, the Township submitted a position statement reiterating its grounds for denial. In support of its argument, the Township provided the attestation

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<sup>1</sup> During the course of the appeal, the Requester provided the OOR with additional time to issue this Final Determination. 65 P.S. § 67.1101(b)(1).

of Pamela Berry, the Township's Secretary and Open Records Officer, who attests, in part, as follows:

3. Upon receipt of the [R]equest, I conducted a thorough examination of files in the possession, custody and control of the [Township] for records responsive to the [R]equest ..., specifically, all [T]ownship records maintained at the Township office, as well as the Jefferson County Law Library ..., where I reviewed Ordinance Books pertaining to [the] Township. Additionally, I spoke with Susan Seigworth, Director of Assessment and Tax Claim for Jefferson County, regarding tax maps and any other information ... that may pertain to the requested information. I also spoke with Tanya Geist, Prothonotary of Jefferson County, and reviewed the Road Docket Books ... and nothing could be found pertaining to this matter. Additionally, I spoke with Bill Setree, in the Department of Development for Jefferson County and he had no pertinent information. Records are retained at the ... Township office dating back to 1953. There are no records pre-dating 1953.
4. Additionally, I have inquired with relevant [Township] personnel, ..., specifically, current and former Supervisors. None are aware of any records dating prior to 1953.
5. Based upon the above-described search ..., I have made the determination that the records requested are not within the [Township's] possession, custody or control.

On January 20, 2021, the Requester submitted a position statement, asserting that “the reason for the appeal is to determine the width of the right-of-way” of Pleasant Hill Road. The Requester also sought additional time to submit more evidence. On January 26, 2021, after the OOR reopened the record for both parties to submit additional evidence, the Requester stated that he “ha[s] no further physical documents available to supplement the record.”

Under the RTKL, an attestation 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 responsive records exist, “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 Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Based on the evidence submitted, the Township has met its burden of proving that no records exist in the Township's possession, custody or control that are responsive to the Request. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

In his appeal submission, the Requester argues that responsive records should exist because the Township is required to preserve the records. However, the OOR makes no determination as to whether records should exist, only that the Township does not possess them. *Gorol v. Forest Hills Borough*, OOR Dkt. AP 2019-0329, 2019 PA O.O.R.D. LEXIS 427 ("While ... evidence may establish that a [record] should exist, the OOR lacks jurisdiction to rule on the propriety of the lack of such [record] -- the OOR may only determine whether a responsive record does, in fact, exist.").

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 or petition for review to the Jefferson 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. This Final Determination shall be placed on the OOR's website at: <https://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: February 23, 2021**

/s/ Magdalene C. Zeppos-Brown  
MAGDALENE C. ZEPPOS-BROWN, ESQ.  
APPEALS OFFICER

Sent to: Charles Mathewson (via email only);  
Pamela Berry, AORO (via email only); and  
Jeffrey Gordon, Esq. (via email only)