



**FINAL DETERMINATION**

**IN THE MATTER OF**

**ANDREW POPP,  
Requester**

**v.**

**NEWBERRY TOWNSHIP,  
Respondent**

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**Docket No: AP 2021-1952**

On August 11, 2021, Andrew Popp (“Requester”) submitted a request (“Request”) to Newberry Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the following records:

1. A copy of Able Electrical Services bid proposal/quote for electrical work for the new Police building.
2. Copies of all other companies’ proposal/quotes for the electrical work for the new Police building.

On September 10, 2021, the Township denied the Request, stating that the Township does not possess responsive records. On September 14, 2021, the Requester appealed to the 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 October 1, 2021, the Township submitted a position statement reiterating its grounds for denial.<sup>1</sup> Accompanying the submission was the sworn attestation of Anthony Miller, Open Records Officer for the Township, attesting that the responsive records sought were not in the control or custody of the Township. Specifically, Mr. Miller attested the following:

1. I serve as the Agency Open Records Officer (“AORO”) for Newberry Township (“Agency”) and am responsible for responding to Right-to-Know requests filed with the Agency.
2. In my capacity as the AORO, I am familiar with the records of the Agency.
3. Upon review of the request from Andrew Popp, I reviewed the Township’s records and located no records responsive to either items 1) or 2) in Mr. Popp’s request.
4. The reason the Township has no such documents is that the electrical work for the above-referenced project was not bid through the traditional public bidding process.
5. The electrical work for the police building we [sic] be secured through a state-approved process called the “Keystone Purchasing Network”.
6. It is my understanding that electrical contractors submit bids through the network for all electrical work within various regions of the state.
7. Able Electric was the successful bidder for all electrical work in the Network within the region of the state that Newberry Township is located in.
8. Any reference in public meetings by Township representatives concerning Able Electrical Services being the “successful bidder” was in reference to Able being the successful bidder in the Network.
9. The Township does not possess any bidding documents through the Network.
10. Because the Township did not bid the electrical work for the police building, the Township has no bidding documents responsive to Mr. Popp’s request.

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<sup>1</sup> The Requester also submitted a position statement in response to the Agency’s submission on October 3, 2021.

Under the RTKL, a sworn affidavit or statement 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. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Township has acted in bad faith or that the records exist in the Township's possession, custody or control, "the averments in [the affidavit] 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 proof that it does not possess the records sought in the Request. *See Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).<sup>2</sup>

For the foregoing reasons, 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 York 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>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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<sup>2</sup> By way of background, the Township received a budget proposal from Lobar Associates to design and build a new police and ambulance facility. Lobar Associates gave a total budget estimate that did not include a separate electrical bid proposal/quote. As part of this budget, the Township used the state-approved process called the Keystone Purchasing Network ("Network"). The Network is part of the Central Susquehanna Intermediate Unit ("CSIU"). CSIU is a political jurisdiction of the Commonwealth of Pennsylvania established by a law passed by the Pennsylvania Legislature in 1971. It is a public education agency. Nothing in this Final Determination prevents the Requester from filing a new RTKL request with the CSIU for the same information.

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

**FINAL DETERMINATION ISSUED AND MAILED: October 14, 2021**

/s/ Lyle Hartranft  
Lyle Hartranft, Esq.  
Appeals Officer

Sent via email to: Andrew Popp (via email only);  
Tony Miller, AORO (via email only);  
Douglas Myers, Esq. (via email only)