



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
GREATER GREENSBURG SEWAGE AUTHORITY, Requester	:	
	:	
v.	:	Docket No.: AP 2018-2010
	:	
WESTMORELAND COUNTY, Respondent	:	

On May 17, 2018, John O’Connell (“Requester”), on behalf of the Greater Greensburg Sewage Authority, submitted a request (“Request”) to the Westmoreland County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking correspondence between the County’s Municipal Authority and the City of Greensburg relating to the Authority’s offer to purchase the operations of the Greater Greensburg Sewage Authority. On June 19, 2018, the County denied the Request pursuant to 65 P.S. § 67.708(b)(10)(i)(A) and 65 P.S. § 67.708(b)(22).

On November 13, 2018, the Requester appealed to the Office of Open Records (“OOR”), stating grounds for disclosure.¹ The OOR invited both parties to supplement the record. Neither party did so.

¹ On June 29, 2018, the OOR dismissed the same appeal on procedural grounds for failure to address the County’s grounds for denial. The Requester then appealed this determination to the Westmoreland County Court of Common Pleas. On October 30, 2018, the Court issued an Order stating that the OOR was correct in dismissing the case;

Under the RTKL, a statement made under the penalty of perjury may serve as sufficient evidentiary support 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). However, an unsworn statement is not competent evidence to meet an agency's burden of proof. *See Housing Authority of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209, 216 (Pa. Commw. Ct. 2012) (holding that unsworn statements of counsel are not competent evidence); *City of Philadelphia 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 County has not submitted any evidence to withhold the responsive records. Therefore, the County has failed to meet its burden of proof under the RTKL. 65 P.S. § 67.708(a)(1).

For the foregoing reasons, Requester's appeal is **granted**, and the County is required to provide all responsive records within thirty days to the Requester. 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 Westmoreland 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.² This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

however, the Court stated that the Requester "shall re-file its appeal to the Office of Open Records pursuant to all requirements of 65 P.S. § 67.1101(a)(1), wherein [the Requester] shall address all areas of appeal as specified by the Office of Open Records in its Final Determination dated June 29, 2018."

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

FINAL DETERMINATION ISSUED AND MAILED: December 6, 2018

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent to: John O'Connell, Esq. (via email only);
Brian Hohman