



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ROBERT GAWLAS, JR.,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2018-2009
	:	
LAKE TOWNSHIP,	:	
Respondent	:	

On October 12, 2018,¹ Robert Gawlas, Jr., Esq. (“Requester”) filed a request (“Request”) with Lake Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “any Planning Commission Meeting Minutes relating Lori Dring, Nancy Asaro, and their real property on Lake Ariel/Mud Pond...any records of visits to Lake Township offices by, or communications from, representatives of Ariel Land Owners, Inc. with respect to Lori Dring, Nancy Asaro, and their real property on Lake Ariel/Mud Pond.” The Township did not respond within five business days of receiving the Request, and the Request was, therefore, deemed denied on October 19, 2018. *See* 65 P.S. § 67.901.

On November 9, 2018, the Requester appealed to the OOR, stating that the Request was deemed denied. The OOR invited both parties to supplement the record.

¹ On September 21, 2018, the Requester submitted a request seeking various records regarding property at Lake Ariel/Mud Pond, including applications, maps, meeting minutes, etc. On October 12, 2018, the Requester submitted another request seeking records that were not provided in response to the September 21, 2018 request. The October 12, 2018 Request is the Request underlying this appeal.

On November 26, 2018, the Township submitted an affidavit made under the penalty of perjury from Jennifer Wargo, the Township's Open Records Officer. She attests that she conducted a thorough examination of documents in the possession, custody and control of the Township and contacted the Township Planning Commission Secretary and Township Supervisor to search for records requested—"Asaro/Dring-planning commission meeting minutes and office notes regarding Asaro/Dring." Ms. Wargo confirms that all responsive records in the Township's possession, custody and control were provided to the Requester on November 13, 2018.

On November 27, 2018, the Requester submitted a sworn affidavit arguing that there was no production of June 5, 2001 approval of a subdivision plan submitted by Dring/Asaro; nor, are there any meeting minutes, decisions or documentation relating to any prior examination or re-examination referenced in the records provided by the Township in response to the Request.

Under the RTKL, an affidavit 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 competent evidence that the Township acted in bad faith or that additional responsive records exist, "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 has provided all records responsive to the Request that are in its possession, custody and control and that no other responsive records. Accordingly, this appeal is **dismissed as moot**.

For the foregoing reasons, 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 Wayne 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 according as per Section 1303. 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: December 6, 2018

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent to: Robert Gawlas, Jr., Esq. (via email only);
Deborah Hargett-Robinson, Esq. (via email only)

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