



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>JOHN MILLER,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No.: AP 2018-2147</b>
	:	
<b>HOMER TOWNSHIP,</b>	:	
<b>Respondent</b>	:	

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* Upon review of the file, the appeal is **dismissed** for the following reason:

On October 27, 2018, John Miller (“Requester”) mailed a RTKL request (“Request”) to Homer Township (“Township”), seeking records related to the adoption of a specific ordinance. The Township failed to respond to the Request within five business days, and the Request was deemed denied. *See* 65 P.S. § 67.901.

On December 13, 2018, the Requester filed an appeal with the OOR, stating grounds for disclosure. On December 26, 2018, the Township made a submission, stating that the Township “adopted Ordi[n]ance #2 ... at the May 9, 2011 meeting.” In response to a request for clarification from the OOR, on December 27, 2018, the Township submitted the sworn affidavit of Mary Freeman (“Ms. Freeman”), the Township’s Secretary and acting Open Records Officer, who

affirms, under the penalty of perjury, that the Township did not receive the Request until the instant appeal was filed. Ms. Freeman further affirms that the Request was not mailed to the Township, but was mailed to Karen Cahilly, Esq., who “serves as Special Counsel to the Township in litigation initiated by [the Requester.]”

Under the RTKL, a sworn 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. Township of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Because the Township’s Open Records Officer did not receive the Request prior to the filing of this appeal, the appeal is **dismissed as premature**. *See* 65 P.S. § 67.901 (stating that “[t]he time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency”); *see also* 65 P.S. § 67.703 (“A written request must be addressed to the open-records officer designated pursuant to section 502.”); *Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014).

For the foregoing reason, 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 Potter 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 to 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> *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

**FINAL DETERMINATION ISSUED AND MAILED: January 11, 2019**

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

Sent to: John Miller (via email only); and  
Mary Freeman, AORO (via email only)