



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
EUGENE GOEBEL,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2019-2625
	:	
CONCORD TOWNSHIP,	:	
Respondent	:	

On December 17, 2019, Eugene Goebel (“Requester”) filed a request (“Request”) with Concord Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, “[a]ny and all documents including but not limited to emails, notes, notices and hearings regarding the liquor license at [address omitted].” On December 23, 2019, the Township granted the Request, providing a letter from the Pennsylvania Liquor Control Board to the Township regarding a liquor license application for the identified address.

On December 23, 2019, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating that additional records exist. The OOR invited both parties to supplement the record.

On January 7, 2020, the Township provided a sworn attestation from Amada Serock, Open Records Officer of the Township. She attests that:

I conducted a good faith search for responsive documents to [the Request] and I have provided [the Requester] with the opportunity to review the entire Township file for [address omitted]. No other files, documents, and/or records responsive to

the [R]equest exist, and the law office of Donaghue & Labrum, LLP communicated that no responsive documents existed ... As this was an intramunicipal liquor license transfer, the Pennsylvania Liquor Control Board has sole authority over such a transfer. I hereby affirm that no response records exist within the care, custody and control of Concord Township...

On January 7, 2020, the Requester submitted a statement arguing that the transferring a liquor license requires certain obligations and paperwork to be filed; therefore, additional information must exist.

Under the RTKL, an affidavit 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 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 proving that no additional responsive records exist in the Township’s possession, custody or control. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). Accordingly, the appeal is **denied**.¹

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 to the Delaware 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

¹ This ruling does not preclude the Requester from filing a RTKL request with the Pennsylvania Liquor Control Board.

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: January 14, 2020

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent via email to: Eugene Goebel;
Hugh Donaghue, Esq.;
Tyler Therriault, Esq.;
Amanda Serock

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