



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
RAYMOND RINALDI, II,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2020-0477
	:	
	:	
JESSUP BOROUGH,	:	
Respondent	:	

On January 23, 2020, Raymond Rinaldi, II, Esq. (“Requester”) filed a request (“Request”) with Jessup Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking all conflict of interest policies for the Borough council, staff, planning commission, zoning hearing board and comprehensive plan committee. On March 2, 2020, after invoking a thirty day extension to respond pursuant to 65 P.S. § 67.902, the Borough granted access to the records.

On March 4, 2020, the Requester appealed to the OOR, stating grounds for disclosure. The OOR invited both parties to supplement the record.

On March 12, 2020, the Requester indicated that he paid for the responsive records and submitted a copy of a business check, along with an affidavit confirming that he paid the duplication fees for the responsive records on March 3, 2020.

On March 13, 2020, the Borough submitted a position statement indicating that the records were granted. The Borough also submitted an affidavit made under the penalty of perjury from Mia Stine, the Borough's Open Records Officer, attesting that she conducted a thorough examination of documents in the possession, custody and control of the Borough and that "[o]n March 3, 2020, I then emailed the aforesaid records to the Requester. All responsive documents were provided, and no documents were denied or exempted from disclosure."¹

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 Borough acted in bad faith or that additional 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 and because the Requester has not disputed the sufficiency of the records provided to him, the Borough has met its burden of proof that it has provided all records responsive to the Request. Accordingly, this appeal is **dismissed as moot**.

For the foregoing reasons, the Borough 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 Lackawanna County Court of Common Pleas.² 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.

¹ On March 16, 2020, the OOR sent an email to the Requester noting that the Borough has provided responsive records and if he wished to withdraw the appeal. Although the Requester did not respond, there is sufficient evidence from the Borough to establish that all responsive records have been provided.

² Regarding the deadlines in this section, note that the Supreme Court has suspended all time calculations and deadlines relevant to court cases or other judicial business through April 3, 2020. (*See* <http://www.pacourts.us/assets/files/page-1305/file-8634.pdf>, last accessed March 25, 2020.)

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.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: March 25, 2020

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent via email to: Raymond Rinaldi, II, Esq.;
Christopher Szewczyk, Esq.;
Mia Stine

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