



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
THOMAS VACCA,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2020-0592
	:	
CECIL TOWNSHIP,	:	
Respondent	:	

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.* For the following reasons, the appeal is **dismissed**.

On March 12, 2020, Thomas Vacca (“Requester”) submitted a request (“Request”) to Cecil Township (“Township”) pursuant to the RTKL, seeking various records, including a Township map and tax information. As the Requester did not receive the Township’s response within five business days of the Request, the Requester filed an appeal with the OOR on March 23, 2020, claiming that the Request was deemed denied. *See* 65 P.S. § 67.901. On March 25, 2020, the Township submitted a position statement stating that it first received the Request in the Notice of Appeal from the OOR. In support of its assertion, the Township submits the affidavit of Donald Gennuso, the Township’s Manager and Open Records Officer.

Section 901 of the RTKL states “[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.” 65 P.S. § 67.901; *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014). In support of the

Township's position, Mr. Gennuso attests that the Township did not receive the Request until it was forwarded by the OOR along with the Official Notice of Appeal. Under the RTKL, a sworn affidavit or statement made under the penalty of perjury is competent evidence 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). Because the Township did not receive the Request prior to this appeal, the appeal is **dismissed as premature**. The Requester is not precluded from refileing the Request with the Township and, if necessary, filing an appeal from the Township's response pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

The file is now closed and no further action will be taken. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Washington County Court of Common Pleas.¹ *See* 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 court rules 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 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.

¹ 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.)

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

Sent via email to: Thomas Vacca:
Alexis Wheeler, Esq.;
Donald Gennuso