

LAW OFFICES OF
MILLER KISTLER & CAMPBELL

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JOHN W. LHOTA
MORGAN M. MADDEN

OF COUNSEL
FRED B. MILLER
LISA M. WELSH**

*ALSO ADMITTED IN WEST VIRGINIA
**ALSO ADMITTED IN MARYLAND

PLEASE REPLY TO:
STATE COLLEGE OFFICE

September 4, 2018

720 SOUTH ATHERTON STREET, STE. 201
STATE COLLEGE, PA. 16801-4669
(814) 234-1500
FAX (814) 234-1549
AND
124 NORTH ALLEGHENY STREET
BELLEFONTE, PA. 16823-1695
(814) 355-5474
GENERAL FAX (814) 355-5340
REAL ESTATE FAX (814) 357-0264

JOHN R. MILLER, JR.
(1919-2007)

ROBERT K. KISTLER
(1925-2012)

Debra Immel, Prothonotary
Centre County Courthouse
102 S. Allegheny Street
Bellefonte, PA 16823

Re: Gregg Township v. Michelle Grove

Dear Ms. Immel:

Enclosed please find one original and one copy of a Petition for Review and Notice of Appeal Pursuant to the Pennsylvania Right-To-Know Law for filing in the above matter. Also enclosed is a check in the amount of \$166.75 to cover the required filing fee. Please file the original document and return the time-stamped copy to my office at your earliest convenience. Thank you.

Very truly yours,



David S. Gaines, Jr.

DSG/amw
Enclosures
cc: Michelle Grove
Gregg Township

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

CENTRE

County

For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☐ Complaint ☐ Writ of Summons ☒ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

Gregg Township

Lead Defendant's Name:

Michelle Grove

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: David S. Gaines, Jr.

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
Restraining Order
☐ Quo Warranto
☐ Replevin
☒ Other:
Right-to-Know Law Appeal

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW**

GREGG TOWNSHIP,

Petitioner,

v.

MICHELLE GROVE,

Respondent.


:
:
:
:
:
:
:
:
:
:

No.

Right-to-Know Law Appeal

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Petition for Review and Notice of Appeal within twenty (20) days from the date of service hereof or a judgment may be entered against you.



David S. Gaines, Jr.

Dated: September 4, 2018

**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW**

GREGG TOWNSHIP,

Petitioner,

v.

MICHELLE GROVE,

Respondent.

:
:
:
:
:
:
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:
:
:
:

No.

Right-to-Know Law Appeal

**PETITION FOR REVIEW AND NOTICE OF APPEAL
PURSUANT TO THE PENNSYLVANIA RIGHT-TO-KNOW LAW**

The Petitioner, Gregg Township, by and through the undersigned counsel, hereby files this Petition for Review and Notice of Appeal Pursuant to the Pennsylvania Right to Know Law, stating in support thereof as follows:

PARTIES

1. The Petitioner, Gregg Township (“Township”), is a second-class township in Centre County, Pennsylvania.

2. The Respondent, Michelle Grove, is an adult resident of the Commonwealth of Pennsylvania who resides at 103 Hidden Springs Lane, Spring Mills, Pennsylvania, 16875.

JURISDICTION AND VENUE

3. The Court has jurisdiction pursuant to 42 Pa. C.S. § 931 and 65 P.S. § 67.1302(a).

4. Venue in this Court is proper according to Pennsylvania Rule of Civil Procedure 1006(a) and 65 P.S. § 67.1302(a).

FACTUAL BACKGROUND

5. Respondent is a routine public records requester and critic of the Township who runs www.GreggTownshipUnofficial.org, a website that provides comprehensive public records relating to Gregg Township.

6. Since approximately December 1, 2016, Respondent has filed with the Township more than seventy-five Right to Know Law requests.

7. On approximately May 22, 2018, Respondent filed a Right to Know Law request with the Township that sought the following information:

- * 5/10/2018 Video Recording of May 2018 Board of Supervisors Meeting.
- * March-April 2018 Solicitor Invoices ELECTRONIC COPIES OR INSPECTION
- * 5/13/2018-5/19/2018 Internet browsing history of all township-owned desktop and laptop computers. ELECTRONIC COPIES OR INSPECTION.
- * 2018 Statements of Financial Interest ELECTRONIC COPIES OR INSPECTION

A copy of Ms. Grove's request is attached hereto as Exhibit 1.

8. The Township responded to Ms. Grove's request on approximately May 29, 2018. A copy of the Township's response to Ms. Grove's request is attached hereto as Exhibit 2.

9. In the Township's response, the Township authorized Ms. Grove to obtain a copy of the video recording, solicitor invoices, and statements of financial interest, and Ms. Grove later obtained those materials.

10. At the time of receiving the request, the Township was unfamiliar with how to provide browser histories in response to a Right to Know Law request.

11. Consequently, a representative of the Township contacted the Office of Open Records, to determine the appropriate procedure for responding to such a request.

12. That representative instructed the Township's representative to print out the browser histories, redact all personal matters that do not relate to Township business, and then provide the redacted histories to Ms. Grove.

13. Ms. Grove took exception to the Township's response and claimed that she is entitled to see all internet browsing history on any Township computer, regardless of the circumstances.

14. Ms. Grove filed an appeal to the Office of Open Records on approximately July 18, 2018. A copy of Ms. Grove's appeal to the Office of Open Records is attached hereto as Exhibit 3.

15. The Township filed a response to Ms. Grove's appeal on approximately July 27, 2018. A copy of the Township's response to Ms. Grove's appeal is attached hereto as Exhibit 4.

16. On approximately August 14, 2018, the Office of Open Records granted Ms. Grove's appeal. A copy of the final determination regarding Ms. Grove's appeal is attached hereto as Exhibit 5.

17. In that final determination—despite the Township filing a lengthy affidavit on this issue, and in direct contravention of the Office of Open Records's prior advice to the Township—the Office of Open Records held that the Township had not provided enough evidence to demonstrate that the redacted materials fell within a recognized exception.

18. Respectfully, the Township adequately explained that the requested emails involved personal matters and, therefore, fell within a recognized exception.


19. As permitted by 65 P.S. § 67.1302(b), the filing of this Petition for Review and Notice of Appeal constitutes a stay against the release of any materials until the Court of Common Pleas issues a decision on the merits of this appeal.

20. The Township requests leave to supplement the record in this appeal for the purpose of demonstrating that the records sought are exempt from disclosure pursuant to the Right to Know Law.

21. Given that the Township is requesting the right to withhold the desired records, the Township requests that the Court review any materials *in camera*.

WHEREFORE, the Petitioner, Gregg Township, respectfully requests that this Court reverse the Final Determination of the Office of Open Records dated and served on August 14, 2018, and enter an order denying the Right to Know Law request of the Requester, Michelle Grove.

Respectfully submitted,

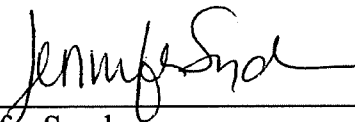


David S. Gaines, Jr.
Pa. I.D. No. 308932
MILLER, KISTLER & CAMPBELL
720 South Atherton Street, Suite 201
State College, PA 16801
(814) 234-1500 TEL
(814) 234-1549 FAX
dgaines@mkclaw.com
Counsel for Petitioner

Dated: September 4, 2018

VERIFICATION

I, Jennifer Snyder, as the Right-to-Know Law Officer for Gregg Township, Centre County, Pennsylvania, hereby depose and state that the statements contained in the foregoing Petition for Review and Notice of Appeal are true and correct to the best of my knowledge, information, and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



Jennifer Snyder

Dated: 8/23/18

EXHIBIT 1



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 5/21/2018

REQUEST SUBMITTED BY: ☒ E-MAIL ☐ U.S. MAIL ☐ FAX ☐ IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): Gregg Township, 106 School Street,

PO Box 184, Spring Mills, PA 16875

NAME OF REQUESTER : Michelle Grove

STREET ADDRESS: PO Box 253

CITY/STATE/COUNTY/ZIP(Required): Spring Mills, PA 16875

TELEPHONE (Optional): 814-470-1132

EMAIL (optional): michelleyvonnegrove@gmail.com

RECORDS REQUESTED: *Provide as much specific detail as possible so the agency can identify the information.
Please use additional sheets if necessary

- * 5/10/2018 Video Recording of May 2018 Board of Supervisors Meeting.
 - * March-April 2018 Solicitor Invoices ELECTRONIC COPIES OR INSPECTION
 - * 5/13/2018-5/19/2018 Internet browsing history of all township-owned desktop and laptop computers.
- ELECTRONIC COPIES OR INSPECTION

- * 2018 Statements of Financial Interest ELECTRONIC COPIES OR INSPECTION

DO YOU WANT COPIES? ☒ YES ☐ NO

DO YOU WANT TO INSPECT THE RECORDS? ☒ YES ☐ NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? ☐ YES ☒ NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? ☒ YES ☐ NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

☐ I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

EXHIBIT 2



pennsylvania

OFFICE OF OPEN RECORDS

Right-To-Know Response Form

Gregg Township
106 School Street PO BOX 184
Spring Mills PA 16875
814-422-8218 secretary@greggtownship.org

May 29, 2018

Michelle Grove
PO BOX 253
Spring Mills PA 16875

Dear Requestor:

This letter acknowledges receipt of your request for access to public records pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 to 67.3104, as set forth in your Standard Right-to-Know Request Form dated May 21, 2018, requesting the following information:

- * 5/10/2018 Video Recording of May 2018 Board of Supervisors Meeting
- * March-April 2018 Solicitor Invoices ELECTRONIC COPIES OR INSPECTION
- * 5/13/2018 - 5/19/2018 Internet Browsing history of all township-owned desktops and laptop computers. ELECTRONIC COPIES OR INSPECTION
- * 2018 Statements of Financial Interest ELECTRONIC COPIES OR INSPECTION

Your request for access to these records has been granted, however the records require redaction and must therefore be printed. The cost for copies of the files totals \$46.99 which includes \$41 for internet browsing history copies and \$5.99 for the cost of the jump drive to provide access to the video recording. You may set up an appointment to inspect the records for the solicitor invoices and statement of financial interest at the township office by calling 814-422-8218 or emailing secretary@greggtownship.org. If you have further questions, please let us know.

Respectfully,

Jennifer Snyder, Secretary/Treasurer, CGA
Gregg Township, Centre County
Right to Know Officer

EXHIBIT 3

Sostar, Janelle K

From: no-reply@openrecords.pa.gov
Sent: Wednesday, July 18, 2018 10:15 PM
To: michelleyvonnegrove@gmail.com
Subject: PA Office of Open Records - Appeal Confirmation

RECEIVED

JUL 18 2018

OFFICE OF OPEN RECORDS



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Michelle Grove
Address 1:	PO Box 253
Address 2:	
City:	Spring Mills
State:	Pennsylvania
Zip:	16875
Phone:	814-470-1132
Fax:	
Email:	michelleyvonnegrove@gmail.com
Agency (list):	Gregg Township
Agency Address 1:	106 School Street
Agency Address 2:	PO Box 184
Agency City:	Spring Mills
Agency State:	Pennsylvania
Agency Zip:	16875
Agency Phone:	814-422-8218
Agency Fax:	814-422-8020
Agency Email:	secretary@greggtownship.org
Records Requested:	* 5/10/2018 Video Recording of May 2018 Board of Supervisors Meeting. * March-April 2018 Solicitor Invoices ELECTRONIC COPIES OR INSPECTION * 5/13/2018 -5/19/2018 Internet browsing history of all township-owned desktop and laptop computers.

ELECTRONIC COPIES OR INSPECTION * 2018 Statements of Financial Interest ELECTRONIC COPIES OR INSPECTION

Request Submitted to Agency Via: e-mail

Request Date: 05/21/2018

Response Date: 05/29/2018

Deemed Denied: No

Agency Open Records Officer: Jennifer Snyder, AORO

Reasons for Appeal: I am disputing the redactions and fees associated with the browser history. NOTE: I received the records on July 10th, so my appeal is timely.

Attached a copy of my request for records: Yes

Attached a copy of all responses from the Agency regarding my request: Yes

Attached any letters or notices extending the Agency's time to respond to my request: Yes

Agree to permit the OOR an additional 30 days to issue a final order: No

Interested In resolving this issue through OOR mediation: No

Attachments:

- Request.pdf
- Response.pdf
- Correspondence 1.pdf
- Correspondence 2.pdf
- Correspondence 3.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

RTK Request 05212018 108

me to Gregg

May 29

Jennifer,

I will inspect all of the records except the video recording.

...

Michelle Grove

On Tue, May 29, 2018 at 2:40 PM, Gregg Twp Secretary <secretary@greggtownship.org> wrote:

Please see the attached response.

Jennifer Snyder, CGA
Secretary/Treasurer
Gregg Township, Centre County
106 School Street
PO BOX 184
Spring Mills PA 16875
814-422-8218

Browser History

David Gaines to me, Gregg

May 30

Michelle,

I understand that there is some confusion about inspecting the browser history printouts. I just want to make clear that you are going to pay first before receiving any browser history printouts. This was something we ran by OOR, which told us to do it this way, so please do not expect Jen to have the browser history printouts when you arrive - they will be available at a later time.

Thank you.

...

David

David S. Gaines, Jr.
MILLER, KISTLER & CAMPBELL
720 South Atherton Street, Suite 201
State College, PA 16801
(814) 234-1500 TEL
(814) 234-1549 FAX

Browser Records

Gregg Twp Secretary to me

Jul 10

Ok.

...

On Tue, Jul 10, 2018 at 8:58 AM, Michelle Grove <michellewonnegrove@gmail.com> wrote:
10:00-lsh

On Tue, Jul 10, 2018, 7:16 AM Gregg Twp Secretary <secretary@greggtownship.org> wrote:
I will need to know an approximate time that you will be here to get the records as I will need to make copies beforehand. The cost is \$41. Please bring exact change or check made payable to Gregg Township.

Thanks.

On Mon, Jul 9, 2018 at 5:18 PM, Michelle Grove <michellewonnegrove@gmail.com> wrote:
Jennifer,

I will be in tomorrow to pick up those records.

Michelle

--
Jennifer Snyder, CGA
Secretary/Treasurer
Gregg Township, Centre County
106 School Street
PO BOX 184
Spring Mills PA 16875
814-422-8218

--
Jennifer Snyder, CGA
Secretary/Treasurer
Gregg Township, Centre County
106 School Street
PO BOX 184
Spring Mills PA 16875
814-422-8218

EXHIBIT 4

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:	:	
	:	
MICHELLE GROVE,	:	
	:	
Requester,	:	
	:	
v.	:	No. AP 2018-1289
	:	
GREGG TOWNSHIP,	:	
	:	
Respondent.	:	
	:	

RESPONDENT'S RESPONSE TO REQUESTER'S APPEAL

The Respondent, Gregg Township, hereby files this Response to Requester's Appeal, stating in support thereof as follows:

I. Factual Background

In this matter involving the Pennsylvania Right-to-Know Law ("Law"), 65 P.S. §§ 67.101 to 67.3104, Requester Michelle Grove ("Mr. Grove") filed a Standard Right-to-Know Request Form with Respondent Gregg Township ("Township") on May 22, 2018. Ms. Grove's request was as follows:

- * 5/10/2018 Video Recording of May 2018 Board of Supervisors Meeting.
- * March-April 2018 Solicitor Invoices ELECTRONIC COPIES OR INSPECTION
- * 5/13/2018-5/19/2018 Internet browsing history of all township-owned desktop and laptop computers. ELECTRONIC COPIES OR INSPECTION.
- * 2018 Statements of Financial Interest ELECTRONIC COPIES OR INSPECTION

Standard Right-to-Know Request Form (May 21, 2018).

Jennifer Snyder is the Right-to-Know officer for Gregg Township. In her attestation, Ms. Snyder confirms that, on May 29, 2018, the Township responded to Ms. Grove's request. *Snyder*

Attestation ¶ 9. In that response, Ms. Snyder authorized Ms. Grove to obtain a copy of the video recording, solicitor invoices, and statements of financial interest, and Ms. Grove later obtained those materials. *Id.* ¶¶ 9-10. Ms. Snyder also agreed to provide a redacted version of the browser histories, based on a conversation with a representative of the Office of Open Records, George Spiess. *Id.* ¶¶ 3-9. In particular, Mr. Spiess advised Ms. Snyder to print out the browser histories, redact all personal matters that do not relate to Township business, and then provide the redacted histories to Ms. Grove. *Id.* ¶ 7.

When Ms. Snyder initially responded to Ms. Grove on May 29, 2018, Ms. Grove felt that Mr. Spiess' directions to the Township violated the Law. Consequently, Ms. Grove filed an appeal to the Office of Open Records on May 30, 2018, claiming that the Law did not authorize the Township to redact and charge Ms. Grove for copies of the requested browser histories. *Id.* ¶ 11. Ms. Grove's first appeal appeared at Office of Open Records docket number AP 2018-0953.

The Office of Open Records issued a final determination in Ms. Grove's initial appeal on June 29, 2018. *Id.* ¶ 12. In the final determination, the Office of Open Records denied Ms. Grove's appeal, holding that the Township could properly charge for the redacted copies of the requested internet browsing histories.

Since the initial final determination in this matter, Ms. Grove has paid for and obtained the desired internet browsing history records. *Id.* ¶ 14. However, she now files the instant appeal, claiming, again, that the Township cannot redact matters involving non-Township business and charge for the redactions. The appeal should fail, for the reasons set forth below.

II. Legal Argument: The Township's Response to Ms. Grove Complied with the Law.

As set forth in her attestation, Ms. Snyder redacted all internet browsing history information that related solely to employees' personal affairs. These actions were appropriate, and the appeal should be denied, for at least five reasons.

As an initial matter, Ms. Grove's appeal should be denied because the Office of Open Records has already decided this issue, involving the same records. It is unprecedented for an individual to file multiple appeals based on the same response to the same request, and the Office of Open Records must plainly deny Ms. Grove's current appeal, not only because this issue has already been resolved, but also because no additional facts have been presented to change the initial reasoning set forth in the prior final determination.

Second, internet browsing histories for personal affairs are not "records" that fall within the scope of the Law. It is beyond cavil that a "record" is a piece of "[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency." 65 P.S. § 67.102. The records subject to redaction—browsing histories relating to employees' personal matters—do not document any transaction or activity of the Township, so those records do not fall within the scope of Ms. Grove's request.

Third, even assuming *arguendo* that the browsing histories for personal affairs are records, they would nonetheless be exempt. Section 708(b)(12) of the Law exempts from disclosure "[n]otes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose." 65 P.S.

§ 67.708(b)(12). Here again, the employees' personal browsing histories are just that: personal records that have no official purpose to the Township.

Fourth, the Township's request to charge for fees was appropriate. In *Daly v. Achievement House Charter School*, OOR No. AP 2010-0365, the Office of Open Records noted that "an agency may only charge a per-page fee for electronically transmitted records where it is required to make copies in order to fulfill the request." *Id.* Here, Ms. Snyder was compelled to screen shot the browser histories and physically redact the portion of the records that were not records under the Law. This action was appropriate and justified under the Law, and taken at the direction of a representative of OOR. *Snyder Attestation* ¶¶ 3-8.

Finally, in her email dated July 25, 2018, Ms. Grove referenced a laptop that is "used exclusively by Supervisor Miller." Supervisor Miller owns her personal laptop, not the Township. *Id.* ¶ 18. Ms. Grove sought the "Internet browsing history of all township-owned desktop and laptop computers," and the Township provided that information.

III. Conclusion

For the reasons set forth above, the Respondent, Gregg Township, respectfully requests that the appeal filed by the Requester, Michelle Grove, be denied.

Respectfully submitted,



David S. Gaines, Jr.
Pa. I.D. No. 308932
MILLER, KISTLER & CAMPBELL
720 South Atherton Street, Suite 201
State College, PA 16801
(814) 234-1500 TEL
(814) 234-1549 FAX
dgaines@mkclaw.com
Counsel for Respondent

Dated: July 27, 2018

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

MICHELLE GROVE,

Requester,

v.

GREGG TOWNSHIP,

Respondent.

No. AP 2018-1289

ATTESTATION OF JENNIFER SNYDER

I, Jennifer Snyder, make the following attestation under the penalty of perjury:

1. I am the Right-to-Know Officer for the Respondent, Gregg Township.
2. I received a Standard Right-to-Know Request Form from Michelle Grove on May

22, 2018, which requested the following information:

- * 5/10/2018 Video Recording of May 2018 Board of Supervisors Meeting.
- * March-April 2018 Solicitor Invoices ELECTRONIC COPIES OR INSPECTION
- * 5/13/2018-5/19/2018 Internet browsing history of all township-owned desktop and laptop computers. ELECTRONIC COPIES OR INSPECTION.
- * 2018 Statements of Financial Interest ELECTRONIC COPIES OR INSPECTION

3. On the same day that I received the foregoing request, May 22, 2018, I called the Office of Open Records and left a message seeking advice about how to respond to Ms. Grove's request regarding browser history of all township computers.

4. In particular, I was unsure whether all browser history was considered to be disclosable under the Right to Know Law, and I worried about disclosing all such records if some of them contained personal information relating to township employees' personal matters.

5. Later the same day, George Spiess returned my phone call.
6. In that phone call, Mr. Spiess told me that, out of more than 19,000 appeals that have been processed by the Office of Open Records, only two have dealt with internet browser histories, and that one of those cases, *Michael Marshall v. South Whitehall Police Department*, OOR No. AP 2017-1702, guided this matter involving Ms. Grove's request.
7. Mr. Spiess further stated that, pursuant to relevant law, including that set forth in the *Marshall* matter noted above, the township should disclose only township-related business from the browser histories and redact all other matters, like websites that an employee may have visited on his or her personal time.
8. Mr. Spiess concluded by stating that, since Ms. Grove is unable to inspect the computer itself, I would need to print out the browser history and physically redact the records, and as such, Ms. Grove would need to pay for the printed record.
9. I provided a response to Ms. Grove's request on May 29, 2018, which followed all of Mr. Spiess' directions regarding the request for internet browser history; the response also granted the remaining portions of Ms. Grove's request.
10. On May 30, 2018, Ms. Grove obtained a copy of the requested video recording and inspected the requested solicitor invoices and statement of financial interest forms.
11. On the same date, May 30, 2018, Ms. Grove filed an appeal appearing at OOR docket number AP 2018-0953, which asserted under "Reasons for Appeal" as follows:

The township wants to redact the browsing history, but they have not claimed any exemptions. The township will not allow me to inspect it. I am NOT asking to look at their computers. The history can be printed on paper or to PDF in same exact way.
12. On June 29, 2018, the Office of Open Records issued a Final Determination, which denied Ms. Grove's request.

13. In particular, the Final Determination provided as follows:

[T]he Township claims that it was required to make redactions to electronic files to remove information claimed to be not subject to access under the RTKL. Section 1307 of the RTKL provides that the OOR has the authority to establish fees for duplication by photocopying for Commonwealth and local agencies. *See* 65 P.S. § 67.1307(b)(1)(i). Pursuant to this authority, the OOR has approved a Fee Structure and posted the information on its website. *See id*; Official RTKL Fee Structure (available at <http://www.openrecords.pa.gov/RTKL/FeeStructure.cfm>). The OOR has approved fees up to \$ 0.25 a page for the duplication of records as set forth in the OOR's Fee Schedule. Under the OOR's fee structure, an agency is not entitled to charge duplication fees for electronic records, unless it must print the records for permissible redaction. *See Mollick v. Worcester Twp.*, OOR Dkt. AP 2015-0678, 2015 PA O.O.R.D. LEXIS 797. As the Township claimed that it redacted information not subject to access under the RTKL and the information existed in electronic form, the Township's conversion of the responsive record to paper in order to securely redact the information is proper under the OOR's Fee Schedule.

14. On July 10, 2018, Ms. Grove obtained the requested browsing history.

15. On July 25, 2018, counsel for the Township sent an email to Ms. Grove, which asking her to clarify her reasons for disputing the redaction and fees associated with the browser history.

16. Later that same day, Ms. Grove responded to the aforementioned email with an email from her, stating, in pertinent part, as follows:

I don't believe the redactions are exempt from disclosure per the RTKL's list of exemptions. As such, I do not believe I should pay for paper copies when I requested them electronically. If the township's position is the redactions are not records of the township (despite being created by township representatives, on township equipment, on township time), I do not believe I should have to pay the township to redact those. That would mean every RTK Requester could be charged discouraging fees by public servants using agency equipment for personal use. This loophole of charging fees based on personal usage of tax-funded equipment does not seem in line with the purpose of the RTKL. I believe the RTKL was created to allow us to see what the agencies are doing with our money, not encourage agencies to abuse equipment and

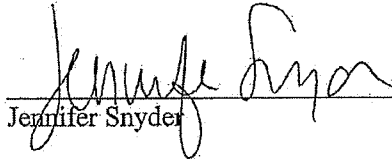
payroll hours that we are forced to pay for, as a way to charge requesters per page for electronic records.

17. This appeal, therefore, challenges the Township's redaction of personal matters and the charging of fees for the requested browsing history.

18. In the same email, Ms. Grove argued that the Township had not provided her with information from a laptop used by Supervisor Miller; in fact, Supervisor Miller owns that laptop.

19. However, as stated above, these actions were taken not only in accordance with the Right to Know Law, but at the explicit direction of representatives of the Office of Open Records.

20. I hereby certify that the facts contained in the foregoing Attestation are true and correct to the best of my knowledge, information, and belief, and that I make this Attestation subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Jennifer Snyder

Dated: July 27, 2018

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

MICHELLE GROVE,

Requester,

v.

GREGG TOWNSHIP,


Respondent.

No. AP 2018-1289

CERTIFICATE OF SERVICE

I, David S. Gaines, Jr., hereby certify that a true and correct copy of this Response to Requester's Appeal was served by United States first-class mail, postage prepaid, on this twenty-seventh day of July, 2018, addressed as follows:

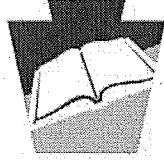
Michelle Grove
P.O. Box 253
Spring Mills, PA 16875



David S. Gaines, Jr.

Dated: July 27, 2018

EXHIBIT 5



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

MICHELLE GROVE,
Requester

v.

GREGG TOWNSHIP,
Respondent

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Docket No.: AP 2018-1289

INTRODUCTION

Michelle Grove (“Requester”) submitted a request (“Request”) to Gregg Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the internet browsing history from Township-owned computers. The Township partially denied the Request by granting access to redacted copies of the responsive internet browsing histories. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Township is required to take further action as directed.

FACTUAL BACKGROUND

On May 21, 2018, the Request was filed, seeking, in pertinent part: “5/13/2018 – 5/19/2018 Internet Browsing History of all [T]ownship-owned desktop or laptop computers.” The Requester specified that she sought electronic copies or inspection of the responsive records. On May 29, 2018, the Township partially granted the Request by making redacted copies of the

internet browsing history available for access subject to the payment of a duplication fee of \$41.00.

On July 18, 2018, the Requester filed an appeal with the OOR, challenging the Township's redactions and the imposition of a duplication fee.¹ The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On July 25, 2018, the Requester submitted a position statement arguing that the Township redacted browsing history showing personal use of computers by Township employees, those redactions were not supported under the RTKL and that the Township should not impose a duplication fee when she sought records in electronic format. The Requester also states that no records were provided for Supervisor Miller's laptop.

On July 27, 2018, the Township submitted a position statement arguing that the Township's redaction of the responsive internet browsing history was proper because the information related to an employee's personal use of Township computers and is not a record under the RTKL. With respect to Supervisor Miller's laptop, the Township asserts that it is not property of the Township. The Township contends that the OOR already decided that the redactions were proper in *Grove v. Gregg Township*, OOR Dkt. AP 2018-0953, 2018 PA O.O.R.D. LEXIS 764. In the alternative, the Township argues that, if the redacted information is determined to be a record under the RTKL, the information would also be exempt from disclosure because they are personal notes, 65 P.S. § 67.708(b)(12). Finally, the Township

¹ The Requester initially appealed this matter on May 30, 2018 at *Grove v. Gregg Township*, OOR Dkt. AP 2018-0953, 2018 PA O.O.R.D. LEXIS 764. The OOR denied the appeal stating that the Requester cannot challenge the redactions prior to reviewing the redacted records. However, the OOR did state that the Requester, upon reviewing the records, may appeal the redactions to the OOR. The Requester obtained the redacted records on July 11, 2018 and is now challenging the redactions. See *Buehl v. Pa. Dep't of Corr.*, No. 198 C.D. 2015, 2015 Pa. Commw. Unpub. LEXIS 552 (Pa. Commw. Ct. 2015).

argues that its imposition of a duplication fee for the redaction of electronic records was proper because the Township had to print the histories to perform the redactions. In support of its assertion, the Township submitted the affidavit of Jennifer Snyder, the Township's Open Records Officer.

On July 30, 2018, the Requester submitted an additional position statement arguing, among other things, that her challenge to the redactions is properly before the OOR and the Township's redactions are without merit. She further states that she would like information on the ownership of Supervisor Miller's laptop.²

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all local agencies. 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the request" and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an

² Ms. Snyder's affidavit explains that Supervisor Miller's laptop is not the property of the Township. The Requester asserts that the Board of Supervisors voted to approve the purchase of the laptop and that she now seeks information about the purchase and ownership status of that laptop. However, a requester may not modify, explain or expand a request on appeal. See *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010). Therefore, the OOR's review on appeal is confined to the Request as written, and the modifications of the Request on appeal are not considered. See *Brown v. Pennsylvania Turnpike Comm'n*, OOR Dkt. AP 2011-1287, 2011 PA O.O.R.D. LEXIS 998. The Requester is not precluded from filing a new request for this information.

appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The Township is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. The Township has not met its burden of proving that the redactions are proper under the RTKL

The Township argues that the OOR has already decided the issue of whether the redactions were proper in *Grove v. Gregg Township*, OOR Dkt. AP 2018-0953, 2018 PA O.O.R.D. LEXIS 764. However, the OOR in that appeal specifically stated that:

Accordingly, because the Requester has not reviewed the redacted records, the appeal as to the redactions is denied. *See Kunkle v. Pa. Dep't of Env'tl. Prot.*, OOR Dkt. AP 2013-1359, 2013 PA O.O.R.D. LEXIS 812; *Parker v. Pa. Dep't of Agriculture*, OOR Dkt. AP 2011-1238, 2011 PA O.O.R.D. LEXIS 843. However, upon reviewing the records, the Requester may appeal the redactions to the OOR. *See Buehl v. Pa. Dep't of Corr.*, No. 198 C.D. 2015, 2015 Pa. Commw. Unpub. LEXIS 552 (holding that that a requester could timely file an appeal both from the date of an agency's response and the date when an agency mailed responsive records).

Id. Accordingly, the OOR has not issued a Final Determination on the merits of the Township's redactions, and the Requester is now properly challenging the redacted records.

The Township argues that it properly redacted portions of the internet browsing histories that do not document a transaction or activity of the Township, but reflect the personal matters of the Township employees. Upon reviewing the evidence submitted by the Township to support this assertion, it fails to provide a sufficient factual basis to withhold the redacted information.³ Ms. Snyder attests that the OOR has previously held that an agency is only required to disclose agency-related business from the browser histories and redact all other matters. Ms. Snyder attests to the relevant law, *Marshall v. South Whitehall Police Department*, OOR No. AP 2017-1702, but fails to provide any factual details that would allow the OOR to determine that the redacted information only reflects personal matters and not transactions or activity of the

³ The Township's submission includes a description of a conversation with an employee of the OOR. As part of its statutory duty to provide training about the RTKL and the Sunshine Act, *see* 65 P.S. §§ 67.1310(a)(4)-(5), the OOR routinely answers inquiries from both agencies and requesters. Comments made in the context of the OOR's duty to provide training on the RTKL are not a substitute for providing sufficient evidence during an appeal.

Township. As a result, the Township has failed to meet its burden of establishing that the redacted information is not a record under the RTKL.

Additionally, the Township argues in its unsworn position statement that Section 708(b)(12) of the RTKL would allow the Township to redact the personal browsing history of its employees. Under the RTKL, a statement made under penalty of perjury may serve as sufficient evidence. This unsworn, conclusory statement is not competent evidence. *See Hous. Auth. of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209, 216 (Pa. Commw. Ct. 2012) (holding that unsworn statements of counsel are not competent evidence); *City of Phila. v. Juzang*, July Term 2010, No. 2048 (Phila. Com. Pl. June 28, 2011) (“Because the letter written by City’s counsel is a legal brief, it cannot be ... evidence at all”). Based on the Township’s failure to provide any evidentiary basis in support, it did not meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305.

2. The Township cannot charge duplication fees for electronic records

The Township states that it was compelled to screen shot the browsing histories and physically redact the electronic records. In *Grove v. Gregg Township*, the OOR did not reach the merits of whether the redactions to the browsing history were proper under the RTKL and determined that the Township may assess duplication fees for the electronic records that required redaction. OOR Dkt. AP 2018-0953, 2018 PA O.O.R.D. LEXIS 764. However, in this matter, the OOR determined that the redactions are not supported by the evidence and the Township must provide unredacted records to the Requester.⁴

Under the OOR’s fee structure, an agency is not entitled to charge duplication fees for electronic records, unless it must print the records for permissible redaction. *See* Official RTKL

⁴ As stated above, there was no OOR determination on the merits with respect to the redactions until this Final Determination.

Fee Structure; *Mollick v. Worcester Twp.*, OOR Dkt. AP 2015-0678, 2015 PA O.O.R.D. LEXIS 797. Because the Request did not seek paper copies of the records and the Township has not demonstrated that electronic copies do not exist, the Township is not entitled to duplication fees for the records provided. *See State Employee's Ret. Sys. v. Office of Open Records*, 10 A.3d 258, 363 (Pa. Commw. Ct. 2010) (holding that an agency is not entitled to duplication fees for creating records that it was not required to create).

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Township is required to provide the unredacted records to the Requester within thirty days. 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 Centre 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 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.⁵ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 14, 2018

/s/ Jill S. Wolfe

JILL S. WOLFE, ESQ.
APPEALS OFFICER

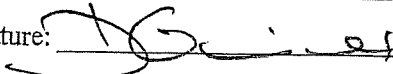
Sent to: Michelle Grove (via email only);
Jennifer Snyder (via email only);
David Gaines, Esq. (via email only)

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

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: David S. Gaines, Jr.

Signature: 

Name: David S. Gaines, Jr.

Attorney No. (if applicable): 308932

**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW**

GREGG TOWNSHIP,

Petitioner,

v.

MICHELLE GROVE,

Respondent.

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No.

Right-to-Know Law Appeal

CERTIFICATE OF SERVICE

I, hereby certify that, on this fourth day of September, 2018, a copy of the foregoing Petition for Review and Notice of Appeal was served on the Respondent by depositing the same within custody of the United States Postal Service, first class, postage prepaid, addressed as follows:

Michelle Grove
P.O. Box 253
Spring Mills, PA 16875



David S. Gaines, Jr.

Dated: September 4, 2018