

**BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

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

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**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,



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*Counsel for Respondent*

Dated: July 27, 2018



BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

MICHELLE GROVE,

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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

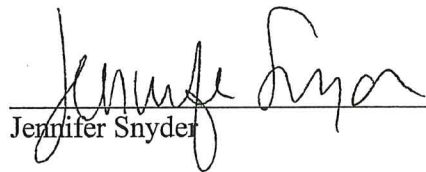
payroll hours that we are forced to pay for, as a way to charge requesters per page for electronic records.

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



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**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