

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:	:	
	:	
MICHELLE GROVE,	:	
	:	
Requester,	:	
	:	
v.	:	No. AP 2018-0953
	:	
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 22, 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 these 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. Ms. Grove believes that Ms. Spiess' directions to the township violated the Law, so she filed the instant appeal.

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 that related solely to employees' personal affairs. These actions were appropriate, for at least two reasons.

First, 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 history 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.

Second, even assuming *arguendo* that the browsing histories for personal affairs were 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. For these reasons, the township's withholding of these records is appropriate.

Finally, the township's request to charge for fees was appropriate, and Ms. Grove's refusal to even consider paying the costs of copying was plainly inappropriate. 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.

III. Conclusion

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

Respectfully submitted,


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Dated: June 12, 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 twelfth day of June, 2018, addressed as follows:

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



David S. Gaines, Jr.

Dated: June 12, 2018