

LAW OFFICES OF
MILLER KISTLER & CAMPBELL

RICHARD L. CAMPBELL
JOHN R. MILLER, III
TERRY J. WILLIAMS
TRACEY G. BENSON*
DAVID B. CONSIGLIO**
DAVID S. GAINES, JR.
MICHAEL S. LEVANDOSKI
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

August 1, 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)

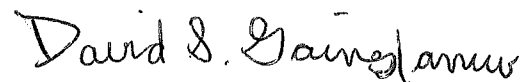
Debra Immel, Prothonotary
Centre County Courthouse
Bellefonte, PA 16823

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: August 1, 2018

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

GREGG TOWNSHIP,	:	
	:	
Petitioner,	:	
	:	
v.	:	No.
	:	
MICHELLE GROVE,	:	Right-to-Know Law Appeal
	:	
Respondent.	:	
	:	

**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 and her spouse have filed with the Township more than seventy-five Right-to-Know Law requests.

7. On approximately June 11, 2018, Respondent filed a Right to Know Law request with the Township that sought the following information:

* 10/26/2016 – 12/31/2017 All emails to/from Doug Bierly with the keyword: “prothonotary”
Search all email accounts used by Doug Bierly for township business and include all replies. ELECTRONIC or INSPECTION

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

8. Doug Bierly is a supervisor in the Township.

9. The Township responded to Ms. Grove’s request on approximately June 26, 2018. A copy of the Township’s response to Ms. Grove’s request is attached hereto as Exhibit 2.

10. In the Township’s response, the Township refused to provide any of the requested emails, because those emails exclusively involved communications

between a Township supervisor and the Township's solicitor regarding then-ongoing legal matters.

11. Ms. Grove took exception to the Township's response, so she filed an appeal to the Office of Open Records on approximately June 26, 2018. A copy of Ms. Grove's appeal to the Office of Open Records is attached hereto as Exhibit 3.

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

13. In that response, the Township noted, again, that it had declined to produce responsive materials because the only responsive materials were communications between a Township supervisor and the Township's solicitor regarding then-ongoing legal matters.

14. Shockingly, and in violation of obvious and well-established notions of the attorney-client privilege, 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.

15. According to the Office of Open Records, the Township did not adequately explain its basis for withholding the aforementioned emails.

16. Respectfully, the Township adequately explained that the requested emails involved communications with counsel regarding pending legal matters

and, therefore, fell within the attorney-client privilege and the appeal should have been denied.

17. 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.

18. 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.

19. 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 July 25, 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

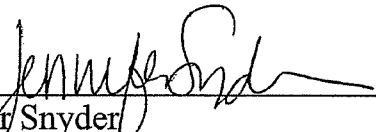
dgaines@mkclaw.com

Counsel for Plaintiff

Dated: August 1, 2018

VERIFICATION

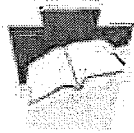
I, Jennifer Snyder, as the Right-to-Know Law Officer for Gregg Township, Centre County, Pennsylvania, hereby depose and state that the statements contained in the foregoing Petition for Review and Notice of Appeal are true and correct to the best of my knowledge, information, and belief. I understand 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: 8/1/18

EXHIBIT 1



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 6/11/2018

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): michellyvonnegrove@gmail.com

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

*10/20/2016-12/31/2017 All emails to/from Doug Bierly with the keyword: "prothonotary"

Search all email accounts used by Doug Bierly for township business and include all replies. 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:

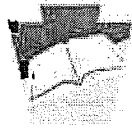
☐ I have provided notice to appropriate third parties and given them an opportunity to object to this request

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

June 26, 2018

Michelle Grove
PO BOX 253
Spring Mills PA 16875

Dear Requestor:

This letter acknowledges receipt of your request for access to public records under 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 June 11, 2018, requesting the following information:

*10/20/2016 - 12/31/2017 All emails to/from Doug Bierly with the keyword: "prothonotary". Search all email accounts used by Doug Bierly for township business and include all replies. ELECTRONIC COPIES OR INSPECTION.

This request is denied. The only available documents that are responsive to this request fall under, and are protected by, the attorney-client privilege.

You have a right to appeal this denial of information in writing to Erik Arneson, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania, 17120.

If you choose to file an appeal, you must do so within fifteen business days of the mailing due date of the agency's response, as outlined in 65 P.S. § 67.1101. Please note that a copy of your original Right-to-Know request and this denial letter must be included when filing an appeal. The law also requires that you state the reasons why the record is a public record and address each of the reasons the Authority denies your request. Visit the Office of Open Records website at <http://openrecords.state.pa.us> for further information on filing an appeal. If you have further questions, please call me at the contact information provided above. Please be advised that this correspondence will serve to close this record with our office as permitted by law

Respectfully,

Jennifer Snyder

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

EXHIBIT 3



June 26, 2018

Via Email Only:

Ms. Michelle Grove
PO Box 253
Spring Mills, PA 16875
michelleyvonnegrove@gmail.com

Via Email Only:

Jennifer Snyder
Agency Open Records Officer
Gregg Township
106 School Street
PO Box 184
Spring Mills, PA 16875
secretary@greggtownship.org

RE: OFFICIAL NOTICE OF APPEAL-DOCKET #AP 2018-1115

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, *et seq.* on **June 26, 2018**. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days. The OOR's Final Determination is currently due on **July 26, 2018**.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. The Parties agreement to mediate stays the Final Determination Deadline. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination, unless the Requester agreed to an additional 30 calendar day extension on the appeal form.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). To meet this burden, the agency must provide evidence to the OOR. The law requires the agency's position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR's website.

Submissions to OOR: Both parties may submit information and legal argument to support their positions by **11:59:59 p.m. on July 6, 2018**. The record closing date is seven (7)

business days from the date of this letter unless the proceedings have been stayed for the parties to submit a completed mediation agreement form, then the record will remain open for seven (7) additional business days beyond the mediation agreement submission deadline. *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the above docket number on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

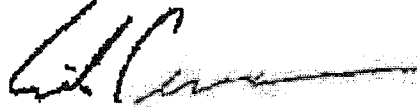
Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

Public Record Notice: All dockets, filings and OOR orders and opinions in this appeal will be public records and subject to public access with limited exception. The OOR’s Final Determination will generally include a summary of the case including the identity of the parties and the relevant factual background. Final Determinations are available on the OOR’s website and searchable on-line.

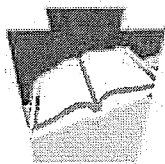
If you have general questions about the appeal process, please contact the OOR at (717) 346-9903. If you have questions specific to your appeal, please email the assigned Appeals Officer (contact information is enclosed) - and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erik Arneson', written over a horizontal line.

Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Jill Wolfe, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

EMAIL:

jiwolfe@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer. Please include the case name and docket number on all submissions.

You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot speak to parties individually without the participation of the other party.

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff are also available to provide general information about the appeals process by calling (717) 346-9903.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at Issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

Sostar, Janelle K

From: no-reply@openrecords.pa.gov
Sent: Tuesday, June 26, 2018 8:09 AM
To: michelleyvonnegrove@gmail.com
Subject: PA Office of Open Records - Appeal Confirmation

RECEIVED

JUN 26 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:	
Agency City:	Spring Mills
Agency State:	Pennsylvania
Agency Zip:	16875
Agency Phone:	814-422-8218
Agency Fax:	814-422-3080
Agency Email:	michelleyvonnegrove@gmail.com
Records Requested:	10/20/2016-12/31/2017 All emails to/from Doug Bierly with the keyword "prothonctary"

Request Submitted to Agency Via:	e-mail
Request Date:	06/11/2018
Response Date:	06/26/2018
No Response:	No
Agency Open Records Officer:	Jennifer Snyder, AORO
Reasons for Appeal:	
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:	No
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:	<ul style="list-style-type: none"> • RTK Gregg Twp.pdf • RTK 06112018 Response Letter 110.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.



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

June 26, 2018

Michelle Grove
PO BOX 253
Spring Mills PA 16875

Dear Requestor:

This letter acknowledges receipt of your request for access to public records under 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 June 11, 2018, requesting the following information:

*10/20/2016 - 12/31/2017 All emails to/from Doug Bierly with the keyword: "prothonotary". Search all email accounts used by Doug Bierly for township business and include all replies. ELECTRONIC COPIES OR INSPECTION.

This request is denied. The only available documents that are responsive to this request fall under, and are protected by, the attorney-client privilege.

You have a right to appeal this denial of information in writing to Erik Arneson, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania, 17120.

If you choose to file an appeal, you must do so within fifteen business days of the mailing due date of the agency's response, as outlined in 65 P.S. § 67.1101. Please note that a copy of your original Right-to-Know request and this denial letter must be included when filing an appeal. The law also requires that you state the reasons why the record is a public record and address each of the reasons the Authority denies your request. Visit the Office of Open Records website at <http://openrecords.state.pa.us> for further information on filing an appeal. If you have further questions, please call me at the contact information provided above. Please be advised that this correspondence will serve to close this record with our office as permitted by law

Respectfully,

Jennifer Snyder

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



STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 6/11/2018

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):** michelleyvonne@grove@gmail.com

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

*10/20/2016-12/31/2017 All emails to/from Doug Bierly with the keyword: "prothonotary"

Search all email accounts used by Doug Bierly for township business and include all replies. 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 4

No. AP 2018-1115

Jennifer Snyder is the Right-to-Know officer for Gregg Township. In her attestation, Ms. Snyder confirms that, on June 18, 2018, the Township responded to Ms. Grove's request by requesting a thirty-day extension. *Snyder Attestation* ¶ 3. Ms. Snyder then responded to the

request on June 26, 2018, by confirming that the only responsive documentation was privileged documentation that involved communications with counsel. *Id.* ¶¶ 5-7. Ms. Grove now appeals.

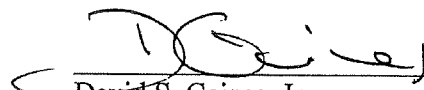
II. Legal Argument: The Township Has No Documentation That Is Not Privileged, and There Is No Obligation to Provide Privileged Documentation.

Under 65 P.S. § 67.506(C)(2), the Law exempts from disclosure all records that are protected by the attorney-client privilege. Mr. Bierly is a township supervisor who has no day-to-day interaction with the court system. It should thus be no surprise that the request for records that reference “prothonotary” has only yielded communications involving the Township’s solicitor. All such communications related to then-ongoing legal matters, and the Township has not waived privilege regarding those communications. The requested records are, therefore, exempt from disclosure.

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: June 27, 2018

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

MICHELLE GROVE,

Requester,

v.

GREGG TOWNSHIP,

Respondent.

No. AP 2018-1115

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 ("Township"), Centre County, and am responsible for responding to Right-To-Know requests filed with the agency.

2. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.

3. I received a Standard Right-to-Know Request Form from Michelle Grove on June 11, 2018, which requested the following information:

* 10/20/2016-12/31/2017 All emails to/from Doug Bierly with the keyword: "prothonotary"
Search all email accounts used by Doug Bierly for township business and include all replies. ELECTRONIC or INSPECTION

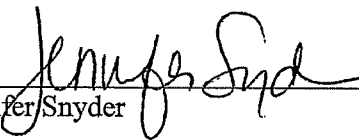
4. On June 18, 2018, I responded to Ms. Grove's request and filed a 30-Day extension.

5. As set forth in Ms. Grove's appeal paperwork, I responded on behalf of the Township on June 26, 2018 denying the request.

6. Upon receipt of Ms. Grove's request, I contacted Mr. Bierly and asked him to perform a search of his email accounts (all email accounts used for township business) regarding the keyword "prothonotary". He provided me with all email with the keyword prothonotary for dates requested in the search. I sent these email to our solicitor to make a determination if said records fall under attorney/client privilege.

7. After conducting a good-faith search of the agency's files and inquiring with relevant Township personnel, I denied the request due to the only available documents that were responsive to the request fell under attorney/client privilege as directed by the township solicitor. This determination was emailed to the requestor on Tuesday, June 26, 2018.

8. 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: June 27, 2018

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

MICHELLE GROVE,

Requester,

v.

GREGG TOWNSHIP,

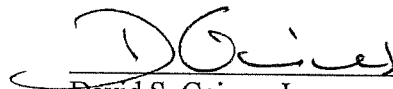
Respondent.

No. AP 2018-1115

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 June, 2018, addressed as follows:

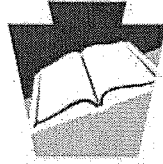
Michelle Grove
P.O. Box 253
Spring Mills, PA 16875



David S. Gaines, Jr.

Dated: June 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 2018-1115

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 certain emails of Doug Bierly. The Township denied the Request, claiming the record are protected by the attorney-client privilege. 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 June 11, 2018, the Request was filed seeking, “10/20/2016-12/31/2017 All emails to/from Doug Bierly with the keyword: ‘prothonotary’.” On June 18, 2018, the Township invoked a thirty day extension to respond. *See* 65 P.S. § 67.902. On June 26, 2018, the Township denied the Request, arguing that the only responsive records are protected by the attorney-client privilege.

On June 26, 2018, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. 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. *See* 65 P.S. § 67.1101(c).

On June 27, 2018, the Township submitted a position statement reiterating its grounds for denial. In support of its position, the Township submitted the affidavit, made under the penalty of perjury, from Jennifer Snyder, Open Records Officer for the Township.

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 Commonwealth and local agencies. *See* 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 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, the

Requester requested that the OOR conduct an *in camera* review; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter. Therefore, the request for *in camera* review is denied.

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. *See* 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. *See* 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). The burden of proof in claiming a privilege is on the party asserting that privilege. *Levy v. Senate of Pa.*, 34 A.3d 243, 249 (Pa. Commw. Ct. 2011). 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)).

The Township argues that Mr. Bierly is a Township supervisor and that seeking records referencing “‘prothonotary’ has only yielded communications involving the Township’s solicitor ...related to “then-ongoing legal matters” that are protected by the attorney-client privilege. The

RTKL excludes records subject to a privilege from the definition of “public record.” *See* 65 P.S. § 67.102. The RTKL defines “privilege” as “[t]he attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.” *Id.*

In order for the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. *Nationwide Mut. Ins. Co. v. Fleming*, 924 A.2d 1259, 1263-64 (Pa. Super. Ct. 2007). An agency may not rely on a bald assertion that the attorney-client privilege applies; instead, the agency must prove all four elements. *See Clement v. Berks County*, OOR Dkt. AP 2011-0110, 2011 PA O.O.R.D. LEXIS 139 (“Simply invoking the phrase ‘attorney-client privilege’ or ‘legal advice’ does not excuse the agency from the burden it must meet to withhold records”). The attorney-client privilege protects only those disclosures necessary to obtain informed legal advice, where the disclosure might not have occurred absent the privilege, and where the client’s goal is to obtain legal advice. *Joe v. Prison Health Services, Inc.*, 782 A.2d 24 (Pa. Commw. Ct. 2001).

Here, Ms. Snyder attests:

6. Upon receipt of Ms. Grove’s [R]equest, I contacted Mr. Bierly and asked him to perform a search of his email accounts (all email accounts used for [T]ownship business) regarding the keyword ‘prothonotary.’ He provided me with all email with the keyword prothonotary for dates requested in the search. I sent these email[s] to our solicitor to make a determination if said records fall under attorney/client privilege.

7. After conducting a good-faith search of the agency's files and inquiring with the relevant Township personnel, I denied the request due to the only available documents that were responsive to the request fell under the attorney/client privilege as directed by the township solicitor.

Under the RTKL, "a generic determination or conclusory statements are not sufficient to justify the exemption of public records." *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (*en banc*); *see also Office of the District Attorney of Phila. v. Bagwell*, 155 A.3d 1119, 1130 ("Relevant and credible testimonial affidavits may provide sufficient evidence in support of a claimed exemption; however, conclusory affidavits, standing alone, will not satisfy the burden of proof an agency must sustain to show that a requester may be denied access to records under the RTKL") (citations omitted); *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 659 (Pa. Commw. Ct. 2016) ("Affidavits that are conclusory or merely parrot the exemption do not suffice") (citing *Scolforo*); *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 375-79 (Pa. Commw. Ct. 2013)). Here, the Township's affidavit fails to provide a factual basis for the OOR to conclude that the withheld records are protected by privilege. Merely stating that the withheld records are protected by the attorney-client privilege is insufficient to meet its burden of proof that the responsive records are protected by privilege. 65 P.S. § 67.305.

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted**, and the Township is required to provide all responsive records within thirty days to the Requester. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal 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 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.¹ This

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

FINAL DETERMINATION ISSUED AND MAILED: July 25, 2018

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

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

¹ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

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

GREGG TOWNSHIP,

Petitioner,

v.

MICHELLE GROVE,

Respondent.

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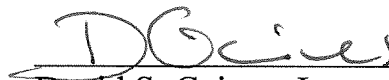
No.

Right-to-Know Law Appeal

CERTIFICATE OF SERVICE

I, hereby certify that, on this first day of August, 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: August 1, 2018

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

GREGG TOWNSHIP,

Petitioner,

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