

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:	:	
	:	
MICHELLE GROVE,	:	
	:	
Requester,	:	
	:	
v.	:	No. AP 2018-1290
	:	
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 June 11, 2018. Ms. Grove's request was as follows:

* 1/1/2018 – 6/1/2018 All emails to/from Keri Miller with the following search terms: "deleted emails" "attestation" "perjury" "What's the best phone number to reach you at?" Search all email accounts used by Keri Miller for township business and include all replied. ELECTRONIC COPIES OR INSPECTION

Standard Right-to-Know Request Form (June 11, 2018).

Jennifer Snyder is the Right-to-Know officer for Gregg Township. In her attestation, Ms. Snyder confirms that, on June 18, 2018, the Township requested an extension of the time period to respond to Ms. Grove's request. *Snyder Attestation* ¶ 3. Ms. Snyder then responded to Ms. Grove's request on June 26, 2018. *Snyder Attestation* ¶ 4. In that response, Ms. Snyder provided

all records that were responsive to Ms. Grove's request, save for matters that fell within the attorney-client privilege. *Id.* ¶¶ 5-13. The appeal should fail, for the reasons set forth below.

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

The Township properly redacted information from its response to Ms. Grove's request. The Law excludes records subject to a privilege from the definition of "public record." 65 P.S. § 67.102. The Law 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).

The Township has met this standard. As set forth in Ms. Snyder's attestation, she consulted with the solicitor of the Township, who redacted only those communications that involved members of the Township's board of supervisors and/or Ms. Snyder, and which involved discussions regarding how to respond or address legal matters, and the Township has not waived its privilege. *Snyder Attestation* ¶¶ 5-13.


It bears noting that Ms. Grove has baldly asserted that all of the redactions from the Township's response were unlawful and failed to raise and specific concerns with the redactions. Out of sheer economics, the Township is unable to review without precise detail every single redaction from the long list of emails provided to Ms. Grove in response to her request. If Ms. Grove wishes to

specify certain concerns relating to certain redactions, the Township can provide more information on those redactions.

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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v.

GREGG TOWNSHIP,

Respondent.

No. AP 2018-1290

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 June

11, 2018, which requested the following information:

* 1/1/2018 – 6/1/2018 All emails to/from Keri Miller with the following search terms: “deleted emails” “attestation” “perjury” “What’s the best phone number to reach you at?” Search all email accounts used by Keri Miller for township business and include all replied. ELECTRONIC COPIES OR INSPECTION

3. On June 18, 2018, I provided a request to extend the time to respond to Ms. Grove’s request by thirty days. A copy of that request to extend is included with Ms. Grove’s appeal.

4. I responded to the request on June 26, 2018. A copy of that response is also including with Ms. Grove’s appeal.

5. Between June 18, 2018, and June 26, 2018, I worked with Supervisor Keri Miller to obtain all of the emails that were responsive to Ms. Grove’s request.

6. In particular, I reached out to Ms. Miller, provided Ms. Miller with a copy of the information sought by Ms. Grove's request, and then assisted Ms. Miller with separating out the emails that were responsive to Ms. Grove's request.

7. All told, the emails that were responsive to Ms. Grove's request numbered more than 100 pages.

8. When Ms. Miller provided the aforementioned emails to me, it was immediately and readily apparent that many of the emails contained communications about ongoing legal matters between Ms. Miller and the Township's solicitor, David Gaines.

9. For example, many of the emails that included "attestation" involved communications between Ms. Miller, who is the Chair of our board of supervisors and the alternate Right to Know Officer for the Township, and Mr. Gaines regarding how to respond to the multitude of Ms. Grove's prior Right to Know Law requests for information.

10. In light of this fact, I provided the emails to Mr. Gaines, who reviewed the emails, ultimately removing and redacting all information that involved communications (1) between Ms. Miller, in her capacity as the Chair of the board of supervisors in the Township, or me, in my capacity as the Right to Know Officer of the Township, and Mr. Gaines, the Township's solicitor, (2) which involved how to respond to or otherwise address legal matters, most often Ms. Grove's prior Right to Know Law requests.

11. In other words, all of the redacted emails involve communications between either the Chair of our board of supervisors or the Right to Know Officer of the Township and the Township's solicitor, regarding how to address and respond to Right to Know Law matters.

12. A limited number of remaining emails involve general communications between Mr. Gaines and the full board of supervisors regarding the same matters.

13. The Township has not waived any privilege or involved any non-officers in the redacted emails.

14. 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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GREGG TOWNSHIP,

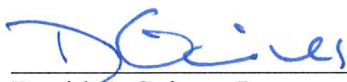
Respondent.

No. AP 2018-1290

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