

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:	:	
	:	
MICHELLE GROVE,	:	
	:	
Requester,	:	
	:	
v.	:	No. AP 2018-1510
	:	
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 filed a Standard Right to Know Request Form with Respondent Gregg Township ("Township") on August 13, 2018. Ms. Grove's request was as follows:

* Surveillance footage of campaign sign being run over AND replaced along school street between 10/10/2017-10/11/2017, 10/15/2017-10/16/2017, 10/16/2017-10/17/2017, 11/1/2017-11/2/2017. Include involved vehicles entering and existing frames.

Standard Right-to-Know Request Form (Aug. 13, 2018).

Jennifer Snyder is the Right to Know Law Officer for the Township. In her attestation, Ms. Snyder confirms that, on August 20, 2018, the Township responded to Ms. Grove's request. *Snyder Attestation* ¶ 10. In that response, Ms. Snyder noted that Ms. Grove has requested the same information in a prior Right to Know Law request, and that the Township was, therefore,

denying this request. *Id.* ¶ 11. Indeed, Ms. Grove first requested the same footage on March 30, 2018. *Id.* ¶ 3. Ms. Grove filed an appeal with the Office of Open Records (“OOR”) when that request was denied, and OOR issued a final determination in that matter at docket number AP 2018-0605. Ms. Grove next requested the same footage on June 8, 2018. *Id.* Ms. Grove filed an appeal with OOR when that request was denied, and OOR issued a final determination in that matter at docket number AP 2018-1288. The recent request is the third time that Ms. Grove has requested this information, and each time, she files an appeal that requires significant time, energy, and expense from the Township.

To make matters worse for Ms. Grove, the Township’s most recent response to Ms. Grove answers the question that Ms. Grove is seeking—the Township’s response tells Ms. Grove that the requested surveillance footage “does not show footage of any campaign sign, campaign sign being run over, or being replaced along school street.” As indicated in Ms. Grove’s requests, she is requesting “[s]urveillance footage of campaign sign being run over AND replaced along school street.” Consequently, the Township not only refuses to engage in this same request—appeal cycle over these same requests, but the Township cannot, even if compelled to disclose footage of the campaign sign being run over, provide the desired information, because the surveillance cameras do not extend that far.

II. Legal Argument: The Township Is Not Required to Respond to Ms. Grove’s Third Request for the Same Surveillance Footage.

The Township is not required to respond to three requests for the same information, especially when the prior two requests have passed through the appeals process before the Office of Open Records. Under the Law, any “agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.” 65 P.S. § 67.506(a).

Ms. Snyder's attestation and the facts of record establish that Ms. Grove has requested the same information now three times. These requests, moreover, have placed an unreasonable burden on the Township. For the two prior requests and appeals, the Township's solicitor spent approximately 6.4 hours of time assisting the Township with responding to and preparing responses to Ms. Grove's appeals. *Snyder Attestation* ¶¶ 4-6. Of note, those appeals involved not just the appeals themselves; when Ms. Grove lost the appeal docketed at AP 2018-1288, she filed a "petition for reconsideration" that involved even more litigation on the issue. Through this request and appeal, the Township is again spending priceless resources working with its solicitor to respond to a request for information that has already been addressed on two prior occasions, not counting the petition for reconsideration. The burden of this request is, therefore, without question, unreasonable.

Ms. Grove is also collaterally estopped from seeking these records, because OOR has already decided that she is unable to access them. Collateral estoppel prevents a party from re-litigating an issue if: 1) the issue decided in the earlier case is identical to the issue presented in the latter case; 2) there was a final judgment on the merits; 3) the party against whom estoppel is asserted was a party to the prior case; and 4) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the prior case. *City of Pittsburgh v. Zoning Bd. of Adjustment*, 599 A.2d 896 (Pa. 1989). Collateral estoppel applies both to courts and administrative agencies. *Phila. Elec. Co. v. Borough of Lansdale*, 424 A.2d 514, 521 (Pa. Super. Ct. 1981) (citations omitted).


Ms. Grove's latest request satisfies the foregoing elements. For one, Ms. Grove's ability to access these records was already decided at docket numbers AP 2018-0605 and AP 2018-1288, and both matters reached finality, as neither party appealed within the relevant time limits.

Ms. Grove was a party in the prior matters, and she had a full and fair opportunity to raise any issues regarding access to those records. The principles supporting collateral estoppel justify the litigation of this request for now a third time.

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: September 4, 2018

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

MICHELLE GROVE,

Requester,

v.

GREGG TOWNSHIP,

Respondent.

No. AP 2018-1510

ATTESTATION OF JENNIFER SNYDER

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

1. I am the Right to Know Law Officer for the Respondent, Gregg Township ("Township").

2. I received a Standard Right to Know Request Form from Michelle Grove on August 13, 2018, which requested the following information:

* Surveillance footage of campaign sign being run over AND replaced along school street between 10/10/2017-10/11/2017, 10/15/2017-10/16/2017, 10/16/2017-10/17/2017, 11/1/2017-11/2/2017. Include involved vehicles entering and existing frames.

3. Ms. Grove has requested this information on two prior occasions. A copy of those requests are attached hereto as Exhibit A and Exhibit B, respectively.

4. Both of Ms. Grove's prior matters went through the appeals process before the Office of Open Records, and neither party appealed from the relevant final determinations.

5. Because both prior appeals involved technical interpretations of the law, including matters involving the disclosure of surveillance footage, I have been required to work with the Township's solicitor on these matters.

6. For the two prior matters, the solicitor invoiced the Township for approximately 6.4 hours of time at the rate of \$140.00 per hour.

7. Although this matter is not yet complete, and we thus do not know what the ultimate burden on the Township will be, it can only be assumed that this matter will require similar input from the solicitor.

8. The Township has already exceeded its annual legal services budget by more than four-thousand dollars, one-hundred-seventy-one percent of this budget line.

9. Further exceeding that budget for a request that has already been requested and litigated on two prior occasions is, in my opinion, unreasonable.

10. For all of the foregoing reasons, I responded to Ms. Grove's latest request for this information on August 20, 2018.

11. As set forth in that response letter, the Township denied the request because Ms. Grove has requested the same information on prior occasions, and responding and relitigating this issue will be an unreasonable burden on the Township.

12. In the response letter, I also indicated that the Township does not, in any event, have surveillance footage of a campaign sign or a campaign sign being run over.

13. This is because the surveillance footage is centered on the Old Gregg School playground and parking lot and does not extend to the portion of the street that Ms. Grove is seeking.

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.

Dated: September 4, 2018

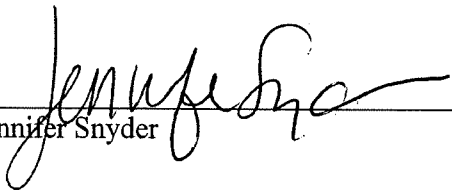
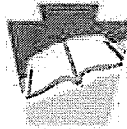

Jennifer Snyder

EXHIBIT A



pennsylvania
OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 3/30/2018

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*

The following SECURITY FOOTAGE of SCHOOL STREET:

*10/10/2017 7PM-10/11/2017 7PM *10/15/2017 5PM-10/16/2017 11AM
*10/16/2017 7PM-10/17/2017 11AM *11/1/2017 12AM-11/2/2017 12AM

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:

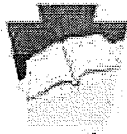
☐ I have provided notice to appropriate third parties and given them an opportunity to object to this request

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 B



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 6/8/2018

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): michellewonnegrove@gmail.com

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information.*

Please use additional sheets if necessary

*Surveillance footage of campaign sign being run over along School Street 10/10/17-10/11/17, 10/15/17-10/16/17, 10/16/17-10/17/17, 11/1/2017-11/2/2017. *Include footage of sign being replaced.

*Copies of any report made or letter sent to the police or Sheriff regarding the vandalism.

*10/1/2017-6/1/2018 Any emails/texts to/from township regarding the incidents. Search keyword: "sign"

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.)*

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

MICHELLE GROVE,

Requester,

v.

GREGG TOWNSHIP,

Respondent.

No. AP 2018-1510

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 fourth day of September, 2018, addressed as follows:

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



David S. Gaines, Jr.

Dated: September 4, 2018