

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:	:	
	:	
MICHELLE GROVE,	:	
	:	
Requester,	:	
	:	
v.	:	No. AP 2018-1654
	:	
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 14, 2018. Ms. Grove’s request was as follows:

- * 2017-2018 Laptop receipts (purchase, sale, improvements, software).
- * January 29-February 9, 2018, Internet browsing history all computers

Standard Right-to-Know Request Form (Aug. 14, 2018).

Jennifer Snyder is the Right-to-Know officer for Gregg Township. In her attestation, Ms. Snyder confirms that, on August 16, 2018, the Township filed a thirty-day extension to respond. *Snyder Attestation* ¶ 3. Ms. Snyder then provided a comprehensive response on September 12, 2018. *Id.* ¶ 4. Prior to responding to the request, Ms. Snyder performed a comprehensive search

for responsive records. *Id.* ¶¶ 5-6. The response contained all responsive records that Ms. Snyder had found. *Id.* ¶ 7. Ms. Grove now appeals.

II. Legal Argument

A. Ms. Grove Has No Standing to Appeal the Township's Decision Because the Township Granted Her Request.

As a preliminary matter, Ms. Grove has no standing to pursue this appeal. 65 P.S. § 67.1101 governs the circumstances under which an individual may file an appeal to the Office of Open Records. According to that section, an individual may only appeal “[i]f a written request for access to a record is denied or deemed denied.” *Id.*

This request was not denied. To the contrary, the Township granted Ms. Grove's request and provided all responsive documentation. Because there is no statute to support her appeal of an agency's granting of her request, the Office of Open Records has no jurisdiction to entertain this appeal.

B. Ms. Grove's Appeal Fails to Sufficiently Identify the Basis of the Appeal.

Ms. Grove's appeal also lacks the necessary allegations to support an appeal to the Office of Open Records. As stated above, section 67.1101(a) sets for the requirements for appealing to the Office of Open Records. According to that section, any appeal “shall state the grounds upon which the requester asserts that the record is a public record . . . and shall address any grounds stated by the agency for delaying or denying the request.” *Id.*

Given the language set forth in section 67.1101(a), an appeal to the Office of Open Records must “*identify* flaws in an agency's decision denying a request” by providing a statement grounded in well-pleaded allegations. *Dep't of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (emphasis in original). In *Department of Corrections*, for

example, the Department of Corrections refused to provide information because a request was not sufficiently specific. *Id.* at 431. The appellant thereafter filed an appeal that stated simply, “The above Pa. right to know requests are public.” *Id.* The Office of Open Records required the Department of Corrections to respond to the request, and the Office of Open Records later granted the appeal and ordered the production of the relevant documents. *Id.* at 431. On further appeal, the Commonwealth Court reversed the Office of Open Records’s ruling, holding that the “Requester’s written appeal to Open Records was clearly deficient.” *Id.* at 434. In particular, “Open Records simply ignored the deficiency [of the appeal]. . . . Open Records, therefore, should not have proceeded, as it did, to decide Requester’s appeal in its deficient form.” *Id.*

The same must be said of this matter. Just as in *Department of Corrections*, Ms. Grove has filed an appeal based on a solitary allegation that has no support in fact. Ms. Grove’s basis for appealing is, in full: “Not a Good Faith Search.” To make matters worse, Ms. Grove filed three other appeals on the same basis and on the same day. Given that Ms. Grove has provided no information or support for her appeal, the appeal should fail.

C. The Township Has Provided All Responsive, Non-Privileged Emails to Ms. Grove.

Despite the inability for this appeal to appear before the Office of Open Records, and the plain deficiencies with the appeal, the appeal should be denied because the Township has provided all responsive records. Ms. Snyder has confirmed that all responsive information was provided. Ms. Grove has provided no information to rebut that fact. The record, therefore, supports the Township’s response.

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,

A handwritten signature in dark ink, appearing to read "DGaines", is written over a horizontal line.

David S. Gaines, Jr.
Pa. I.D. No. 308932
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Counsel for Respondent

Dated: September 25, 2018

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Requester,	:	
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Respondent.	:	
_____	:	

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").

2. I received a Standard Right to Know Request Form from Michelle Grove on August 14, 2018, which requested the following information:

- * 2017-2018 Laptop receipts (purchase, sale, improvements, software).
- * January 29-February 9, 2018, Internet browsing history all computers

3. As set forth in Ms. Grove's appeal paperwork, I responded on behalf of the Township on August 16, 2018, and requested a thirty-day extension.

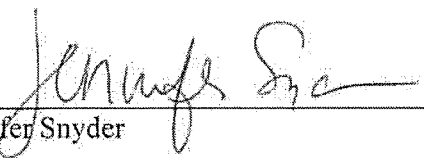
4. As also set forth in Ms. Grove's appeal paperwork, I responded again on September 12, 2018, granted the request, and provided all responsive documentation.

5. Upon receipt of Ms. Grove's request, I conducted a thorough examination of files in the possession, custody, and control of the Township for records responsive to the request underlying this appeal.

6. It was not necessary to speak to someone else regarding this request, because, in my role as the secretary for the Township's board of supervisors, I maintain the files that contain the laptop receipts, and I personally accessed the Township's computers to seek browser history.

7. After conducting a good-faith search of the Township's files, I identified all records within the Township's possession, custody, or control that are responsive to this request and provided them to Ms. Grove; put differently, I provided all of the documentation that Ms. Grove requested.

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: September 25, 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 via email to michelleyvonnegrove@gmail.com on this twenty-fifth day of September, 2018.



David S. Gaines, Jr.

Dated: September 25, 2018