

**BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

IN THE MATTER OF:

MICHELLE GROVE,

Requester,

v.

GREGG TOWNSHIP,

Respondent.

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No. AP 2018-1517

**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 ("Ms. Grove") filed a Standard Right to Know Request Form with Respondent Gregg Township ("Township") on August 16, 2018. Ms. Grove's request was as follows:

\* January-February 2018 ALL EMAILS to/from:  
KeriMiller.GreggTownship@gmail.com

*Standard Right-to-Know Request Form* (Aug. 15, 2018).

Jennifer Snyder is the Right-to-Know officer for Gregg Township. In her attestation, Ms. Snyder confirms that, on August 23, 2018, the Township responded to Ms. Grove's request. *Snyder Attestation* ¶ 9. Prior to responding to the request, Ms. Snyder reached out to Keri Miller, who provided Ms. Snyder with all responsive records. *Miller Attestation* ¶¶ 2-3. The Township's ultimate response consisted of 173 pages of emails, but had two documents removed. *Snyder*

*Attestation* ¶ 5. The removals consisted of emails between supervisors and legal counsel in which supervisors sought and received advice of counsel. *Id.* ¶¶ 6-7. Ms. Grove now appeals.

**II. Legal Argument: The Township Has Provided All Responsive, Non-Privileged Emails to Ms. Grove.**

The Township provided Ms. Grove with 173 pages of emails on August 23, 2018. *Id.* ¶¶ 8-9. Exempted from those pages were just two brief chains of emails. *Id.* ¶¶ 5-7. In both of those chains, supervisors were communicating privately and confidentially with counsel, regarding legal matters, on matters that have not been waived or pursued in violation of the law. *Id.* ¶ 7. Under 65 P.S. § 67.506(C)(2), the Law exempts from disclosure all records that are protected by the attorney-client privilege. The requested records are, therefore, exempt from disclosure.

Ms. Grove also contends that she must receive the “Quoted text hidden” emails from the Townships response. As set forth in Ms. Snyder’s attestation, the “Quoted text hidden” emails have already been provided; they are merely repeats of other emails, in an attempt to reduce the number of pages provided to Ms. Grove. *Snyder Attestation* ¶¶ 10-13.

**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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David S. Gaines, Jr.

Pa. I.D. No. 308932

MILLER, KISTLER & CAMPBELL

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*Counsel for Respondent*

Dated: September 6, 2018

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**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

August 16, 2018, which requested the following information:

\* January-February 2018 ALL EMAILS to/from:  
KeriMiller.GreggTownship@gmail.com

3. Upon receipt of the request, I contacted Ms. Miller and asked her to provide me with all records that were responsive to Ms. Grove's request, namely all emails from KeriMiller.GreggTownship@gmail.com during the months of January and February of 2018.

4. Ms. Miller provided the requested emails to me in a timely fashion, after which I worked with the Township's solicitor to making a determination if said records fall under the attorney/client privilege.

5. Through those communications, the solicitor and I removed two "chained" emails from the packet that was ultimately provided to Ms. Grove.

6. Both of the aforementioned chains emails involved attorney-client communications—in both emails, supervisors were seeking and receiving advice from the solicitor regarding procedures at public meetings.

7. In both such chains, it is clear that (A) clients, namely supervisor, (B) are communicating privately and confidentially with the solicitor, (C) regarding legal matters pertaining to procedures at play at a municipal meeting, i.e., for the purpose of receiving an opinion of law and not for the purpose of committing a crime or tort, and (D) the supervisors in question have not waived their right to claim this privilege.

8. The remaining emails, which consisted of 173 pages of materials, were provided to Ms. Grove.

9. I responded to the request and provided the non-privileged emails to Ms. Grove on August 23, 2018.

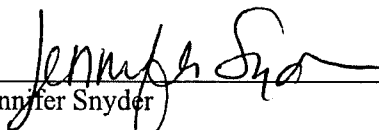
10. In response, Ms. Grove asked me to provide her with the “Quoted text hidden” emails.

11. However, it is clear from the context of the emails that the “Quoted text hidden” emails are simply the emails that solicited a response to the relevant email.

12. For example, I have attached to this attestation the first two pages of emails that were provided to Ms. Grove. As you can see in those emails, the “Quoted text hidden” is simply the emails to which a response is being provided. To be more specific, the first email in which this appears, from Jen Snyder on February 7, 2018, at 3:21 p.m., begins, “Please see message below from Mike.”

13. For these reasons, Ms. Grove has all of the emails that are responsive to her request.

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: September 6, 2018



Keri Miller &lt;kerimiller.greggtownship@gmail.com&gt;

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**290 Kline Rd**

4 messages

**PV Code** <pvcode@verizon.net>

Tue, Feb 6, 2018 at 6:32 PM

To: secretarygreggtownship@gmail.com, cws14@yahoo.com, supervisor1@greggtownship.org, KeriMiller.GreggTownship@gmail.com

Hello,

I wanted to advise you that Mr. Stoltzfus has requested to build a factory at his property at 290 Kline Rd.

The property is zoned as Residential, therefore a factory is not permitted under current zoning. Here is a copy of the letter I sent to him.

Regards,  
Mike

*Penns Valley Code Enforcement Agency  
225 East Main Street  
P. O. Box 357  
Millheim, PA 16854*

*(814) 349-8177  
Fax (814) 349-8017  
PVCode@verizon.net*

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 **Zoning request denial.pdf**  
597K

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**Gregg Twp Secretary** <secretary@greggtownship.org>

Wed, Feb 7, 2018 at 3:21 PM

To: Penns Valley Code Enforcement Agency &lt;pvcode@verizon.net&gt;

Cc: Charles Stover &lt;cws14@yahoo.com&gt;, Douglas Bierly &lt;supervisor1@greggtownship.org&gt;, Keri Miller &lt;KeriMiller.GreggTownship@gmail.com&gt;, Chris Kunes &lt;haskelholdings@outlook.com&gt;

Please see message below from Mike . I got a message on our answering machine today when I checked the messages regarding this issue. He is asking about filling for a variance for this property to build a bigger workshop to continue with his business, diamond custom kitchens. Just making sure, this would be a zoning hearing board issue correct? We would have to hold a zoning hearing for this one way or the other? Please give me your thoughts. Thanks.

Jen

[Quoted text hidden]

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**Douglas Bierly** <supervisor1@greggtownship.org>

Thu, Feb 8, 2018 at 9:58 AM

To: Gregg Twp Secretary &lt;secretary@greggtownship.org&gt;

Cc: Penns Valley Code Enforcement Agency &lt;pvcode@verizon.net&gt;, Charles Stover &lt;cws14@yahoo.com&gt;, Keri Miller &lt;KeriMiller.GreggTownship@gmail.com&gt;, Chris Kunes &lt;haskelholdings@outlook.com&gt;

Yes, this is a Zoning Hearing Board issue; Mr. Stoltzfus may want to attend a Gregg Planning Commission meeting and have Chris answer any questions he (Stoltzfus) may have?

Doug

[Quoted text hidden]

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**cws14** <cws14@yahoo.com>

Thu, Feb 8, 2018 at 12:26 PM

To: Douglas Bierly <supervisor1@greggtownship.org>, Gregg Twp Secretary <secretary@greggtownship.org>

Cc: Penns Valley Code Enforcement Agency <pvcodes@verizon.net>, Keri Miller <KeriMiller.GreggTownship@gmail.com>, Chris Kunes <haskelholdings@outlook.com>

I would agree charles

Sent from my Verizon 4G LTE smartphone  
[Quoted text hidden]



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**ATTESTATION OF KERI MILLER**

I, Keri Miller, make the following attestation under the penalty of perjury:

1. I am the chair of the board of supervisors of the Respondent, Gregg Township ("Township").

2. Shortly after August 16, 2018, Jennifer Snyder, the Township's Right to Know Law Officer, asked me to provide all emails from kerimiller.greggtownship@gmail.com between January and February of 2018.

3. I provided all such emails to Ms. Snyder in the days following her request to me.

4. 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.

  
Keri Miller

Dated: September 6, 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 sixth day of September, 2018, addressed as follows:

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

  
\_\_\_\_\_  
David S. Gaines, Jr.

Dated: September 6, 2018