

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:	:	
	:	
MICHELLE GROVE,	:	
	:	
Requester,	:	
	:	
v.	:	No. AP 2018-1652
	:	
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 21, 2018. Ms. Grove's request was as follows:

* August 3-21, 2018: All email correspondence regarding ignoring the Office of Open Records. Search all email addresses used by Jennifer Snyder, Keri Miller, Doug Bierly. SEARCH TERM: "exemption log" INCLUDE ALL REPLIES

Standard Right-to-Know Request Form (Aug. 21, 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* ¶ 3. Prior to responding to the request, Ms. Snyder worked with Ms. Miller

and Mr. Bierly to ensure that they had provided Ms. Snyder with all responsive documentation. *Id.* ¶¶ 4-7; *Bierly Attestation* ¶¶ 2-4; *Miller Attestation* ¶¶ 2-4. 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.

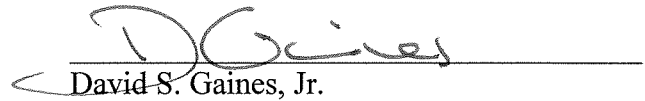
C. The Township Has Provided All Responsive, Non-Privileged Emails to Ms. Grove.

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 black ink, appearing to read "D. Gaines", is written over a horizontal line.

David S. Gaines, Jr.

Pa. I.D. No. 308932

MILLER, KISTLER & CAMPBELL

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dgaines@mkclaw.com

Counsel for Respondent

Dated: September 25, 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 ("Township").

2. I received a Standard Right to Know Request Form from Michelle Grove on August 21, 2018, which requested the following information:

* August 3-21, 2018: All email correspondence regarding ignoring the Office of Open Records. Search all email addresses used by Jennifer Snyder, Keri Miller, Doug Bierly. SEARCH TERM: "exemption log" INCLUDE ALL REPLIES.

3. As set forth in Ms. Grove's appeal paperwork, I responded on behalf of the Township on August 23, 2018, granted the request, and provided all responsive documentation.

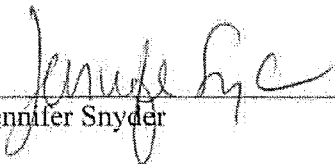
4. Upon receipt of Ms. Grove's request, I conducted a thorough examination of files in the possession, custody, and control of the Township for records responsive to the request underlying this appeal, including a keyword search of the requested emails for the keyword "exemption log."

5. Additionally, I have inquired with relevant Township personnel, namely Keri Miller and Doug Bierly, as to whether the requested records exist in their possession, and in particular, I asked Ms. Miller and Mr. Bierly to perform a search of their email accounts for any responsive records.

6. Ms. Miller and Mr. Bierly have provided the records that I requested from them.

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

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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No. AP 2018-1652

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 Respondent Gregg Township ("Township").

2. Shortly after August 21, 2018, I became aware that Michelle Grove had requested emails from me regarding "ignoring the Office of Open Records" and "exemption log."

3. I became aware of this request because Jennifer Snyder, the Township's Right to Know Law Officer, contacted me to discuss this matter and request all relevant records.

4. I thereafter provided all responsive records to Ms. Snyder.

5. 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 25, 2018

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ATTESTATION OF DOUGLAS BIERLY

I, Douglas Bierly, make the following attestation under the penalty of perjury:

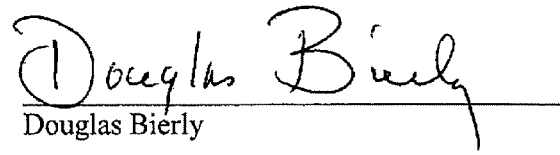
1. I am a member of the board of supervisors of Respondent Gregg Township ("Township").

2. Shortly after August 21, 2018, I became aware that Michelle Grove had requested emails from me regarding "ignoring the Office of Open Records" and "exemption log."

3. I became aware of this request because Jennifer Snyder, the Township's Right to Know Law Officer, contacted me to discuss this matter and request all relevant records.

4. I thereafter provided all responsive records to Ms. Snyder.

5. 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.


Douglas Bierly

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