

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

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| IN THE MATTER OF: | : | |
| | : | |
| JOHN G. YAKIM, | : | |
| | : | |
| Requester, | : | |
| | : | |
| v. | : | No. AP 2018-1880 |
| | : | |
| 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 John G. Yakim filed a Standard Right to Know Request Form with Respondent Gregg Township ("Township") on September 11, 2018. Mr. Yakim's request was as follows:

Please provide all emails to or from
Kerimiller.greggtownship@gmail.com regarding Right to Know
requests, time frame January 1 2018 to August 31, 2018

Jennifer Snyder is the Right to Know officer for Gregg Township. In her attestation, Ms. Snyder confirms that, on September 18, 2018, the Township filed a thirty-day extension to respond. *Snyder Attestation* ¶ 3. Ms. Snyder then responded to the request on October 16, 2018. *Id.* ¶ 4.

II. Legal Argument

A. The Request Is Not Sufficiently Specific.

The Law requires requests to be sufficiently specific. In the language of 65 P.S. § 67.703, “A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested” *Id.* “The central question in evaluating the adequacy of a request is whether the request ‘sufficiently informs an agency of the records requested.’” *Dep’t of Corr. v. St. Hillaire*, 128 A.3d 859, 863 (Pa. Commw. Ct. 2015) (quoting *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 283 (Pa. Commw. Ct. 2012) (en banc)).

Mr. Yakim’s request fails to meet this threshold requirement. Mr. Yakim seeks emails “regarding Right to Know requests.” Throughout the past approximate year, the Township has received approximately 100 Right to Know requests. Many, if not most, of the responses to those requests have been appealed. As such, the Township is involved, at any particular time, with Right to Know requests themselves, Right to Know appeals, Right to Know litigation relating to Right to Know appeals, discussions regarding hiring a separate Right to Know officer, discussions regarding the solicitor and the solicitor’s response to Right to Know matters, budget matters (most of which involve or contemplate ongoing Right to Know requests), activities responsive to Right to Know matters (like exploring alternative security measures for the Old Gregg School, in response to Right to Know requests seeking surveillance footage), and the like. At this point, frankly, virtually every email sent by every Township representative “regard[s] Right to Know requests.”

For this reason, the appeal should be dismissed. The Township is under no obligation to guess what Mr. Yakim is looking for.

B. The Request Seeks Records Involving Internal, Predecisional Deliberations of the Township and/or Attorney-Client Privileged Communications.

Setting aside the insufficiency of the request itself, Ms. Snyder nonetheless compiled all relevant emails referencing “Right to Know” matters. *Snyder Attestation* ¶ 8. All such emails reflected either predecisional deliberations of the Township and/or privileged communications between the Township and its solicitor.

The Township is not required to provide records that reflect “[t]he internal, predecisional deliberations of . . . its members, employees or officials.” 65 P.S. § 67.708(b)(10)(i)(A). The Law also 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 documents at issue fall within these exceptions. The Township, therefore, properly denied Mr. Yakim’s request.

III. Conclusion

For the reasons set forth above, the Respondent, Gregg Township, respectfully requests that the appeal filed by the Requester, John Yakim, be denied.

Respectfully submitted,

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

David S. Gaines, Jr.
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dgaines@mkclaw.com
Counsel for Respondent

Dated: October 26, 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 John Yakim on September 11, 2018, which requested the following information:

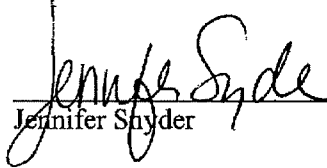
Please provide all emails to or from
Kerimiller.greggtownship@gmail.com regarding Right to Know
requests, time frame January 1 2018 to August 31, 2018

3. On September 18, 2018, I provided Mr. Yakim with a request for extension, which is included in his appeal paperwork.

4. On October 16, 2018, I responded on behalf of the Township and noted that the request contained a number of deficiencies. Those deficiencies included: (a) the request was insufficiently specific, (b) the request did not seek records within the scope of relevant law, namely the Right to Know Law, 65 P.S. §§ 67.101 to 67.3104, (c) the request sought information protected by the attorney-client privilege, and (d) the request sought information that reflected predecisional deliberations.

5. Ms. Miller is the chair of the board of supervisors in the Township.
6. Between September 11, 2018, when I received the request, and October 16, 2018, when I responded to the request, I worked with Supervisor Keri Miller to obtain all emails from her account that were responsive to the request.
7. During this process, I had difficulty determining exactly what Mr. Yakim sought when using the term “regarding Right to Know requests.”
8. As such, I worked with Supervisor Miller to obtain all emails to or from her supervisor email address, Kerimiller.greggtownship@gmail.com, between January 1, 2018, and August 31, 2018, which referenced “Right to Know.”
9. All told, the emails that were responsive to this request numbered nearly 500 pages.
10. 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.
11. This should make sense—generally, Ms. Miller’s communications regarding “Right to Know” matters are with the solicitor, who is representing the Township in these matters.
12. In light of this fact, I provided the emails to Mr. Gaines, who reviewed the emails and concluded that a denial of the request was appropriate, given the reasons set forth above.
13. 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: October 26, 2018


Jennifer Snyder

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JOHN G. YAKIM,

Requester,

v.


GREGG TOWNSHIP,

Respondent.

No. AP 2018-1880

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 jyakim@aol.com on this twenty-sixth day of October, 2018.



David S. Gaines, Jr.

Dated: October 26, 2018