

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:	:	
	:	
JOHN YAKIM,	:	
	:	
Requester,	:	
	:	
v.	:	No. AP 2018-1712
	:	
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 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 bills from township solicitor regarding right to know requests, date range January 1 – August 31, 2018

Standard Right-to-Know Request Form (Sep. 11, 2018).

Jennifer Snyder is the Right-to-Know officer for Gregg Township. In her attestation, Ms. Snyder confirms that, on September 18, the Township filed a thirty-day extension to respond. *Snyder Attestation* ¶ 3. Ms. Snyder then provided a comprehensive response on September 21, 2018. *Id.* ¶ 4. Ms. Snyder’s response requested of payment for paper copies of the solicitor’s

invoices, which Mr. Yakim requested. *Id.* ¶¶ 5-9. Mr. Yakim now appeals, claiming that the Township has not proven that the solicitor's invoices are in paper form.

II. Legal Argument

A. Mr. Yakim Has No Standing to Appeal the Township's Decision Because the Township Granted His Request.

As a preliminary matter, Mr. Yakim 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 Mr. Yakim's request and provided all responsive documentation. Because there is no statute to support his appeal of an agency's granting of his request, the Office of Open Records has no jurisdiction to entertain this appeal.

B. Mr. Yakim's Appeal Fails to Sufficiently Identify the Basis of the Appeal.

Mr. Yakim'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*, Mr. Yakim has filed an appeal based on a solitary and conclusory allegation that has no support in fact. Mr. Yakim’s basis for appealing is, in full: “Agency must prove that the records are not available in electronic format.” Given that Mr. Yakim’s entire appeal rests on this solitary statement, the appeal should fail.

C. The Township Has Properly Requested Payment for Copying Paper Documents.

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 Mr. Yakim has no basis for alleging that the Township has the documents in electronic format. It is beyond cavil that the Township may charge photocopying costs for documents that are maintained in only paper form. Ms. Snyder has established that she receives the solicitor’s invoices in paper form, through the U.S. mail, and that the records at issue are exactly that—documents that are only available in paper form. *Snyder Attestation* ¶¶ 5-9. Mr. Yakim 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, 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.
Pa. I.D. No. 308932
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Counsel for Respondent

Dated: October 3, 2018

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IN THE MATTER OF:

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No. AP 2018-1712

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 bills from township solicitor regarding right to know requests, date range January 1 – August 31, 2018.

3. As set forth in Mr. Yakim's appeal paperwork, I responded on behalf of the Township on September 18, 2018, by requesting a thirty-day extension.

4. I then provided a substantive response on September 21, 2018, although I needed to correct my initial response later on September 21, 2018. A copy of the corrected response, which is not enclosed with Mr. Yakim's appeal but which Mr. Yakim nonetheless received, is attached hereto as Exhibit 1.

5. With limited exception, the Township receives the solicitor's invoice in paper form through U.S. first-class mail, so the Township does not have electronic copies of most solicitor invoices.

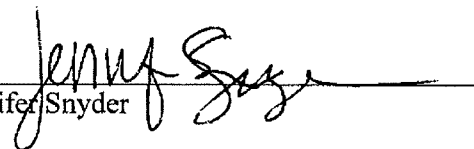
6. In my response, I noted that Mr. Yakim would need to pay \$3.00 because responsive documents were in paper format, having been received in the mail, and Mr. Yakim requested copies of those documents.

7. In his appeal, Mr. Yakim notes that he refuses to pay for copying costs, and that the Township must "prove that the records are not available in electronic format."

8. I hereby attest that the records for which the Township is requesting payment are not available in electronic format.

9. To be even more specific, the records for which the Township is requesting payment were documents that were received in the mail and which are, therefore, maintained only in paper format.

10. 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: October 3, 2018

EXHIBIT 1



pennsylvania

OFFICE OF OPEN RECORDS

Right-To-Know Response Form

Gregg Township
106 School Street PO BOX 184
Spring Mills PA 16875
814-422-8218
secretary@greggtownship.org

September 21, 2018

Jon Yakim
1033 Harvard Road
Monroeville PA

Dear Requestor:

This letter acknowledges receipt of your request for access to public records under the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 to 67.3104, as set forth in your Standard Right-to-Know Request Form dated September 11, 2018, requesting the following information:

*Provide all bills from township solicitor regarding right to know requests, dates range January 1 – August 31, 2018.

Your request has been granted. The records available in electronic format are attached. The cost of copies for the remaining records will be \$3.00 plus postage if required, and costs shall be paid at or prior to the release of the records. If you choose to inspect the records at the Gregg Township Office, please call me at the contact information provided above at least 24 hours in advance to schedule an appointment for inspection. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

Jennifer Snyder, Secretary/Treasurer, CGA
Gregg Township, Centre County
Right to Know Officer

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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 jyakim@aol.com on this third day of October, 2018.



David S. Gaines, Jr.

Dated: October 3, 2018