

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:	:	
	:	
MICHELLE GROVE,	:	
	:	
Requester,	:	
	:	
v.	:	No. AP 2018-1892
	:	
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 September 11, 2018. Ms. Grove's request was as follows:

* 6/25/2018 – 9/11/2018 All emails to/from Solicitor David Gaines. Search ALL email accounts used by: Doug Bierly, Keri Miller, and Jennifer Snyder.

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, 2018, the Township filed a thirty-day extension to respond. *Snyder Attestation* ¶ 3. Ms. Snyder then provided a comprehensive response on October 16, 2018. *Id.* ¶ 4. Ms. Grove now appeals.

II. Legal Argument

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

Ms. Grove's appeal lacks the necessary allegations to support an appeal to the Office of Open Records. 65 P.S. § 67.1101(a) sets 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.* In this vein, the Office of Open Records Procedural Guidelines state that a deficient appeal, which is defined as an appeal that does not include a "concise statement of the grounds that the Requester asserts that the record is a public record," will receive "an Order requiring the Requester to provide the missing [information] . . . within seven (7) calendar days." *OOR Procedural Guidelines* § IV(B)(1)(c) and IV(C)(1).

The Office of Open Records appeal form has a section entitled, "Reasons for Appeal." In Ms. Grove's appeal, that section is blank. Ms. Grove did not even attempt to explain the basis of her appeal. And for some reason, the Office of Open Records allowed the appeal to continue. This is a pattern—the Township now routinely receives appeals from Ms. Grove that contain no stated reasons for appeal, and even when there are grounds stated, those grounds are limited to spurious statements like "not a good faith search"—which the Township requests be brought to a conclusion. Regardless of the overall concerns, though, this appeal should plainly be dismissed. It is simply inconceivable that someone can successfully pursue an appeal with an administrative body of the Commonwealth of Pennsylvania without giving any reason whatsoever for filing the appeal.

B. Ms. Grove's Appeal Fails to Identify the Materials Sought With Sufficient Specificity.

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)).

Generally, a request for emails over an extended period of time, without any reference to the type of information being sought, is not sufficiently specific. The Commonwealth Court reached this conclusion in *Mollick v. Township of Worcester*, 32 A.3d 859 (Pa. Commw. Ct. 2010). In that case, a requester sought, in relevant part, copies of “all emails between the Supervisors regarding any Township business” over an extended period of time. *Id.* at 871. The Office of Open Records held that the request was sufficiently specific, and the Commonwealth Court reversed that conclusion. In the words of the Commonwealth Court:

While the purpose of the RTKL is to provide access to public records in order to prohibit secrets, allow the public to scrutinize the actions of public officials, and make public officials accountable for their actions, it would place an unreasonable burden on an agency to examine all its emails for an extended time period without knowing, with sufficient specificity, what Township business or activity the request is related.

Id.

Ms. Grove's request fails to meet this threshold requirement. Ms. Grove seeks “All emails to/from Solicitor David Gaines” over a similarly lengthy period of time. The request contains no topical limitations of any kind. It, therefore, is not sufficiently specific.

C. 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. *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 Ms. Grove’s request.

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,



David S. Gaines, Jr.
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Counsel for Respondent

Dated: November 1, 2018

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

MICHELLE GROVE,

Requester,

v.

GREGG TOWNSHIP,

Respondent.

No. AP 2018-1892

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 September 11, 2018, which requested the following information:

* 6/25/2018 – 9/11/2018 All emails to/from Solicitor David Gaines. Search ALL email accounts used by: Doug Bierly, Keri Miller, and Jennifer Snyder.

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

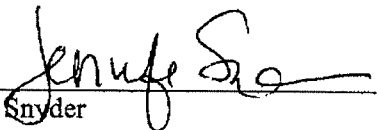
4. On October 16, 2018, I responded on behalf of the Township and noted that the request contained a number of deficiencies. Those deficiencies included: (a) the request was insufficiently specific, (b) the request did not seek records within the scope of relevant law, namely the Right to Know Law, 65 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. Between September 11, 2018, when I received the request, and October 16, 2018, when I responded to the request, I worked with Mr. Gaines to address the foregoing request.

6. During this process, it became immediately clear that all responsive emails would be either internal, predecisional deliberations or attorney-client privileged.

7. This should make sense—generally, Mr. Gaines only communicates with the Township in a representative capacity.

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: October 30, 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 first day of November, 2018.



David S. Gaines, Jr.

Dated: November 1, 2018