

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:	:	
	:	
MICHELLE GROVE,	:	
	:	
Requester,	:	
	:	
v.	:	No. AP 2018-1971
	:	
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 13, 2018. Ms. Grove's request was as follows:

*4/13/18-4/26/18 Surveillance footage of Jennifer Snyder & Doug Bierly entering and exiting building for beginning of shifts, ending of shifts, and lunch breaks.
PRESERVE DATE & TIME STAMP.
* 6/22/2018-7/5/2018 SAME
* 7/20/2018-8/1/2018 SAME

Standard Right-to-Know Request Form (Sep. 13, 2018).

Jennifer Snyder is the Right-to-Know officer for Gregg Township. In her attestation, Ms. Snyder confirms that she requested a thirty-day extension to Ms. Grove's request on September 21, 2018. *Snyder Attestation* ¶ 3. Ms. Snyder then provided a comprehensive response to Ms. Grove's request on October 16, 2018. *Id.* 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 states, in full, "Bad Faith Denial."

Beyond this conclusory statement, Ms. Grove did not even attempt to explain the basis of her appeal, and 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 little or no stated reasons for appeal—which the Township requests be brought to a conclusion.

Regardless of the overall concerns, simply stating “Bad Faith Denial” does not meet the requester’s burden. For one, an alleged “bad faith denial” could be anything—and it is not the Township’s job to guess what might be meant by this vague term. For these reasons alone, the appeal should be denied.

B. The Appeal Should Be Denied Because the Security Camera Footage Is Exempt Under 65 P.S. § 67.708(b)(2).

65 P.S. § 67.708(b)(2) allows a local agency to withhold the following information:

A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.

Id.

In this case, Ms. Grove has requested security footage from the Old Gregg School, which is where the Township’s office is located. *Snyder Attestation* ¶ 10. The Old Gregg School is an open municipal building, which anybody can use

between the hours of 8:30 a.m. and 9:30 p.m. *Id.* ¶¶ 11-12. While the Township is responsible for ensuring safety at the Old Gregg School, the Township does not employ any active security services to ensure safety. *Id.* ¶¶ 15-17. Instead, the Township relies on security cameras to monitor the building, both as a deterrent against crime and a monitoring device in the event that crime occurs. *Id.*

While some of the cameras at the Old Gregg School are conspicuous to users of the Old Gregg School, not all cameras are obvious to passers-by. *Id.* ¶ 21. Further, the security cameras themselves record at different angles, and in different manners. *Id.* ¶ 23. As such, disclosing the security camera footage would allow a member of the public to determine important details relating to the security camera footage itself. *Id.* ¶ 25.

Importantly, Ms. Grove's request does not specify a location of the security camera, a specific security camera, or any material details of the desired footage. It stands to reason, then, that the mere disclosure of employees "entering and exiting building" will disclose important details of the security cameras that Ms. Grove does not currently know.

Of course, it also bears noting that Ms. Grove routinely requests surveillance footage of the Old Gregg School, so this request is not limited to just the cameras at issue. *Id.* ¶ 29. As the Office of Open Records is well aware, Ms. Grove has requested footage from essentially every camera at the Old Gregg School. To

provide Ms. Grove with now all outdoor cameras would be to provide her with a comprehensive understanding of all previously confidential facets of the Old Gregg School's surveillance system. The Law clearly prohibits such an outcome. For all of these reasons, the appeal should be denied.

C. The Appeal Should Be Denied Because the Security Camera Footage Is Exempt Under 65 P.S. § 67.708(b)(3).

65 P.S. § 67.708(b)(3) allows a local agency to withhold “[a] record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system.” For the reasons set forth above, disclosing the security footage of the Old Gregg School would create a reasonable likelihood of impairing and/or limiting the physical security of the building and its resources.

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.

Pa. I.D. No. 308932

MILLER, KISTLER & CAMPBELL

720 South Atherton Street, Suite 201

State College, PA 16801

(814) 234-1500 TEL

(814) 234-1549 FAX

dgaines@mkclaw.com

Counsel for Respondent

Dated: November 14, 2018

IN THE MATTER OF: :

MICHELLE GROVE, :

Requester, :

v. : No. AP 2018-1971

GREGG TOWNSHIP, :

Respondent. :

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 13, 2018, which requested the following information:

*4/13/18-4/26/18 Surveillance footage of Jennifer Snyder & Doug Bierly entering and exiting building for beginning of shifts, ending of shifts, and lunch breaks. PRESERVE DATE & TIME STAMP.

* 6/22/2018-7/5/2018 SAME

* 7/20/2018-8/1/2018 SAME

3. On September 21, 2018, I requested a thirty-day extension to Ms. Grove's request, and on October 16, 2018, I responded on behalf of the Township

and noted that the request contained a number of deficiencies. A copy of that response is included with Ms. Grove's appeal.

4. As set forth in the response to the request, the Township denied Ms. Grove's request, for several reasons.

5. First, the requested record does not exist, and the Township would be required to create a record to respond to Ms. Grove's request.

6. More specifically, the Township does not maintain the security footage in the manner requested by Ms. Grove—i.e., security footage from one specific time to another, in a continuous recording.

7. Instead, the Township's security footage automatically loops, and to remove the footage from that loop, the Township must undertake a series of "backup" steps.

8. In short, the Township would need to create the record requested by Ms. Grove.

9. Second, disclosing the requested security footage would jeopardize public safety.

10. The Township's office is located in the Old Gregg School.

11. The Old Gregg School is a former school building that the Township has converted into a community building.

12. The Old Gregg School is open to the public every day from 8:30 a.m. to 9:30 p.m.

13. The Township rents portions of the Old Gregg School to private groups, and allows the public to use the remaining portions of the building at its leisure.

14. For example, the Old Gregg School contains a gymnasium for athletic and entertainment events, and the basement of the Old Gregg School is used as a workout facility.

15. As the owner, landlord, and primary user of the Old Gregg School, the Township is responsible for ensuring public safety at the Old Gregg School.

16. The Township does not actively patrol the Old Gregg School for safety, meaning that the Township does not provide security services to ensure the safety of individuals in the Old Gregg School.

17. Instead, the Township relies on the relevant security cameras to ensure safety and verify that the public uses the Old Gregg School in an appropriate manner.

18. The Township installed the security cameras after a security assessment by, and at the recommendation of, local security officials, including a police lieutenant and the current Sheriff of Centre County.

19. After the aforementioned security assessment, the Township proceeded to install security cameras for safety and security reasons.

20. It was understood throughout the security assessment process that information relating to the cameras and other security equipment would be kept private.

21. While some of the security cameras are conspicuous to passive users of the building, other security cameras are not necessarily obvious to passers-by.

22. What is more, the extent to which the security cameras can capture the activities in the Old Gregg School is unknown to the public, meaning, for example, that users of the Old Gregg School are unaware of the width of the camera lenses' angles, especially as it relates to front door access.

23. All of the information set forth above, including the location of cameras and the extent to which the cameras can monitor the activities at the Old Gregg School, is confidential.

24. Neither Ms. Grove nor any member of the public knows the manner in which, or the extent to which, the front door security camera records people coming and going from the building.

25. For the foregoing reasons, disclosing the foregoing information would breach the Township's prior efforts to maintain the confidentiality of this important security system.

26. Third, disclosing the security footage would create a reasonable likelihood of endangering the safety or physical security of the Old Gregg School.

27. This reasoning is in line with the reasoning set forth above, namely that the security cameras are the primary means of ensuring safety at the Old Gregg School, which is left unmonitored on a daily and nightly basis.

28. Forth, to fulfill this request would require disclosure of footage from multiple cameras throughout the building and many periods of time throughout the day which would further jeopardize the security and safety of the building.

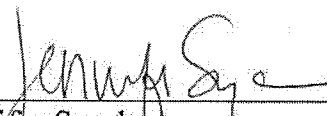
29. Fifth, it is impossible to discern the nature or reason(s) that Doug Bierly and I would enter/exit the building on any given day and any given time due to the duties and responsibilities that may require offsite work.

30. Finally, it bears noting that Ms. Grove routinely requests surveillance footage of the Old Gregg School, and as a result, this issue is not limited to just the request at issue.

31. As the Office of Open Records is well aware, Ms. Grove has requested video surveillance of the Old Gregg School on numerous other occasions. Just some of those requests are noted at docket number AP 2018-1973, AP 2018-1771, AP 2018-0605, AP 2017-1433, and AP 2017-0159.

32. Given the scope of video surveillance footage requested, the Township's representatives have expressed concern about providing evermore increasing video surveillance records.

33. 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: November 14, 2018

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

MICHELLE GROVE,

Requester,

v.

GREGG TOWNSHIP,


Respondent.

:
:
:
:
:
:
:
:
:
:
:
:

No. AP 2018-1971

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 fourteenth day of November, 2018.



David S. Gaines, Jr.

Dated: November 14, 2018