IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	No. 2018-3617
Plaintiffs,	:	
	:	
v.	:	Type of Pleading:
	:	**ENTRY OF APPEARANCE**
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
	:	Filed on behalf of Defendants
Defendants.	:	
	:	
	:	Counsel of Record for this Party:
	:	David S. Gaines, Jr.
	:	Pa. I.D. 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

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter the appearance of the undersigned counsel on behalf of Defendants Gregg Township and Jennifer Snyder.

Respectfully submitted,

CAMPBELL, MILLER, WILLIAMS, BENSON & CONSIGLIO, INC.

By: 

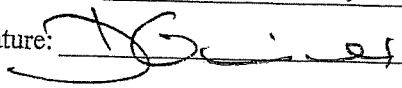
David S. Gaines, Jr.
Pa. I.D. 308932
720 S. Atherton Street, Suite 201
State College, PA 16801
(814) 234-1500 TEL
(814) 234-1549 FAX
dgaines@mkclaw.com

Date: October 16, 2018

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: David S. Gaines, Jr.

Signature: 

Name: David S. Gaines, Jr.

Attorney No. (if applicable): 308932

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I, David S. Gaines, Jr., hereby certify that a true and correct copy of the foregoing document was served by United States first-class mail, postage prepaid, on this sixteenth day of October, 2018, addressed as follows:

Christopher B. Wencker
Shoaf & Wencker, LLC
201 Fifth Street, Suite 201
Huntingdon, PA 16652
Counsel for Plaintiffs

David S. Gaines, Jr.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

CONTINUANCE REQUEST

■ I, David S. Gaines, Jr., represent the Defendants in the above-mentioned action. A hearing on Plaintiffs' Petition for Writ of Mandamus is scheduled for October 23, 2018, at 2:00 p.m. I am requesting a **CONTINUANCE** for the following reason(s): pursuant to Pennsylvania Rule of Civil Procedure 1091, writs of mandamus are to follow procedures for civil actions. Defendants wish to resolve this matter quickly, as well, but would like to proceed through the standard pleadings stage and conduct limited discovery. The Defendants request an additional 120 days to complete those matters.

■ Opposing Counsel **does not** object to the above request.

□ Please do not reschedule the above hearing/conference/argument for the following dates as opposing counsel or myself are not available:

_____

October 16, 2018
Date

David S. Gaines, Jr.
Name

(814) 234-1500
Phone

dgaines@mkclaw.com
Email Address

ORDER

AND NOW, this _____ day of _____, 2018, upon consideration of this Petition/Motion, it is the **ORDER** of this Court that the hearing/argument is scheduled for the _____ day of _____, _____, at _____, in:

□ Courtroom _____Centre County Courthouse, 102 S. Allegheny Street, Bellefonte, Pennsylvania.

□ the Annex Courtroom, Centre County Courthouse Annex, 108 S. Allegheny Street, Bellefonte, Pennsylvania.

BY THE COURT:

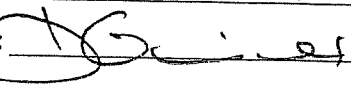
_____

J.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: David S. Gaines, Jr.

Signature: 

Name: David S. Gaines, Jr.

Attorney No. (if applicable): 308932

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	No. 2018-3617
Plaintiffs,	:	
	:	Type of Pleading:
v.	:	**PRELIMINARY OBJECTIONS**
	:	**TO PLAINTIFFS' PETITION**
GREGG TOWNSHIP and	:	**FOR WRIT OF MANDAMUS**
JENNIFER SNYDER,	:	
	:	Filed on behalf of Defendants
Defendants.	:	
	:	
	:	Counsel of Record for this Party:
	:	David S. Gaines, Jr.
	:	Pa. I.D. 308932
	:	MILLER, KISTLER & CAMPBELL
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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

SCHEDULING REQUEST

- ■ Kindly schedule the attached Preliminary Objections before the Court. It is anticipated that the matter will require approximately 30 minutes for resolution.

- ■ The undersigned certifies that good faith efforts were made to resolve this matter without the necessity of Court involvement.

- □ Opposing counsel/party does not oppose the relief sought, and the attached proposed Order may be signed without appearance.

October 16, 2018
Date

David S. Gaines, Jr.
Name

(814) 234-1500
Phone

dgaines@mkclaw.com
Email Address

ORDER

AND NOW, this _____ day of _____, _____, upon consideration of the Petition/Motion, it is the ORDER of this Court that the hearing/argument is scheduled for the _____ day of _____, _____, at _____, in

□ Courtroom _____Centre County Courthouse, 102 S. Allegheny Street, Bellefonte, Pennsylvania.

□ the Annex Courtroom, Centre County Courthouse Annex, 108 S. Allegheny Street, Bellefonte, Pennsylvania.

BY THE COURT:

_____

J.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this ____ day of _____, 2018, upon consideration of the Preliminary Objections filed by the Defendants, Gregg Township and Jennifer Snyder, in her capacity as the open records officer for Gregg Township, and any responses and replies filed thereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Preliminary Objections are SUSTAINED;
2. The Petition for Writ of Mandamus is DISMISSED to the extent that it seeks penalties under Right to Know Law, 65 P.S. §§ 67.101 to 67.310;
3. Count one of the Petition for Writ of Mandamus is DISMISSED;
4. Count two of the Petition for Writ of Mandamus is DISMISSED;
5. Plaintiff Casey Grove is DISMISSED as a party to this action; and

6. Plaintiffs shall have twenty-one days from the date of this order to file an amended Petition for Writ of Mandamus.

BY THE COURT:

_____

J.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

PRELIMINARY OBJECTIONS TO PLAINTIFFS' PETITION FOR WRIT OF MANDAMUS

The Defendants, Gregg Township and Jennifer Snyder, in her capacity as the open records officer for Gregg Township, by and through the undersigned counsel, hereby file these Preliminary Objections to Plaintiffs' Petition for Writ of Mandamus, stating in support thereof as follows:

1. This mandamus action follows a series of requests made under the Right to Know Law ("RTKL"), 65 P.S. §§ 67.101 to 67.3104, by Plaintiff Michelle Grove.

2. Confusingly, Mr. Grove is named as a party, even though the Petition for Writ of Mandamus ("Petition") concedes that he was not involved in the RTKL requests. *Petition* ¶ 4.

3. Count one of the Petition relates to a RTKL request for surveillance footage of the Old Gregg School. *Id.* ¶¶ 6-17.

4. This RTKL request is the subject of litigation appearing in this Court at docket number 2017-1296.

5. As noted on the Court's docket, the Commonwealth Court entered its decision on June 25, 2018.[1] Ex. 1, *Opinion* (June 25, 2018).

6. The Township thereafter filed a timely application for reargument, which was decided on August 21, 2018. Ex. 2, *Order* (Aug. 21, 2018).

7. Mrs. Grove now claims that the Township did not timely provide a response to the Commonwealth Court's order. *Petition* ¶ 13.

8. Count two of the Petition relates to a RTKL request for meeting minutes of the Old Gregg School Advisory Board. *Id.* ¶ 19.

9. The Petition contends that the Office of Open Records, through a final determination dated March 8, 2017, compelled the Township to provide these records. *Id.* ¶ 22.

10. The Petition further contends that the Township refused to provide these records. *Id.* ¶ 23.

---

[1] The Court "may take judicial notice of public documents in ruling on a preliminary objection in the nature of a demurrer." *Solomon v. U.S. Healthcare Sys. of Pa.*, 797 A.2d 346, 352 (Pa. Super. Ct. 2002) (citing *Bykowski v. Chesed, Co.*, 625 A.2d 1256, 1258 n.1 (Pa. Super. Ct. 1993)). Further, the Court "may rely on documents forming in part the foundation of the suit even where a plaintiff does not attach such documents to its complaint." *Feldman v. Hoffman*, 107 A.3d 821, 829 (Pa. Commw. Ct. 2014).

11. Count three of the Petition relates to a RTKL request for Township supervisors' Facebook posts. *Id.* ¶ 33.

12. The Petition contends that the Office of Open Records, through a final determination dated May 7, 2018, compelled the Township to provide these records. *Id.*

13. The Petition further contends that the Township refused to provide these records. *Id.* ¶ 34.

14. Count four of the Petition relates to a RTKL request for Township emails. *Id.* ¶ 40.

15. The Petition contends that the Office of Records, through a final determination dated May 14, 2018, compelled the Township to provide these records. *Id.* ¶ 44.

16. The Petition further contends that the Township refused to provide these records. *Id.* ¶ 46.

DEMURRER AS TO EACH COUNT'S REQUEST FOR PENALTIES UNDER THE RTKL

17. The allegations contained in paragraphs one through sixteen are incorporated by reference as if set forth fully herein.

18. Mandamus "compel[s] official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding

duty in the defendant, and a lack of any other adequate and appropriate remedy at law." *Del. River Port Auth. v. Thornburgh*, 493 A.2d 1351, 1355 (Pa. 1985).

19. A determination of whether mandamus lies in a given case is within the discretion of the Court. *Branchick v. Dep't of Labor & Indus.*, 436 A.2d 1182, 1183 (Pa. 1981).

20. Additionally, "the procedure in the action of mandamus shall be in accordance with the rules relating to a civil action." Pa. R.C.P. 1091.

21. Pennsylvania Rule of Civil Procedure 1028(a) allows the Court to grant preliminary objections with respect to the "legal insufficiency of a pleading (demurrer)." Pa. R.C.P. 1028(a)(4).

22. Preliminary objections in the nature of a demurrer test the legal sufficiency of the plaintiffs' pleading. *State Farm Mut. Auto. Ins. Co. v. Ware's Van Storage*, 953 A.2d 568, 571 (Pa. Super. Ct. 2008) (citing *Sexton v. PNC Bank*, 792 A.2d 602, 604 (Pa. Super. Ct. 2002)).

23. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. *Lenau v. Co-eXprise, Inc.*, 102 A.3d 423, 429 (Pa. Super. Ct. 2014), *appeal denied*, 113 A.3d 280 (Pa. 2015).

24. A demurrer should be granted when the relevant pleading has "failed to state a claim for which relief can be granted." *Clark v. Beard*, 918 A.2d 155,

158 n.4 (Pa. Commw. Ct. 2007) (citing *Composition Roofers Local 30/30B v. Katz*, 581 A.2d 607, 609 (Pa. Super. Ct. 1990)).

25. "A preliminary objection in the nature of a demurrer will be granted where the contested pleading is legally insufficient." *Cardenas v. Schober*, 783 A.2d 317, 321 (Pa. Super. Ct. 2001) (citing Pa. R.C.P. 1028(a)(4)).

26. The Petition seeks various penalties against the Township for allegedly violating the RTKL.

27. Those penalties, which appear under the RTKL, plainly do not apply to this action under Pennsylvania Rules of Civil Procedure 1091 to 1100.

28. Damages in a mandamus action "are not plenary." *Stoner v. Merion*, 587 A.2d 879, 885 (Pa. Commw. Ct. 1991).

29. Instead, "[d]amages recoverable in mandamus are those incidental to the specific relief being sought." *Id.* (citing *Kane v. Stucker*, 48 A.2d 162 (Pa. Super. Ct. 1946)).

30. A mandamus plaintiff may only receive incidental damages; consequential damages are unavailable. *Soni Props., LLC v. City of Reading*, 2010 Pa. Commw. Unpub. LEXIS 338, at *12 (Commw. Ct. May 28, 2010).

31. The Petition in this matter asks the Court to go well beyond its ability to impose damages.

32. Rather than seek the incidental damages for the alleged failure to provide certain RTKL records, Mr. and Mrs. Grove ask the Court to bootstrap penalty provisions that appear in the RTKL to impose those penalties on the Township.

33. The Petition altogether fails to explain how such penalties could possibly be allowed, when even standard consequential damages are unavailable in a mandamus action.

34. The Petition should, therefore, be dismissed to the extent that it seeks penalties under 65 Pa. C.S. § 67.1304 and 65 P.S. § 67.1305.

WHEREFORE, the Defendants, Gregg Township and Jennifer Snyder, in her capacity as the open records officer for Gregg Township, respectfully request that the Court sustain these preliminary objections and dismiss the Petition for Writ of Mandamus to the extent that it seeks relief under the Right to Know Law, 65 P.S. §§ 67.101 to 67.3104.

DEMURRER AS TO COUNT ONE FOR FAILING TO ESTABLISH RELIEF THAT IS "CLEAR"

35. The allegations contained in paragraphs one through thirty-four are incorporated by reference as if set forth fully herein.

36. Count one of the Petition contends that "the Defendants have refused to release the security camera footage," which is the subject of litigation appearing at docket number 2017-1296. *Petition* ¶ 13.

37. However, the Commonwealth Court resolved this matter on August 21, 2018, and the Commonwealth Court's order was not final until September 20, 2018.

38. In the words of Pennsylvania Rule of Appellate Procedure 2572, "The court possessed of the record shall remand 30 days after either the entry of a final order or the disposition of all post-decision applications, whichever is later." Pa. R.A.P. 2572(b).

39. The time for filing an appeal to the Supreme Court is the same—under Pennsylvania Rule of Appellate Procedure 1113, "the time for filing a petition for allowance of appeal [to the Supreme Court] for all parties shall run from the entry of the order denying reargument . . . ." Pa. R.A.P. 1113(a)(1).

40. Mr. and Mrs. Grove filed their Petition on September 13.

41. Count one should, therefore, be dismissed unless Mr. and Mrs. Grove can allege that the Township did not provide them with video even after September 20, 2018.[2]

WHEREFORE, the Defendants, Gregg Township and Jennifer Snyder, in her capacity as the open records officer for Gregg Township, respectfully request that the Court sustain these preliminary objections and dismiss count one of the Petition for Writ of Mandamus.

---

[2] This is not the case. The Township provided Mr. and Mrs. Grove with the video on September 13, 2018, well within the required timeframe.

DEMURRER AS TO COUNT TWO FOR FALLING OUTSIDE OF THE STATUTE OF LIMITATIONS[3]

42. The allegations contained in paragraphs one through forty-one are incorporated by reference as if set forth fully herein.

43. In its second count, the Petition argues that the Township failed to respond to a decision of the Office of Open Records dated March 8, 2017. *Petition* ¶ 22.

44. Actions in mandamus have a six-month limitations period. *Capinksi v. Upper Pottsgrove Twp.*, 164 A.3d 601, 610 (Pa. Commw. Ct. 2017) (citing 42 Pa. C.S. § 5522(b)(1)).

45. The Township had thirty days to comply with the Office of Open Records decision dated March 8, 2017. *See* 65 P.S. § 67.1302(a).

46. Consequently, count two of the Petition seeks relief based on conduct that, by law, must have occurred by April 7, 2017.

47. Count two is, therefore, well outside of the relevant limitations period and should be dismissed.

WHEREFORE, the Defendants, Gregg Township and Jennifer Snyder, in her capacity as the open records officer for Gregg Township, respectfully request that the Court sustain these preliminary objections and dismiss count two of the

[3] Limitations issues may be raised through preliminary objections if such issues are apparent on the face of a Complaint. *Reuben v. O'Brien*, 445 A.2d 801, 802-03 (Pa. Super. Ct. 1982).

DEMURRER AS TO COUNT THE INCLUSION OF CASEY GROVE, WHO HAD NO INVOLVEMENT IN THE UNDERLYING PROCEEDINGS[4]

48. The allegations contained in paragraphs one through forty-seven are incorporated by reference as if set forth fully herein.

49. Mr. Grove is not a proper party to this action.

50. A "party, seeking to challenge governmental action, 'must show a direct and substantial interest," *i.e.*, an interest other than that of the general public which will be adversely affected by the challenged action.'" *Citizens for State Hosp. v. Commonwealth*, 553 A.2d 496, 498 (Pa. Commw. Ct. 1989) (quoting *William Penn Parking Garage, Inc. v. City of Philadelphia*, 346 A.2d 269, 286 (Pa. 1975)).

51. Mr. Grove did not participate in any of the RTKL appeals at issue. *Petition* ¶ 4.

52. He, therefore, lacks any relationship to the matters at bar and should be dismissed as a party.

WHEREFORE, the Defendants, Gregg Township and Jennifer Snyder, in her capacity as the open records officer for Gregg Township, respectfully request that the Court sustain these preliminary objections and dismiss Casey Grove as a

[4] Limitations issues may be raised through preliminary objections if such issues are apparent on the face of a Complaint. *Reuben v. O'Brien*, 445 A.2d 801, 802-03 (Pa. Super. Ct. 1982).

Plaintiff in this action.

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
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dgaines@mkclaw.com
Solicitor for Defendant

Dated: October 16, 2018

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregg Township	:	
	:	
v.	:	No. 1186 C.D. 2017
	:	Submitted: April 20, 2018
Michelle Grove,	:	
Appellant	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY PRESIDENT JUDGE LEAVITT

FILED: June 25, 2018

Michelle Grove (Requester), *pro se*, appeals an order of the Court of Common Pleas of Centre County (trial court) denying her Right-to-Know Law[1] request for certain footage from security cameras in the Old Gregg School, which is used for municipal offices. In doing so, the trial court reversed the final determination of the Office of Open Records (OOR) that the information requested from Gregg Township (Township) was disclosable. Requester contends that the trial court erred in holding that the disclosure of the security camera footage would jeopardize public safety or endanger the physical security of the building. Concluding that the Township's affidavit did not support either finding of the trial court, we reverse.

On December 29, 2016, Requester submitted a written request to the Township for the

[1] Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101-67.3104.

> 12/29/16 security footage of Joel Myers and Doug Bierly entering and exiting the office and the time in between (one continuous recording).

Reproduced Record at 3 (R.R. __). On January 23, 2017, the Township denied the request, asserting that the requested security footage was exempt from disclosure for the stated reason that its release "would be reasonably likely to jeopardize or threaten public safety...[,]" and would "create[ ] a reasonable likelihood of endangering the safety or the physical security of a building...." Section 708(b)(2) and (3) of the Right-to-Know Law, 65 P.S. §67.708(b)(2), (3).

Requester appealed to the OOR arguing, among other things, that the Township had previously granted her requests for security footage and that release of the requested information would not threaten either the public safety or the building's security. In response, the Township reiterated its reasons for denying the request and submitted a sworn attestation of Jennifer Snyder (Snyder affidavit), the Right-to-Know Officer for the Township, which stated, in relevant part:

> 18. [T]he Township relies on the relevant security cameras to ensure safety and verify that the public uses the Old Gregg School in an appropriate manner.
>
> 19. The Township installed the security cameras after a security assessment by local security officials, including a police lieutenant and the current Sheriff of Centre County....
>
> 20. After the aforementioned security assessment, the Township proceeded to install security cameras for safety and security reasons.
>
> 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.

R.R. 17-18.

The OOR issued a final determination granting Requester's appeal. The OOR explained that the area described in the request, *i.e.*, the front of the Old Gregg School, was public. Further, the Township's affidavit did not demonstrate how knowledge of the security camera's location in this public area would be reasonably likely to pose a threat.

The Township filed a petition for review with the trial court, asserting various exceptions under the Right-to-Know Law. By order of July 26, 2017, the trial court reversed the OOR's final determination, holding that the security footage was exempt from disclosure under Section 708(b)(2) and (3) of the Right-to-Know Law, 65 P.S. §67.708(b)(2), (3). The trial court explained:

> [t]he public is permitted to access the building during certain daytime hours but the building is closed at night, with surveillance cameras providing the only security. It is reasonably likely the disclosure would threaten public safety at the Old Gregg School by exposing the scope of the surveillance coverage that is unknown to the general public.
>
> * * *
>
> [Additionally, t]he building is home to the municipal offices and numerous groups and needs to be properly monitored. Building security would be impaired and threatened by having the surveillance coverage exposed and could endanger the safety of those people using the building.

Trial Court Op., 7/26/2017, at 4. Requester appealed to this Court.[2]

---

[2] This Court's review in a Right-to-Know Law appeal determines "whether the trial court committed an error of law and whether its findings of fact are supported by substantial evidence."

On appeal, Requester raises eight issues for consideration by this Court.[3] Most of Requester's issues have not been developed in the argument section of her brief and, thus, will not be addressed. The relevant question Requester has preserved for appeal is whether the security footage she requested is exempt from disclosure under Section 708(b)(2) and (3) of the Right-to-Know Law. Requester argues that disclosure of the limited footage she requested is not "reasonably likely" to jeopardize public safety. Requester Brief at 14.

We begin with a review of the Right-to-Know Law, which requires local agencies to provide access to public records upon request. *See* Section 302(a) of the Right-to-Know Law, 65 P.S. §67.302(a) ("A local agency shall provide public records in accordance with this act."). Records in the possession of a local agency

---

Paint Township v. Clark, 109 A.3d 796, 803 n.5 (Pa. Cmwlth. 2015). The statutory construction of the Right-to-Know Law is a question of law, for which our scope of review is plenary, and our standard of review is *de novo*. *Hearst Television, Inc. v. Norris*, 54 A.3d 23, 29 (Pa. 2012).

[3] They are:

(1) Does [Requester] publish tax lists indicating which residents have and have not paid taxes?

(2) Is it relevant that [Requester] maintains a website providing public records relating to the [T]ownship?

(3) Is the disclosure of surveillance video from the hall "reasonably likely" to threaten public safety?

(4) Is it relevant that the cameras in the hall are in public view?

(5) Is it relevant that surveillance footage of the hall had been disclosed on multiple occasions in the months leading up to this request?

(6) Is it relevant that [Requester] was permitted into the secure office to video record directly from the surveillance monitor in those instances?

(7) Is it relevant that the footage requested was from a non-public, non-advertised meeting between two Supervisors?

(8) Is it relevant that [Requester] was present in the hall during this meeting and overheard the discussion that took place and the decisions that were made by the two Supervisors?

Requester Brief at 9.

are presumed to be a public record unless exempt under Section 708 of the Right-to-Know Law, 65 P.S. §67.708; protected by a privilege; or exempt from disclosure under a federal or state law or judicial order. Section 305(a) of the Right-to-Know Law, 65 P.S. §67.305(a). The local agency has the burden of proving that a record is exempt by a preponderance of the evidence. Section 708(a)(1) of the Right-to-Know Law, 65 P.S. §67.708(a)(1).

Section 708(b)(2) exempts from disclosure records "maintained by an agency in connection with ... 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[.]" 65 P.S. §67.708(b)(2) (emphasis added). To satisfy this exemption, the local agency must prove that (1) the record at issue relates to a law enforcement or public safety activity; and (2) disclosure of the record would be "reasonably likely" to threaten public safety or a public protection activity. *Carey v. Department of Corrections*, 61 A.3d 367, 374-75 (Pa. Cmwlth. 2013). "In interpreting the 'reasonably likely' part of the test, as with all the security-related exceptions, we look to the likelihood that disclosure would cause the alleged harm, requiring more than speculation." *Id.* at 375.

Similarly, Section 708(b)(3) of the Right-to-Know Law exempts from public access "[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...." 65 P.S. §67.708(b)(3) (emphasis added). "For this exemption to apply, 'the disclosure of' the records, rather than the records themselves, must create a reasonable likelihood of endangerment to the safety or physical security of certain structures or other entities, including infrastructures." *Smith on behalf of Smith Butz, LLC v. Pennsylvania*

Department of Environmental Protection, 161 A.3d 1049, 1062 (Pa. Cmwlth. 2017). Again, "'[r]easonably likely' has been interpreted as 'requiring more than speculation.'" *Id.* at 1062-63 (citing *Carey*, 61 A.3d at 375).

The Township urges that we affirm the trial court, arguing that its security cameras are "the only realistic means of ensuring public safety at the Old Gregg School, and that the security system is the result of a security audit performed by law enforcement personnel." Township Brief at 14. The locations of some security cameras are confidential because they have been placed in inconspicuous places throughout the building. Even where cameras are visible, the width of the lens is not obvious to a passerby. The Township contends that the release of even limited security footage would expose vulnerabilities in the surveillance system and, thus, endanger public safety.[4] Township Brief at 7.

Snyder's affidavit established that cameras were installed for security of the building. The question is whether the affidavit established that disclosure of the requested security camera footage would be "reasonably likely" to threaten public safety or the security of the building.

First, the Snyder affidavit is silent as to what is depicted on the requested camera footage. Second, the affidavit refers generally to *all* the security cameras at the Old Gregg School and does not explain why the disclosure of specific footage from one camera will jeopardize the building's security and the public safety. Third, the affidavit does not explain how the Township uses the cameras to enhance public and building safety; for example, the affidavit does not state whether

[4] The State Association of Township Supervisors has filed an *amicus curiae* brief in support of the Township.

the cameras are monitored contemporaneously. Finally, the affidavit does not address whether any of the information requested can be redacted.

Snyder's affidavit offers conclusory statements that both public safety and building security will be jeopardized. Without explaining details, the affidavit provides no more than speculation. This does not suffice.

The Township acknowledges that it has allowed Requester to view security footage in the past. The Township argues that this prior act does not preclude it from asserting the exemption this time. We agree that a prior disclosure, whether done accidentally or intentionally, does not require repeated disclosure of similar information. A government agency may correct mistakes; it is not forever bound to repeat them. Nevertheless, the Township's prior disclosure undermines its claim that another disclosure would be dangerous. The Township does not assert, for example, that its prior disclosure has harmed the public safety or compromised building security in any way.

The Township complains that Requester publishes public records on the internet. This is not a valid reason to deny the request. *See* Section 302(b) of the Right-to-Know Law, 65 P.S. §67.302(b) (A local agency "may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law."); *see also Hunsicker v. Pennsylvania State Police*, 93 A.3d 911, 913 (Pa. Cmwlth. 2014) (stating that "the reason for the request, good or bad, [is] irrelevant as to whether a document must be made accessible...."). Further, if this camera footage is already available online, then the Township needed to show how the addition of new footage would undermine building security and public safety.

The State Association of Township Supervisors, *amicus curiae*, directs this Court to *Gilleran v. Township of Bloomfield*, 149 A.3d 800 (N.J. 2016), which considered New Jersey's version of our Right-to-Know Law. In *Gilleran*, the requester sought 14 hours of video footage from a security camera located on the second floor of the Town Hall that was adjacent to the police station. The township asserted that the recording was protected under the security exclusions of New Jersey's Open Public Records Act.[5] It noted that the cameras would likely show confidential informants or domestic abuse victims going to the police station. A divided panel of the New Jersey Supreme Court held that "wholesale release" of the videotape product of a single security camera or a "combination of cameras from a government facility's security system would reveal information about a system's operation and also its vulnerabilities." *Id.* at 810. The dissent agreed with this logic but concluded that the majority's holding could not be squared with the plain language of the statute.

Gilleran provides little instructive value. First, it construes a statute that is similar but not identical to Pennsylvania's Right-to-Know Law. Second, it is distinguishable because the instant case does not involve a "wholesale release" of videotape product. Requester has sought limited camera footage, not 14 hours of

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[5] N.J. STAT. ANN. §§ 47:1A-1 - 13. Under Section 47:1A-1.1, a government record does not include the following information:

* * *

> emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein;
>
> security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software;

* * *

N.J. STAT. ANN. § 47:1A-1.1.

footage. She seeks footage from one camera, not a combination of multiple cameras. Simply, the Township did not meet its burden of showing more than speculation that the discrete information sought by Requester will undermine the building's security and public safety.

For the above stated reasons, we reverse the trial court's order.

MARY HANNAH LEAVITT, President Judge

Senior Judge Colins dissents.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregg Township	:	
	:	
v.	:	No. 1186 C.D. 2017
	:	
Michelle Grove,	:	
Appellant	:	

ORDER

AND NOW, this 25th day of June, 2018, the order of the Court of Common Pleas of Centre County dated July 26, 2017, in the above-captioned matter is REVERSED.

MARY HANNAH LEAVITT, President Judge

EXHIBIT 2

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregg Township	:	
	:	
v.	:	No. 1186 C.D. 2017
	:	
Michelle Grove,	:	
Appellant	:	

ORDER

NOW, August 21, 2018, having considered appellee's application for reargument, the application is denied.

MARY HANNAH LEAVITT,
President Judge

Certified from the Record
AUG 21 2018
And Order Exit

Soni Props., LLC v. City of Reading

Commonwealth Court of Pennsylvania

March 15, 2010, Argued; May 28, 2010, Decided; May 28, 2010, Filed

No. 2559 C.D. 2009

Reporter
2010 Pa. Commw. Unpub. LEXIS 338 *; 2010 WL 9520416

Soni Properties, LLC, Appellant v. City of Reading and Cynthia Sopka

Notice: OPINION NOT REPORTED

Prior History: *Soni Props., LLC v. City of Reading, 994 A.2d 1206, 2010 Pa. Commw. LEXIS 291 (Pa. Commw. Ct., 2010)*

Core Terms

damages, trial court, zoning, mandamus, permits, occupancy, peremptory, zoning administrator, ministerial, leases, notify

Judges: [*1] BEFORE: HONORABLE RENEE COHN JUBELIRER, Judge, HONORABLE PATRICIA A. McCULLOUGH, Judge, HONORABLE JIM FLAHERTY, Senior Judge.

Opinion by: JIM FLAHERTY

Opinion

MEMORANDUM OPINION BY SENIOR JUDGE FLAHERTY

Soni Properties, LLC (Soni) appeals from an order of the Court of Common Pleas of Berks County (trial court), denying its motion for post-trial relief. In doing so, the trial court affirmed its verdict of February 17, 2009, wherein it determined that the Appellees, City of Reading (Reading) and Cynthia Sopka (Sopka), were not liable to Soni for damages. We affirm.

This case concerns zoning and use and occupancy permits for property located at 1626 Perkiomen Avenue in Reading, Pennsylvania (Property). Soni entered into an agreement of sale to purchase the Property on July 18, 2007. The agreement of sale contained a provision calling for the seller to arrange a "One Call meeting" (Meeting) with authorities in Reading to discuss the use of the Property. On August 23, 2007, Soni attended the Meeting and met with inspectors and heads of various departments of Reading, including Sopka, the zoning administrator and Steve Franco, the chief building inspector.

At the Meeting, Sopka indicated that she did not see any **[*2]** problems with the zoning issues for the Property, but instructed Soni to schedule an official meeting with Reading's zoning department. On the same day, Soni went to the public works department, where it received permits for remodeling the Property. Soni thereafter acquired title to the Property by deed dated August 29, 2007.

On September 5, 2007, Soni completed a zoning application for the Property and met with James Mohn (Mohn), the acting zoning administrator. [1] Mohn told Soni he would review the plans and be in touch.

According to Soni, it learned in December of 2007, through one of its sub-contractors, that no zoning permit had been issued for the Property.

On June 12, 2008, Soni commenced an action by filing a three count complaint in mandamus alleging, among other things, that it was entitled to zoning and use and occupancy permits for the Property, and damages in excess of $ 50,000.00 as a result of Reading's and Sopka's failure **[*3]** to take any action on Soni's zoning application and/or to provide Soni with a written explanation for its failure to do so. Appellees filed an answer.

Thereafter, Soni filed a motion for partial peremptory judgment and the trial court conducted a hearing on July 22, 2008. [2] In an order dated August 6, 2008, the trial court granted Soni's motion, concluding that Appellees failed to notify Soni of the denial of its zoning application for nearly

---

[1] A review of the testimony indicates that Mohn is employed by The Associates, which is employed by the City of Reading. Mohn began serving as the active zoning administrator, the highest position in the zoning department, beginning in 2006. (R.R. at 96a.)

[2] Soni claims that it was not until the hearing that it learned the specifics of the denial of its zoning application.

one year and deemed the zoning application approved. The trial court also ordered Appellees to issue a certificate of occupancy to Soni. [3]

Thereafter, counsel for both parties appeared before the trial court requesting that the case be certified **[*4]** for trial, so that Soni could pursue its claim for damages. After a bench trial, the trial court issued a verdict in favor of Appellees, concluding that Appellees were not liable to Soni for damages. Soni thereafter filed a motion for post-trial relief, which the trial court denied. Soni then filed a notice of appeal and, thereafter, Soni complied with the trial court's order to file a concise statement of matters complained of on appeal.

On May 12, 2009, the trial court issued an opinion in support of its verdict regarding damages. In the opinion, the trial court stated that at the hearing on damages, testimony and evidence were presented which were not presented at the hearing for partial peremptory judgment. If such testimony had been previously presented, the trial court indicated that it would not have issued the order directing Appellees to issue a permit to Soni, inasmuch as the testimony undermined Soni's case. Specifically, Mohn, who did not testify at the hearing for partial peremptory judgment, testified at the hearing on damages that a decision to deny Soni's zoning application had been reached on September 7, 2007, and that he phoned Soni informing it of the decision. The **[*5]** trial court found the testimony of Mohn to be credible, as it was consistent with the contents of Appellees Exhibit 11, a March 13, 2008 letter which indicated that Soni was aware that it did not have approval of its zoning application. [4]

As to Soni's request for damages, the trial court stated that mandamus damages are not plenary, and the damages recoverable are those incidental **[*6]** to specific relief being sought. *Stoner v. Township of Lower Merion, 138 Pa. Commw. 257, 587 A.2d 879 (Pa. Cmwlth. 1991)*, petition for allowance of appeal denied, *529 Pa. 660, 604 A.2d 252 (1992)*. In *Stoner*, this court determined that landowners who sought mandamus to compel approval of a subdivision could not recover as mandamus damages any loss of bargain with respect to a contract to sell one of the lots.

The trial court, in this case, determined that the damages requested were not incidental to the relief sought through mandamus and thus, were not appropriate. Soni sought consequential damages which are not appropriate in a mandamus action. Specifically, Soni's alleged damages consisted of the money to be received from leasing the Property, but the leases were neither witnessed nor notarized and the principal of Soni, Frank Gussoni (Gussoni) was well aware that he did not have zoning approval for the Property. In support of its determination that Soni knew it did not have zoning approval, the trial court also relied on Exhibit 11, a letter dated March 13, 2008, which was sent by Soni's former counsel to Sopka, and copied to Gussoni. In the letter, counsel confirmed that in August of 2007, long before **[*7]** any leases on the Property were negotiated and executed, Soni was aware that it did not have the proper zoning approval.

In this appeal, we note that where a trial court denies mandamus damages, this court's review is limited to determining whether the trial court abused its discretion or committed an error of law. *Maurice A. Nernberg & Associates v. Coyne, 920 A.2d 967 (Pa. Cmwlth. 2007)*.

In its brief to this court, Soni maintains that the trial court erred in finding that Appellees had notified Soni of the denial of its zoning application, that the trial court erred in concluding that Appellees were not required to provide it with written notice of its zoning application denial and that the trial court erred when it entered its verdict in favor of Appellees and against Soni on Soni's claim for damages.

In addressing the first two issues, we note that procedurally, the trial court initially granted Soni's motion for partial peremptory judgment. A peremptory judgment in a mandamus action is appropriately entered when there are no genuine issues of fact and where the case is free and clear from doubt. *Shaler Area School District v. Salakas, 494 Pa. 630, 432 A.2d 165 (1981)*. Mandamus is **[*8]** an extraordinary writ and is a remedy used to compel performance of a ministerial act or a mandatory duty. *Washowich v. McKeesport Municipal Water Authority, 94 Pa. Commw. 509, 503 A.2d 1084 (Pa. Cmwlth. 1996)*. In order to

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[3] As of October 2008, the certificate of occupancy had not been issued and the trial court issued an order directing that Appellees issue the certificate no later than October 24, 2008. Appellees failed to comply and Soni filed a motion for adjudication of civil contempt and sanctions against Appellees on October 28, 2008. Appellees filed an answer. The trial court has not ruled on the motion.

[4] The letter from Soni's former counsel to Sopka provides in pertinent part:

> Mr. Gussoni paid the appropriate fee and met in early September with Mr. Jim Bauman, the then Assistant Zoning Officer, who suggested that Mr. Gussoni make an application to the Zoning Hearing Board. Confused, Mr. Gussoni pointed out to Mr. Bauman that the property was zoned CN-Commercial Neighborhood, and that the permitted uses complied with his intent, i.e. his prospective tenants' uses. He indicated he would have to look into it. You called Mr. Gussoni in early November and again there was an indication that you would look into it. In the meantime, Mr. Gussoni was going forward, receiving all the proper permits and improving the property. It was just last week you indicated that Mr. Gussoni should go to the Zoning Hearing Board.

prevail in an action in mandamus, there must be a clear legal right for the performance of a ministerial act or mandatory duty, a corresponding duty in the party to perform the ministerial act or duty and the absence of any other appropriate or adequate remedy. *The Council of the City of Philadelphia v. Street, 856 A.2d 893 (Pa. Cmwlth. 2004)*, petition for allowance of appeal denied, *583 Pa. 675, 876 A.2d 397 (2005)*.

In its August 6, 2008 order granting the motion for peremptory judgment, the trial court stated that "the Defendants failure to notify the applicant (Plaintiff) of the denial of the applicants permit application (for nearly one year), requires that said application be deemed approved." (R.R. at 78a.) The trial court then ordered that Soni's application for a zoning permit be approved and directed Reading to issue Soni a certificate of occupancy. Although *Pa. R.A.P. 311(a)(5)* permits an appeal as of right from a peremptory judgment in mandamus, no appeal was taken from the **[*9]** trial court's August 6, 2008 order.

Thus, any argument made by the parties in this case concerning whether Soni had been notified of the denial of its zoning application and whether such notice needed to be in writing is of no moment as the trial court had previously determined that Reading did not notify Soni of the denial of its application, and no appeal was taken therefrom, the trial court's decision became *res judicata*. [5] *Kelso Woods Association v. Swanson, 753 A.2d 894 (Pa. Cmwlth. 2000)*.

We next address the issue of damages. In accordance with *42 Pa. C.S. § 8303*, "[a] person who is adjudged in an action in the nature of mandamus to have failed or refused without lawful justification to perform a duty required by law shall be liable in damages to the person aggrieved by such failure or refusal."

Before **[*10]** addressing Soni's argument, we first address Appellees' contention that Soni failed to plead damages in its complaint. In order to recover damages, a party must request damages in its complaint. Specifically, *Pa. R.C.P. No. 1095* provides that a complaint in mandamus must contain "the damages, if any" and "a prayer for the entry of judgment against the defendant commanding that the defendant perform the act or duty required to be performed and for damages, if any, and costs." *Pa. R.C.P. No. 1095(4)* and *(7)*. Thus, Soni's complaint must set forth and request damages in order to recover. *Maurice A. Nernberg & Associates, 920 A.2d at 970*.

The complaint in this case states that "[t]he amount in controversy, exclusive of interest and costs, exceeds Fifty Thousand Dollars ($ 50,000.00)." (Complaint at P1.) Further in the complaint, Soni alleges that it has suffered damages as a result of Appellees failure to issue use and occupancy permits for the Property. (Complaint at P23, P34.) In its prayer for relief, Soni similarly requests damages. (Complaint at p. 6, 7.)

While we agree with the trial court and Appellees that Soni did not state damages with any specificity in its complaint, the complaint **[*11]** does set forth a claim for damages and requests damages in its prayer for relief. Because pleadings are to be liberally construed, *Vernon D. Cox & Company v. Giles, 267 Pa. Super. 411, 406 A.2d 1107, 1109 n.3 (Pa. Super. 1979)*, we conclude that Soni has complied with the requirements of *Pa. R.C.P. No. 1095(4)* and *(7)*.

As to damages, Soni introduced evidence showing that it had three tenants ready to lease the Property. Because Reading did not issue the use and occupancy permits to Soni until the beginning of 2009, those tenants could not move into the Property when the leases were negotiated and ultimately took their business elsewhere. We agree with the trial court that based on *Stoner*, damages for lost rentals are not within the scope of mandamus damages.

In *Stoner*, this court held that while mandamus damages are not plenary, they include those damages "incidental" to the "specific relief being sought" but do not include "consequential damages or damages arising in connection with transactions or potential transactions with other parties." *Id. at 885*. Thus, any damages alleged due to the loss of tenants are not recoverable in this case.

Soni also argues that it is entitled to incidental damages for its **[*12]** out of pocket expenses in maintaining the Property during the time that the permits were not issued. Specifically, Soni claims that until it received the occupancy and use permits on January 9, 2009, it incurred monthly expenses to maintain the Property, totaling $ 140,000.00, with additional expenses at the rate of $ 8,500.00 per month beginning in March of 2009. Soni argues that the trial court erred in concluding that the damages were speculative and, in addition, not recoverable in a mandamus action.

We reiterate that the damages in a mandamus action must be "clearly related to the defendant's failure to perform a mandatory ministerial function." *School District of Pittsburgh v. City of Pittsburgh, 23 Pa. Commw. 405, 352 A.2d 223, 229*

[5] We note that § 27-201.2.D of the City of Reading Zoning Ordinance requires that the zoning administrator shall "[i]ssue or refuse permits within 30 days of the receipt of the complete application ...." Further, § 27-203.2. of the Ordinance provides that the zoning administrator "shall either issue the zoning permit, [or] refuse the permit, indicating in writing the reasons therefore ...."

(Pa. Cmwlth. 1976). The costs Soni seeks in association with maintaining the Property, which include payment for utility bills, are not the result of Reading's failure to issue the permit. Such costs are not a result of Appellees failure to perform a mandatory ministerial function.

Moreover, the determination of damages is a factual question to be determined by the fact-finder. *Penn Electric Supply Company, Inc. v. Billows Electric Supply Company, Inc., 364 Pa. Super. 544, 528 A.2d 643, 644 (Pa. Super. 1987)*. **[*13]** Here, the trial court rejected the estimate of damages as merely speculative.

In accordance with the above, the decision of the trial court is affirmed.

JIM FLAHERTY, Senior Judge

ORDER

Now, May 28, 2010, the order of the Court of Common Pleas of Berks County, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge

End of Document

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF COMPLIANCE

I, David S. Gaines, Jr., hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

David S. Gaines, Jr.

Dated: October 16, 2018

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I, David S. Gaines, Jr., hereby certify that a true and correct copy of these Preliminary Objections to Plaintiffs' Writ of Mandamus was served by United States first-class mail, postage prepaid, on this sixteenth day of October, 2018, addressed as follows:

Christopher B. Wencker
Shoaf & Wencker, LLC
201 Fifth Street, Suite 201
Huntingdon, PA 16652
Counsel for Plaintiffs

David S. Gaines, Jr.

Dated: October 16, 2018

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	No. 2018-3617
Plaintiffs,	:	
	:	Type of Pleading:
v.	:	**BRIEF IN SUPPORT OF**
	:	**PRELIMINARY OBJECTIONS**
GREGG TOWNSHIP and	:	**TO PLAINTIFFS' PETITION**
JENNIFER SNYDER,	:	**FOR WRIT OF MANDAMUS**
	:	
Defendants.	:	Filed on behalf of Defendants
	:	
	:	Counsel of Record for this Party:
	:	David S. Gaines, Jr.
	:	Pa. I.D. 308932
	:	MILLER, KISTLER & CAMPBELL
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	:	State College, PA 16801
	:	814-234-1500 TEL
	:	814-234-1549 FAX
	:	dgaines@mkclaw.com

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

BRIEF IN SUPPORT OF DEFENDANTS' PRELIMINARY OBJECTIONS TO PLAINTIFFS' PETITION FOR WRIT OF MANDAMUS

The Defendants, Gregg Township and Jennifer Snyder, in her capacity as the open records officer for Gregg Township, by and through the undersigned counsel, hereby file this Brief in Support of Defendants' Preliminary Objections to Plaintiffs' Petition for Writ of Mandamus, stating in support thereof as follows:

I. Introduction

This matter relates to a long series of requests filed by Plaintiffs Michelle Grove under the Right to Know Law ("RTKL"), 65 P.S. §§ 67.101 to 67.3104. Since late 2016, Mrs. Grove has filed approximately 150 RTKL requests with Defendant Gregg Township ("Township") alone. Separately from Gregg Township, Mrs. Grove has pursued similar series of RTKL requests with separate entities like Penns Valley Area School District and Centre County.

The number of requests is only part of the problem giving rise to this dispute; the more troubling issue is the manner by which Mrs. Grove proceeds with her requests. Nearly every one of Mrs. Grove's RTKL requests results in an appeal to the Office Open Records and subsequent courts. And nearly every appeal that Mrs. Grove files is in response to requests being granted and records being provided to Mrs. Grove. In her appeals, Mrs. Grove claims, without any basis in fact, that the Township said that it was providing all responsive documents but actually withheld documents.

In this vein, the Petition for Writ of Mandamus ("Petition") now asks the Court to compel responses to four different RTKL requests. Yet long ago, the Township provided Mrs. Grove with all of responsive documents to those requests—saving, on a limited number of occasions, documents that are undoubtedly protected by the attorney-client privilege. But just like Mrs. Grove's appeals to the Office of Open Records, the Petition claims, without any basis, that the Township has refused to provide all responsive documents. Again, Mrs. Grove simply refuses to believe that the Township has provided her with all responsive documentation.

Merits aside, the Petition suffers from numerous, overarching, legal flaws. For these reasons, the Township respectfully requests that the Court sustain these Preliminary Objections.

II. Factual Background

The following facts are taken from the Petition unless otherwise stated. This mandamus action follows a series of requests made under the RTKL by Plaintiff Michelle Grove. Confusingly, Mr. Grove is named as a party, even though the Petition concedes that he was not involved in the RTKL requests. *Petition* ¶ 4.

Count one of the Petition relates to a RTKL request for surveillance footage of the Old Gregg School. *Id.* ¶¶ 6-17. This RTKL request is the subject of litigation appearing in this Court at docket number 2017-1296. As noted on the Court's docket, the Commonwealth Court entered its decision on June 25, 2018.[1] Ex. 1, *Opinion* (June 25, 2018). The Township thereafter filed a timely application for reargument, which was decided on August 21, 2018. Ex. 2, *Order* (Aug. 21, 2018). Mrs. Grove now claims that the Township did not timely provide a response to the Commonwealth Court's order. *Petition* ¶ 13.

Count two of the Petition relates to a RTKL request for meeting minutes of the Old Gregg School Advisory Board. *Id.* ¶ 19. The Petition contends that the Office of Open Records, through a final determination dated March 8, 2017, compelled the Township to provide these records. *Id.* ¶ 22. The Petition further

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[1] The Court "may take judicial notice of public documents in ruling on a preliminary objection in the nature of a demurrer." *Solomon v. U.S. Healthcare Sys. of Pa.*, 797 A.2d 346, 352 (Pa. Super. Ct. 2002) (citing *Bykowski v. Chesed, Co.*, 625 A.2d 1256, 1258 n.1 (Pa. Super. Ct. 1993)). Further, the Court "may rely on documents forming in part the foundation of the suit even where a plaintiff does not attach such documents to its complaint." *Feldman v. Hoffman*, 107 A.3d 821, 829 (Pa. Commw. Ct. 2014).

contends that the Township refused to provide these records. *Id.* ¶ 23.

Count three of the Petition relates to a RTKL request for Township supervisors' Facebook posts. *Id.* ¶ 33. The Petition contends that the Office of Open Records, through a final determination dated May 7, 2018, compelled the Township to provide these records. *Id.* The Petition further contends that the Township refused to provide these records. *Id.* ¶ 34.

Count four of the Petition relates to a RTKL request for Township emails. *Id.* ¶ 40. The Petition contends that the Office of Records, through a final determination dated May 14, 2018, compelled the Township to provide these records. *Id.* ¶ 44. The Petition further contends that the Township refused to provide these records. *Id.* ¶ 46.

III. Standard of Review

Mandamus "compel[s] official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and a lack of any other adequate and appropriate remedy at law." *Del. River Port Auth. v. Thornburgh*, 493 A.2d 1351, 1355 (Pa. 1985). In particular:

> A writ of mandamus cannot be used to control the exercise of discretion or judgment by a public official or administrative or judicial tribunal; to review or compel the undoing of an action taken by such an official or tribunal in good faith and in the exercise of legitimate jurisdiction, even though the decision was wrong; to

> influence or coerce a particular determination of the issue involved; or to perform the function of an appeal or writ of error.

Pa. Dental Ass'n v. Commonwealth Ins. Dep't, 516 A.2d 647, 652 (Pa. 1986).

A determination of whether mandamus lies in a given case is within the discretion of the Court. *Branchick v. Dep't of Labor & Indus.*, 436 A.2d 1182, 1183 (Pa. 1981). Additionally, "the procedure in the action of mandamus shall be in accordance with the rules relating to a civil action." Pa. R.C.P. 1091.

Pennsylvania Rule of Civil Procedure 1028(a) allows the Court to grant preliminary objections with respect to the "legal insufficiency of a pleading (demurrer)." Pa. R.C.P. 1028(a)(4). Preliminary objections in the nature of a demurrer test the legal sufficiency of the plaintiffs' pleading. *State Farm Mut. Auto. Ins. Co. v. Ware's Van Storage*, 953 A.2d 568, 571 (Pa. Super. Ct. 2008) (citing *Sexton v. PNC Bank*, 792 A.2d 602, 604 (Pa. Super. Ct. 2002)). When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. *Lenau v. Co-eXprise, Inc.*, 102 A.3d 423, 429 (Pa. Super. Ct. 2014), *appeal denied*, 113 A.3d 280 (Pa. 2015).

A demurrer should be granted when the relevant pleading has "failed to state a claim for which relief can be granted." *Clark v. Beard*, 918 A.2d 155, 158 n.4 (Pa. Commw. Ct. 2007) (citing *Composition Roofers Local 30/30B v. Katz*, 581

A.2d 607, 609 (Pa. Super. Ct. 1990)). "A preliminary objection in the nature of a demurrer will be granted where the contested pleading is legally insufficient." *Cardenas v. Schober*, 783 A.2d 317, 321 (Pa. Super. Ct. 2001) (citing Pa. R.C.P. 1028(a)(4)).

IV. Legal Argument

A. The Petition Should Be Dismissed Insofar as It Seeks Statutory Penalties Under the RTKL, Because Damages Are Limited and Such Penalties Are Unavailable in a Mandamus Action, Which Compels Performance Rather than Imposing Damages.

As an initial matter, the Petition seeks various penalties against the Township for allegedly violating the RTKL. Those penalties, which appear under the RTKL, plainly do not apply to this action under Pennsylvania Rules of Civil Procedure 1091 to 1100.

Preliminarily, it bears noting that the Petition itself recognizes that monetary damages are generally unavailable to Mr. and Mrs. Grove. Paragraphs fifteen, twenty-five, thirty-six, and fifty of the Petition cites the various governmental immunity statutes and then states as follows:

> The Plaintiffs lack and other adequate remedy at law for the relief they seek, as an award of damages will not satisfy their need for the security camera footage, and damages are not available to the Plaintiffs pursuant to 42 Pa. C.S.A. §§ 8541 and 8545.

Petition ¶¶ 15, 25, 36, and 50 (emphasis added).

Regardless, and despite recognizing that monetary damages are generally unavailable to Mr. and Mrs. Grove, the very next paragraphs of the Petition seek statutory damages. *Id.* ¶¶ 16, 17, 26, 27, 37, 38, 51, and 52. To justify this request, Mr. and Mrs. Grove cite two provisions of the RTKL, 65 P.S. § 67.1304 and 65 P.S. § 67.1305.

Sections 67.1304 and 67.1305 relate to RTKL appeals, not writs of mandamus. They are contained within the "Judicial Review" subchapter of the RTKL, just after the sections addressing how an individual may appeal from a decision of the Office of Open Records to the trial court. *See* 65 P.S. § 67.1302(a) ("Within 30 days of the mailing date of the final determination of the appeals officer . . ., a requester or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located.").

This action obviously does not fall under the RTKL "Judicial Review" procedures. It is, to the contrary, a writ of mandamus falling under a completely different set of procedural statutes—the Mandamus Act, which is codified at Pennsylvania Rules of Civil Procedure 1091 through 1100. If the procedural portions of the RTKL did apply, which is again not the case, then the Court would presumably need to follow all of the other portions of that chapter, including serving the Office of Open Records under 65 P.S. § 67.1303(a), requiring the

Office of Open Records to provide a record of the proceedings below under 65 P.S. § 67.1303(b), and following specific findings of fact and conclusions of law procedures under 65 P.S. § 67.1302(a), among other requirements. It would obviously be absurd to apply those provisions to this Petition, so it is similarly absurd to argue that related damages provisions apply to this Petition.

Moreover, damages in a mandamus action "are not plenary." *Stoner v. Merion*, 587 A.2d 879, 885 (Pa. Commw. Ct. 1991). Instead, "[d]amages recoverable in mandamus are those incidental to the specific relief being sought." *Id.* (citing *Kane v. Stucker*, 48 A.2d 162 (Pa. Super. Ct. 1946)). Damages must "be 'clearly related to the defendant's failure to perform a mandatory ministerial function.'" *Soni Props., LLC v. City of Reading*, 2010 Pa. Commw. Unpub. LEXIS 338, at *12 (Commw. Ct. May 28, 2010) *(quoting Sch. Dist. of Pittsburgh v. City of Pittsburgh*, 352 A.2d 223, 229 (Pa. Commw. Ct. 1976)). "For example, where mandamus is issued to compel the reinstatement of a public employee in employment, the damages have regularly been confined to those arising from the absence of employment over the period, i.e., the loss of salary or net loss of income." *Id.* (citing *Langan v. Sch. Dist. of City of Pittston*, 6 A.2d 772 (1939)). Because a mandamus plaintiff may only receive incidental damages, consequential damages are unavailable. *Id.*

The Petition in this matter asks the Court to go well beyond its ability to

impose damages. Rather than seek the incidental damages for the alleged failure to provide certain RTKL records, Mr. and Mrs. Grove ask the Court to bootstrap penalty provisions that appear in the RTKL to impose those penalties on the Township. The Petition altogether fails to explain how such penalties could possibly be allowed, when even standard consequential damages are unavailable in a mandamus action.

Simply put, this Court must follow the procedures applicable to mandamus actions, not RTKL actions. By arguing that the Township could be liable in this mandamus action to pay penalties that apply solely to RTKL actions, the Petition seeks relief that goes well beyond the available remedies. The Petition should, therefore, be dismissed to the extent that it seeks penalties under 65 Pa. C.S. § 67.1304 and 65 P.S. § 67.1305.

B. Count One of the Petition Should Be Dismissed, Because Mr. and Mrs. Grove Do Not Have an Even Arguably "Clear" Right to Relief, Given that the Township Did Not Need to Provide Records in Response to the Commonwealth Court Appeal Until After the Petition for Writ of Mandamus Was Filed.

Mandamus is available "only where there is a clear legal right in the plaintiff." *Mellinger v. Kuhn*, 130 A.2d 154, 155 (Pa. 1957). Count one of the Petition contends that "the Defendants have refused to release the security camera footage," which is the subject of litigation appearing at docket number 2017-1296. *Petition* ¶ 13. This count cannot prevail because the Township was not required to

provide Mrs. Grove with the desired security footage on or before the date of her Petition. Because Plaintiffs' right to relief in count one is not "clear," this count should be dismissed.

On June 25, 2018, the Commonwealth Court reversed this Court and required the Township to provide Mrs. Grove with the desired surveillance footage of the Old Gregg School. Ex. 1, *Opinion* (June 25, 2018). On July 9, 2018, the Township filed an application for reargument with the Commonwealth Court, which the Commonwealth Court decided on August 21, 2018. Ex. 2, *Order* (Aug. 21, 2018).

The Commonwealth Court's order was not final until September 20, 2018. In the words of Pennsylvania Rule of Appellate Procedure 2572, "The court possessed of the record shall remand 30 days after either the entry of a final order or the disposition of all post-decision applications, whichever is later." Pa. R.A.P. 2572(b). The time for filing an appeal to the Supreme Court is the same—under Pennsylvania Rule of Appellate Procedure 1113, "the time for filing a petition for allowance of appeal [to the Supreme Court] for all parties shall run from the entry of the order denying reargument . . . ." Pa. R.A.P. 1113(a)(1).

Given that the disposition of the application for reargument occurred on August 21, 2018, the order of the Commonwealth Court did not even become final until September 20, 2018. Mr. and Mrs. Grove filed their Petition on September

13. Count one should, therefore, be dismissed unless Mr. and Mrs. Grove can allege that the Township did not provide them with video even after September 20, 2018.[2]

C. Count Two of the Petition Should Be Dismissed, Because It Falls Well Outside the Relevant Statute of Limitations.[3]

In its second count, the Petition argues that the Township failed to respond to a decision of the Office of Open Records dated March 8, 2017. *Petition* ¶ 22. This count should fail, because writs of mandamus have only a six-month limitations period, and the Petition was filed some fifteen months after the Township's required response to the relevant decision.

Actions in mandamus have a six-month limitations period. *Capinksi v. Upper Pottsgrove Twp.*, 164 A.3d 601, 610 (Pa. Commw. Ct. 2017) (citing 42 Pa. C.S. § 5522(b)(1)). The Township had thirty days to comply with the Office of Open Records decision dated March 8, 2017. *See* 65 P.S. § 67.1302(a). Consequently, count two of the Petition seeks relief based on conduct that, by law, must have occurred by April 7, 2017.

---

[2] This is not the case. The Township provided Mr. and Mrs. Grove with the video on September 13, 2018, well within the required timeframe.

[3] Limitations issues may be raised through preliminary objections if such issues are apparent on the face of a Complaint. *Reuben v. O'Brien*, 445 A.2d 801, 802-03 (Pa. Super. Ct. 1982).

The Petition was filed fifteen months later, in September of 2018. Count two is, therefore, well outside of the relevant limitations period and should be dismissed.

D. Plaintiff Casey Grove Should Be Dismissed as a Party Because He Was Not Involved in the RTKL Requests at Issue.

Finally, Mr. Grove is not a proper party to this action. A "party, seeking to challenge governmental action, 'must show a direct and substantial interest," *i.e.*, an interest other than that of the general public which will be adversely affected by the challenged action.'" *Citizens for State Hosp. v. Commonwealth*, 553 A.2d 496, 498 (Pa. Commw. Ct. 1989) (quoting *William Penn Parking Garage, Inc. v. City of Philadelphia*, 346 A.2d 269, 286 (Pa. 1975)). Mr. Grove did not participate in any of the RTKL appeals at issue. *Petition* ¶ 4. He, therefore, lacks any relationship to the matters at bar and should be dismissed as a party.

To get around this fact, the Petition contains the following, confusing allegation:

> Although the records requests described herein were each submitted by only one of the Plaintiffs, each of the Plaintiffs has an interest in each of the records requested, and each request should be considered as having been made by both of the Plaintiffs.

Petition ¶ 4. This solitary allegation fails to explain why Mr. Grove, who again was not a party to any of the RTKL appeals at issue, is a proper party before the Court.

V. Conclusion

For the reasons set forth above, the Defendants, Gregg Township and Jennifer Snyder, in her capacity as the open records officer for Gregg Township, hereby request that the Court sustain these Preliminary Objections.

Respectfully submitted,

David S. Gaines, Jr.
Pa. I.D. No. 308932
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Solicitor for Defendant

Dated: October 16, 2018

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregg Township	:	
	:	
v.	:	No. 1186 C.D. 2017
	:	Submitted: April 20, 2018
Michelle Grove,	:	
Appellant	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY PRESIDENT JUDGE LEAVITT

FILED: June 25, 2018

Michelle Grove (Requester), *pro se*, appeals an order of the Court of Common Pleas of Centre County (trial court) denying her Right-to-Know Law[1] request for certain footage from security cameras in the Old Gregg School, which is used for municipal offices. In doing so, the trial court reversed the final determination of the Office of Open Records (OOR) that the information requested from Gregg Township (Township) was disclosable. Requester contends that the trial court erred in holding that the disclosure of the security camera footage would jeopardize public safety or endanger the physical security of the building. Concluding that the Township's affidavit did not support either finding of the trial court, we reverse.

On December 29, 2016, Requester submitted a written request to the Township for the

[1] Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101-67.3104.

> 12/29/16 security footage of Joel Myers and Doug Bierly entering and exiting the office and the time in between (one continuous recording).

Reproduced Record at 3 (R.R. __). On January 23, 2017, the Township denied the request, asserting that the requested security footage was exempt from disclosure for the stated reason that its release "would be reasonably likely to jeopardize or threaten public safety...[,]" and would "create[ ] a reasonable likelihood of endangering the safety or the physical security of a building...." Section 708(b)(2) and (3) of the Right-to-Know Law, 65 P.S. §67.708(b)(2), (3).

Requester appealed to the OOR arguing, among other things, that the Township had previously granted her requests for security footage and that release of the requested information would not threaten either the public safety or the building's security. In response, the Township reiterated its reasons for denying the request and submitted a sworn attestation of Jennifer Snyder (Snyder affidavit), the Right-to-Know Officer for the Township, which stated, in relevant part:

> 18. [T]he Township relies on the relevant security cameras to ensure safety and verify that the public uses the Old Gregg School in an appropriate manner.
>
> 19. The Township installed the security cameras after a security assessment by local security officials, including a police lieutenant and the current Sheriff of Centre County....
>
> 20. After the aforementioned security assessment, the Township proceeded to install security cameras for safety and security reasons.
>
> 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.

R.R. 17-18.

The OOR issued a final determination granting Requester's appeal. The OOR explained that the area described in the request, *i.e.*, the front of the Old Gregg School, was public. Further, the Township's affidavit did not demonstrate how knowledge of the security camera's location in this public area would be reasonably likely to pose a threat.

The Township filed a petition for review with the trial court, asserting various exceptions under the Right-to-Know Law. By order of July 26, 2017, the trial court reversed the OOR's final determination, holding that the security footage was exempt from disclosure under Section 708(b)(2) and (3) of the Right-to-Know Law, 65 P.S. §67.708(b)(2), (3). The trial court explained:

> [t]he public is permitted to access the building during certain daytime hours but the building is closed at night, with surveillance cameras providing the only security. It is reasonably likely the disclosure would threaten public safety at the Old Gregg School by exposing the scope of the surveillance coverage that is unknown to the general public.
>
> * * *
>
> [Additionally, t]he building is home to the municipal offices and numerous groups and needs to be properly monitored. Building security would be impaired and threatened by having the surveillance coverage exposed and could endanger the safety of those people using the building.

Trial Court Op., 7/26/2017, at 4. Requester appealed to this Court.[2]

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[2] This Court's review in a Right-to-Know Law appeal determines "whether the trial court committed an error of law and whether its findings of fact are supported by substantial evidence."

On appeal, Requester raises eight issues for consideration by this Court.[3] Most of Requester's issues have not been developed in the argument section of her brief and, thus, will not be addressed. The relevant question Requester has preserved for appeal is whether the security footage she requested is exempt from disclosure under Section 708(b)(2) and (3) of the Right-to-Know Law. Requester argues that disclosure of the limited footage she requested is not "reasonably likely" to jeopardize public safety. Requester Brief at 14.

We begin with a review of the Right-to-Know Law, which requires local agencies to provide access to public records upon request. *See* Section 302(a) of the Right-to-Know Law, 65 P.S. §67.302(a) ("A local agency shall provide public records in accordance with this act."). Records in the possession of a local agency

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Paint Township v. Clark, 109 A.3d 796, 803 n.5 (Pa. Cmwlth. 2015). The statutory construction of the Right-to-Know Law is a question of law, for which our scope of review is plenary, and our standard of review is *de novo*. *Hearst Television, Inc. v. Norris*, 54 A.3d 23, 29 (Pa. 2012).

[3] They are:

(1) Does [Requester] publish tax lists indicating which residents have and have not paid taxes?

(2) Is it relevant that [Requester] maintains a website providing public records relating to the [T]ownship?

(3) Is the disclosure of surveillance video from the hall "reasonably likely" to threaten public safety?

(4) Is it relevant that the cameras in the hall are in public view?

(5) Is it relevant that surveillance footage of the hall had been disclosed on multiple occasions in the months leading up to this request?

(6) Is it relevant that [Requester] was permitted into the secure office to video record directly from the surveillance monitor in those instances?

(7) Is it relevant that the footage requested was from a non-public, non-advertised meeting between two Supervisors?

(8) Is it relevant that [Requester] was present in the hall during this meeting and overheard the discussion that took place and the decisions that were made by the two Supervisors?

Requester Brief at 9.

are presumed to be a public record unless exempt under Section 708 of the Right-to-Know Law, 65 P.S. §67.708; protected by a privilege; or exempt from disclosure under a federal or state law or judicial order. Section 305(a) of the Right-to-Know Law, 65 P.S. §67.305(a). The local agency has the burden of proving that a record is exempt by a preponderance of the evidence. Section 708(a)(1) of the Right-to-Know Law, 65 P.S. §67.708(a)(1).

Section 708(b)(2) exempts from disclosure records "maintained by an agency in connection with ... 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[.]" 65 P.S. §67.708(b)(2) (emphasis added). To satisfy this exemption, the local agency must prove that (1) the record at issue relates to a law enforcement or public safety activity; and (2) disclosure of the record would be "reasonably likely" to threaten public safety or a public protection activity. *Carey v. Department of Corrections*, 61 A.3d 367, 374-75 (Pa. Cmwlth. 2013). "In interpreting the 'reasonably likely' part of the test, as with all the security-related exceptions, we look to the likelihood that disclosure would cause the alleged harm, requiring more than speculation." *Id.* at 375.

Similarly, Section 708(b)(3) of the Right-to-Know Law exempts from public access "[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...." 65 P.S. §67.708(b)(3) (emphasis added). "For this exemption to apply, 'the disclosure of' the records, rather than the records themselves, must create a reasonable likelihood of endangerment to the safety or physical security of certain structures or other entities, including infrastructures." *Smith on behalf of Smith Butz, LLC v. Pennsylvania*

Department of Environmental Protection, 161 A.3d 1049, 1062 (Pa. Cmwlth. 2017). Again, "'[r]easonably likely' has been interpreted as 'requiring more than speculation.'" *Id.* at 1062-63 (citing *Carey*, 61 A.3d at 375).

The Township urges that we affirm the trial court, arguing that its security cameras are "the only realistic means of ensuring public safety at the Old Gregg School, and that the security system is the result of a security audit performed by law enforcement personnel." Township Brief at 14. The locations of some security cameras are confidential because they have been placed in inconspicuous places throughout the building. Even where cameras are visible, the width of the lens is not obvious to a passerby. The Township contends that the release of even limited security footage would expose vulnerabilities in the surveillance system and, thus, endanger public safety.[4] Township Brief at 7.

Snyder's affidavit established that cameras were installed for security of the building. The question is whether the affidavit established that disclosure of the requested security camera footage would be "reasonably likely" to threaten public safety or the security of the building.

First, the Snyder affidavit is silent as to what is depicted on the requested camera footage. Second, the affidavit refers generally to *all* the security cameras at the Old Gregg School and does not explain why the disclosure of specific footage from one camera will jeopardize the building's security and the public safety. Third, the affidavit does not explain how the Township uses the cameras to enhance public and building safety; for example, the affidavit does not state whether

[4] The State Association of Township Supervisors has filed an *amicus curiae* brief in support of the Township.

the cameras are monitored contemporaneously. Finally, the affidavit does not address whether any of the information requested can be redacted.

Snyder's affidavit offers conclusory statements that both public safety and building security will be jeopardized. Without explaining details, the affidavit provides no more than speculation. This does not suffice.

The Township acknowledges that it has allowed Requester to view security footage in the past. The Township argues that this prior act does not preclude it from asserting the exemption this time. We agree that a prior disclosure, whether done accidentally or intentionally, does not require repeated disclosure of similar information. A government agency may correct mistakes; it is not forever bound to repeat them. Nevertheless, the Township's prior disclosure undermines its claim that another disclosure would be dangerous. The Township does not assert, for example, that its prior disclosure has harmed the public safety or compromised building security in any way.

The Township complains that Requester publishes public records on the internet. This is not a valid reason to deny the request. *See* Section 302(b) of the Right-to-Know Law, 65 P.S. §67.302(b) (A local agency "may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law."); *see also Hunsicker v. Pennsylvania State Police*, 93 A.3d 911, 913 (Pa. Cmwlth. 2014) (stating that "the reason for the request, good or bad, [is] irrelevant as to whether a document must be made accessible...."). Further, if this camera footage is already available online, then the Township needed to show how the addition of new footage would undermine building security and public safety.

The State Association of Township Supervisors, *amicus curiae*, directs this Court to *Gilleran v. Township of Bloomfield*, 149 A.3d 800 (N.J. 2016), which considered New Jersey's version of our Right-to-Know Law. In *Gilleran*, the requester sought 14 hours of video footage from a security camera located on the second floor of the Town Hall that was adjacent to the police station. The township asserted that the recording was protected under the security exclusions of New Jersey's Open Public Records Act.[5] It noted that the cameras would likely show confidential informants or domestic abuse victims going to the police station. A divided panel of the New Jersey Supreme Court held that "wholesale release" of the videotape product of a single security camera or a "combination of cameras from a government facility's security system would reveal information about a system's operation and also its vulnerabilities." *Id.* at 810. The dissent agreed with this logic but concluded that the majority's holding could not be squared with the plain language of the statute.

Gilleran provides little instructive value. First, it construes a statute that is similar but not identical to Pennsylvania's Right-to-Know Law. Second, it is distinguishable because the instant case does not involve a "wholesale release" of videotape product. Requester has sought limited camera footage, not 14 hours of

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[5] N.J. STAT. ANN. §§ 47:1A-1 - 13. Under Section 47:1A-1.1, a government record does not include the following information:

* * *

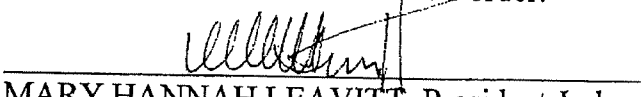
> emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein;
>
> security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software;

* * *

N.J. STAT. ANN. § 47:1A-1.1.

footage. She seeks footage from one camera, not a combination of multiple cameras. Simply, the Township did not meet its burden of showing more than speculation that the discrete information sought by Requester will undermine the building's security and public safety.

For the above stated reasons, we reverse the trial court's order.



MARY HANNAH LEAVITT, President Judge

Senior Judge Colins dissents.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregg Township	:	
	:	
v.	:	No. 1186 C.D. 2017
	:	
Michelle Grove,	:	
Appellant	:	

ORDER

AND NOW, this 25th day of June, 2018, the order of the Court of Common Pleas of Centre County dated July 26, 2017, in the above-captioned matter is REVERSED.

MARY HANNAH LEAVITT, President Judge

EXHIBIT 2

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregg Township	:	
	:	
v.	:	No. 1186 C.D. 2017
	:	
Michelle Grove,	:	
Appellant	:	

ORDER

NOW, August 21, 2018, having considered appellee's application for reargument, the application is denied.

MARY HANNAH LEAVITT,
President Judge

Certified from the Record
AUG 21 2018
And Order Exit

Soni Props., LLC v. City of Reading

Commonwealth Court of Pennsylvania

March 15, 2010, Argued; May 28, 2010, Decided; May 28, 2010, Filed

No. 2559 C.D. 2009

Reporter
2010 Pa. Commw. Unpub. LEXIS 338 *; 2010 WL 9520416

Soni Properties, LLC, Appellant v. City of Reading and Cynthia Sopka

Notice: OPINION NOT REPORTED

Prior History: *Soni Props., LLC v. City of Reading, 994 A.2d 1206, 2010 Pa. Commw. LEXIS 291 (Pa. Commw. Ct., 2010)*

Core Terms

damages, trial court, zoning, mandamus, permits, occupancy, peremptory, zoning administrator, ministerial, leases, notify

Judges: [*1] BEFORE: HONORABLE RENEE COHN JUBELIRER, Judge, HONORABLE PATRICIA A. McCULLOUGH, Judge, HONORABLE JIM FLAHERTY, Senior Judge.

Opinion by: JIM FLAHERTY

Opinion

MEMORANDUM OPINION BY SENIOR JUDGE FLAHERTY

Soni Properties, LLC (Soni) appeals from an order of the Court of Common Pleas of Berks County (trial court), denying its motion for post-trial relief. In doing so, the trial court affirmed its verdict of February 17, 2009, wherein it determined that the Appellees, City of Reading (Reading) and Cynthia Sopka (Sopka), were not liable to Soni for damages. We affirm.

This case concerns zoning and use and occupancy permits for property located at 1626 Perkiomen Avenue in Reading, Pennsylvania (Property). Soni entered into an agreement of sale to purchase the Property on July 18, 2007. The agreement of sale contained a provision calling for the seller to arrange a "One Call meeting" (Meeting) with authorities in Reading to discuss the use of the Property. On August 23, 2007, Soni attended the Meeting and met with inspectors and heads of various departments of Reading, including Sopka, the zoning administrator and Steve Franco, the chief building inspector.

At the Meeting, Sopka indicated that she did not see any **[*2]** problems with the zoning issues for the Property, but instructed Soni to schedule an official meeting with Reading's zoning department. On the same day, Soni went to the public works department, where it received permits for remodeling the Property. Soni thereafter acquired title to the Property by deed dated August 29, 2007.

On September 5, 2007, Soni completed a zoning application for the Property and met with James Mohn (Mohn), the acting zoning administrator. [1] Mohn told Soni he would review the plans and be in touch.

According to Soni, it learned in December of 2007, through one of its sub-contractors, that no zoning permit had been issued for the Property.

On June 12, 2008, Soni commenced an action by filing a three count complaint in mandamus alleging, among other things, that it was entitled to zoning and use and occupancy permits for the Property, and damages in excess of $ 50,000.00 as a result of Reading's and Sopka's failure **[*3]** to take any action on Soni's zoning application and/or to provide Soni with a written explanation for its failure to do so. Appellees filed an answer.

Thereafter, Soni filed a motion for partial peremptory judgment and the trial court conducted a hearing on July 22, 2008. [2] In an order dated August 6, 2008, the trial court granted Soni's motion, concluding that Appellees failed to notify Soni of the denial of its zoning application for nearly

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[1] A review of the testimony indicates that Mohn is employed by The Associates, which is employed by the City of Reading. Mohn began serving as the active zoning administrator, the highest position in the zoning department, beginning in 2006. (R.R. at 96a.)

[2] Soni claims that it was not until the hearing that it learned the specifics of the denial of its zoning application.

one year and deemed the zoning application approved. The trial court also ordered Appellees to issue a certificate of occupancy to Soni. [3]

Thereafter, counsel for both parties appeared before the trial court requesting that the case be certified **[*4]** for trial, so that Soni could pursue its claim for damages. After a bench trial, the trial court issued a verdict in favor of Appellees, concluding that Appellees were not liable to Soni for damages. Soni thereafter filed a motion for post-trial relief, which the trial court denied. Soni then filed a notice of appeal and, thereafter, Soni complied with the trial court's order to file a concise statement of matters complained of on appeal.

On May 12, 2009, the trial court issued an opinion in support of its verdict regarding damages. In the opinion, the trial court stated that at the hearing on damages, testimony and evidence were presented which were not presented at the hearing for partial peremptory judgment. If such testimony had been previously presented, the trial court indicated that it would not have issued the order directing Appellees to issue a permit to Soni, inasmuch as the testimony undermined Soni's case. Specifically, Mohn, who did not testify at the hearing for partial peremptory judgment, testified at the hearing on damages that a decision to deny Soni's zoning application had been reached on September 7, 2007, and that he phoned Soni informing it of the decision. The **[*5]** trial court found the testimony of Mohn to be credible, as it was consistent with the contents of Appellees Exhibit 11, a March 13, 2008 letter which indicated that Soni was aware that it did not have approval of its zoning application. [4]

As to Soni's request for damages, the trial court stated that mandamus damages are not plenary, and the damages recoverable are those incidental **[*6]** to specific relief being sought. *Stoner v. Township of Lower Merion, 138 Pa. Commw. 257, 587 A.2d 879 (Pa. Cmwlth. 1991)*, petition for allowance of appeal denied, *529 Pa. 660, 604 A.2d 252 (1992)*. In *Stoner*, this court determined that landowners who sought mandamus to compel approval of a subdivision could not recover as mandamus damages any loss of bargain with respect to a contract to sell one of the lots.

The trial court, in this case, determined that the damages requested were not incidental to the relief sought through mandamus and thus, were not appropriate. Soni sought consequential damages which are not appropriate in a mandamus action. Specifically, Soni's alleged damages consisted of the money to be received from leasing the Property, but the leases were neither witnessed nor notarized and the principal of Soni, Frank Gussoni (Gussoni) was well aware that he did not have zoning approval for the Property. In support of its determination that Soni knew it did not have zoning approval, the trial court also relied on Exhibit 11, a letter dated March 13, 2008, which was sent by Soni's former counsel to Sopka, and copied to Gussoni. In the letter, counsel confirmed that in August of 2007, long before **[*7]** any leases on the Property were negotiated and executed, Soni was aware that it did not have the proper zoning approval.

In this appeal, we note that where a trial court denies mandamus damages, this court's review is limited to determining whether the trial court abused its discretion or committed an error of law. *Maurice A. Nernberg & Associates v. Coyne, 920 A.2d 967 (Pa. Cmwlth. 2007)*.

In its brief to this court, Soni maintains that the trial court erred in finding that Appellees had notified Soni of the denial of its zoning application, that the trial court erred in concluding that Appellees were not required to provide it with written notice of its zoning application denial and that the trial court erred when it entered its verdict in favor of Appellees and against Soni on Soni's claim for damages.

In addressing the first two issues, we note that procedurally, the trial court initially granted Soni's motion for partial peremptory judgment. A peremptory judgment in a mandamus action is appropriately entered when there are no genuine issues of fact and where the case is free and clear from doubt. *Shaler Area School District v. Salakas, 494 Pa. 630, 432 A.2d 165 (1981)*. Mandamus is **[*8]** an extraordinary writ and is a remedy used to compel performance of a ministerial act or a mandatory duty. *Washowich v. McKeesport Municipal Water Authority, 94 Pa. Commw. 509, 503 A.2d 1084 (Pa. Cmwlth. 1996)*. In order to

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[3] As of October 2008, the certificate of occupancy had not been issued and the trial court issued an order directing that Appellees issue the certificate no later than October 24, 2008. Appellees failed to comply and Soni filed a motion for adjudication of civil contempt and sanctions against Appellees on October 28, 2008. Appellees filed an answer. The trial court has not ruled on the motion.

[4] The letter from Soni's former counsel to Sopka provides in pertinent part:

> Mr. Gussoni paid the appropriate fee and met in early September with Mr. Jim Bauman, the then Assistant Zoning Officer, who suggested that Mr. Gussoni make an application to the Zoning Hearing Board. Confused, Mr. Gussoni pointed out to Mr. Bauman that the property was zoned CN-Commercial Neighborhood, and that the permitted uses complied with his intent, i.e. his prospective tenants' uses. He indicated he would have to look into it. You called Mr. Gussoni in early November and again there was an indication that you would look into it. In the meantime, Mr. Gussoni was going forward, receiving all the proper permits and improving the property. It was just last week you indicated that Mr. Gussoni should go to the Zoning Hearing Board.

prevail in an action in mandamus, there must be a clear legal right for the performance of a ministerial act or mandatory duty, a corresponding duty in the party to perform the ministerial act or duty and the absence of any other appropriate or adequate remedy. *The Council of the City of Philadelphia v. Street, 856 A.2d 893 (Pa. Cmwlth. 2004)*, petition for allowance of appeal denied, *583 Pa. 675, 876 A.2d 397 (2005)*.

In its August 6, 2008 order granting the motion for peremptory judgment, the trial court stated that "the Defendants failure to notify the applicant (Plaintiff) of the denial of the applicants permit application (for nearly one year), requires that said application be deemed approved." (R.R. at 78a.) The trial court then ordered that Soni's application for a zoning permit be approved and directed Reading to issue Soni a certificate of occupancy. Although *Pa. R.A.P. 311(a)(5)* permits an appeal as of right from a peremptory judgment in mandamus, no appeal was taken from the **[*9]** trial court's August 6, 2008 order.

Thus, any argument made by the parties in this case concerning whether Soni had been notified of the denial of its zoning application and whether such notice needed to be in writing is of no moment as the trial court had previously determined that Reading did not notify Soni of the denial of its application, and no appeal was taken therefrom, the trial court's decision became *res judicata.* [5] *Kelso Woods Association v. Swanson, 753 A.2d 894 (Pa. Cmwlth. 2000)*.

We next address the issue of damages. In accordance with *42 Pa. C.S. § 8303*, "[a] person who is adjudged in an action in the nature of mandamus to have failed or refused without lawful justification to perform a duty required by law shall be liable in damages to the person aggrieved by such failure or refusal."

Before **[*10]** addressing Soni's argument, we first address Appellees' contention that Soni failed to plead damages in its complaint. In order to recover damages, a party must request damages in its complaint. Specifically, *Pa. R.C.P. No. 1095* provides that a complaint in mandamus must contain "the damages, if any" and "a prayer for the entry of judgment against the defendant commanding that the defendant perform the act or duty required to be performed and for damages, if any, and costs." *Pa. R.C.P. No. 1095(4)* and *(7)*. Thus, Soni's complaint must set forth and request damages in order to recover. *Maurice A. Nernberg & Associates, 920 A.2d at 970*.

The complaint in this case states that "[t]he amount in controversy, exclusive of interest and costs, exceeds Fifty Thousand Dollars ($ 50,000.00)." (Complaint at P1.) Further in the complaint, Soni alleges that it has suffered damages as a result of Appellees failure to issue use and occupancy permits for the Property. (Complaint at P23, P34.) In its prayer for relief, Soni similarly requests damages. (Complaint at p. 6, 7.)

While we agree with the trial court and Appellees that Soni did not state damages with any specificity in its complaint, the complaint **[*11]** does set forth a claim for damages and requests damages in its prayer for relief. Because pleadings are to be liberally construed, *Vernon D. Cox & Company v. Giles, 267 Pa. Super. 411, 406 A.2d 1107, 1109 n.3 (Pa. Super. 1979)*, we conclude that Soni has complied with the requirements of *Pa. R.C.P. No. 1095(4)* and *(7)*.

As to damages, Soni introduced evidence showing that it had three tenants ready to lease the Property. Because Reading did not issue the use and occupancy permits to Soni until the beginning of 2009, those tenants could not move into the Property when the leases were negotiated and ultimately took their business elsewhere. We agree with the trial court that based on *Stoner*, damages for lost rentals are not within the scope of mandamus damages.

In *Stoner*, this court held that while mandamus damages are not plenary, they include those damages "incidental" to the "specific relief being sought" but do not include "consequential damages or damages arising in connection with transactions or potential transactions with other parties." *Id. at 885*. Thus, any damages alleged due to the loss of tenants are not recoverable in this case.

Soni also argues that it is entitled to incidental damages for its **[*12]** out of pocket expenses in maintaining the Property during the time that the permits were not issued. Specifically, Soni claims that until it received the occupancy and use permits on January 9, 2009, it incurred monthly expenses to maintain the Property, totaling $ 140,000.00, with additional expenses at the rate of $ 8,500.00 per month beginning in March of 2009. Soni argues that the trial court erred in concluding that the damages were speculative and, in addition, not recoverable in a mandamus action.

We reiterate that the damages in a mandamus action must be "clearly related to the defendant's failure to perform a mandatory ministerial function." *School District of Pittsburgh v. City of Pittsburgh, 23 Pa. Commw. 405, 352 A.2d 223, 229*

[5] We note that § 27-201.2.D of the City of Reading Zoning Ordinance requires that the zoning administrator shall "[i]ssue or refuse permits within 30 days of the receipt of the complete application ...." Further, § 27-203.2. of the Ordinance provides that the zoning administrator "shall either issue the zoning permit, [or] refuse the permit, indicating in writing the reasons therefore ...."

(Pa. Cmwlth. 1976). The costs Soni seeks in association with maintaining the Property, which include payment for utility bills, are not the result of Reading's failure to issue the permit. Such costs are not a result of Appellees failure to perform a mandatory ministerial function.

Moreover, the determination of damages is a factual question to be determined by the fact-finder. *Penn Electric Supply Company, Inc. v. Billows Electric Supply Company, Inc., 364 Pa. Super. 544, 528 A.2d 643, 644 (Pa. Super. 1987)*. **[*13]** Here, the trial court rejected the estimate of damages as merely speculative.

In accordance with the above, the decision of the trial court is affirmed.

JIM FLAHERTY, Senior Judge

ORDER

Now, May 28, 2010, the order of the Court of Common Pleas of Berks County, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge

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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PA
CIVIL ACTION – LAW

MICHELLE and CASEY GROVE,	:	
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Plaintiffs,	:	
	:	
v.	:	No. 2018-3617
	:	
GREGG TOWNSHIP and JENNIFER SNYDER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF COMPLIANCE

I, David S. Gaines, Jr., hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

David S. Gaines, Jr.

Dated: October 16, 2018

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	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I, David S. Gaines, Jr., hereby certify that a true and correct copy of this Brief in Support of Defendants' Preliminary Objections to Plaintiffs' Writ of Mandamus was served by United States first-class mail, postage prepaid, on this sixteenth day of October, 2018, addressed as follows:

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Counsel for Plaintiffs

David S. Gaines, Jr.

Dated: October 16, 2018