

**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

MICHELLE GROVE,
Plaintiff

v.

GREGG TOWNSHIP and
JENNIFER SNYDER,
Defendants

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No. 2018-3617

Attorney for Plaintiff:
Attorney for Defendants:

Christopher B. Wencker, Esq.
David S. Gaines, Jr., Esq.

OPINION and ORDER

Ruest, J.

Presently before the Court is Plaintiff Michelle Grove's Petition for a Writ of Mandamus. Plaintiff alleges Defendants Gregg Township and Jennifer Snyder, in her capacity as the Right-to-Know Law (RTKL) officer for Gregg Township, have failed to comply with Final Determinations handed down from the Office of Open Records (OOR), requiring Defendants to disclose all responsive records to Plaintiff's RTKL request. A hearing on Plaintiff's Petition for a Writ of Mandamus was held on February 25, 2019. Upon consideration of all evidence and arguments put forth by the parties, the Court finds as follows:

Background

This matter involves two separate RTKL requests Plaintiff filed with Gregg Township.¹ On February 28, 2018 Plaintiff requested

*8/1/2017 – 2/28/2018 all facebook correspondence regarding Resolution R-18-02, audio/video recording, and the Groves. To include: facebook posts, comments, and messages. All facebook pages and groups administered by Gregg Township Supervisors and staff are to be included.

¹ Counts I and II of Plaintiff's Petition for Writ of Mandamus were dismissed at preliminary objections. Consequently, this Court will address Plaintiff's Counts III and IV only. Also dismissed at preliminary objections were Plaintiff's requests for monetary relief.

Def.'s Ex. "D1." Defendants granted Plaintiff's request on March 28, 2018 and provided her with a single public post from Gregg Township Supervisor Keri Miller's official Facebook page. Plaintiff appealed Defendants' actions to the OOR on March 30, 2018, alleging not all responsive records were disclosed. In that appeal, Plaintiff also averred her request for affidavits from Gregg Township supervisors, attesting all responsive records were disclosed, was denied. On May 7, 2018 the OOR made a Final Determination in favor of Plaintiff finding that Defendants had not disclosed all responsive materials. On May 15, 2018 Gregg Township, by and through its solicitor, David Gaines, Jr., provided Plaintiff with more responsive Facebook correspondence. Neither Party appealed the OOR's Final Determination.

On March 12, 2018 Plaintiff requested:

*11/1/17 – 3/12/18 [a]ll email communication to/from Keri Miller, Doug Bierly, and Jennifer Snyder regarding Constable Grove, to/from all other parties. Keywords to include: 'constable' 'www.constablegrove.com' [i]nclude all replies.

*12/1/17 – 3/12/18 All email correspondence to/from same regarding RTK report.

Def.'s Ex. "D6." On April 13, 2018 Gregg Township partially granted Plaintiff's first request, stating that some of the emails would not be disclosed due to attorney-client privilege. Gregg Township denied Plaintiff's second request, stating that it was unclear. Plaintiff appealed Gregg Township's decision on April 13, 2018 requesting an in-camera review of the privileged documents in front of the OOR. In an email addressed to the OOR on April 27, 2018, Gregg Township gave no substantive response to Plaintiff's request for an in-camera review of the withheld records, but it did recognize the OOR's ability to hold an in-camera review. The OOR gave a Final Determination in favor of Plaintiff on May 14, 2018, finding that Gregg Township did not meet its burden in proving the withheld records were protected by attorney/client privilege, and ordered Gregg Township to provide Plaintiff with the requested materials within thirty (30) days of its Final Determination. On May 16, 2018 Gregg Township, by and through

its solicitor, David Gaines, Jr., sent Plaintiff a letter with a responsive email attached. Neither party appealed the OOR's Final Determination.

Believing Gregg Township withheld other materials responsive to her requests for Facebook correspondence and emails, Plaintiff filed this action in mandamus on September 12, 2018 to compel Defendants to comply with the OOR's Final Determinations. Count III of Plaintiff's Petition addresses the requested Facebook correspondence. Count IV of Plaintiff's Petition addresses the requested email correspondence.

Discussion

Plaintiff filed the present action requesting this Court to compel Defendants to comply with the Final Determinations of the OOR in two RTKL appeals. Despite Defendants having turned over responsive records, Plaintiff avers in her Petition that Defendants have failed to disclose all responsive records in contravention of the OOR's Final Determinations. After reviewing the evidence and testimony produced by the parties, this Court finds Defendants have provided all information requested by Plaintiff.

A private citizen has standing to bring an action in mandamus when he has a "specific and independent legal right or interest in himself different from that of the public at large or who has suffered an injury special and peculiar to himself." ***Dorris v. Lloyd***, 375 Pa. 474, 477, 100 A.2d 924, 926 (1953). The jurisdiction of a Court of Common Pleas to hear a petition for writ of mandamus has been confirmed by Pennsylvania appellate courts. See ***Meadville Area School District v. Department of Public Instruction***, 398 Pa. 496, 500, 159 A.2d 482, 484 (1960) (finding the Court of Common Pleas "possessed the requisite jurisdiction to determine whether an extraordinary writ of mandamus should issue"); ***Capinski v. Upper Pottsgrove Township***, 164 A.3d 601, 610 (Pa. Commw. Ct. 2017) (the Commonwealth Court affirmed the jurisdiction of the Court of Common Pleas where that court's jurisdiction was questioned); see also the Judicial Code, 42 Pa.C.S. §5522(b)(1) (actions sounding in mandamus are given a six month statute of limitations).

A writ of mandamus “compels the government’s performance of a ministerial and mandatory duty where there is a clear legal right in the plaintiff and a lack of any other adequate and appropriate remedy at law.” **Capinski**, 164 A.3d at 610. A duty is ministerial when it is “of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill.” Bryan A. Garner (ed.), Black’s Law Dictionary, 7th ed., West Group, St. Paul, Minn., 1999, p. 1011.

Defendant Gregg Township is a local agency whose ministerial and mandatory duty is to disclose public records upon request pursuant to 65 P.S. §67.302. Plaintiff had a clear legal right to the requested records pursuant to the RTKL. Plaintiff admitted into evidence as Plaintiff’s Exhibit “1” the Final Determination from the OOR directing Defendants to provide Plaintiff with all responsive Facebook correspondence. Admitted as Plaintiff’s Exhibit “2” was the OOR’s Final Determination directing Defendants to provide all responsive email correspondence. “Where there has been a final determination of the Office of Open Records that the requested records are disclosable, then the requester has established a clear right to have the agency produce those public records.” **Capinski**, *supra* at 606. The RTKL does not provide any other adequate remedy at law. **Id.**

Plaintiff’s Petition for a Writ of Mandamus is proper. This Court, however, believes Defendants have established all responsive records have been disclosed in satisfaction of the two RTKL requests at issue in this case.

Defendant Jennifer Snyder, the RTKL officer for Gregg Township, testified at the hearing on the Petition for a Writ of Mandamus. Regarding Plaintiff’s request for Gregg Township Facebook correspondence, Ms. Snyder testified to consulting with everyone involved with the request. At the time of the request, Ms. Snyder was the administrator of the Gregg Township official Facebook page. Only the official page of Supervisor Keri Miller was implicated in Plaintiff’s request. Supervisor Miller was the administrator of her own Facebook page. Ms. Snyder testified to sitting with Supervisor Miller and going through all Facebook correspondence

within the requested time frame to see if there were any other responsive records. More responsive records were found after the OOR's Final Determination, and they were provided to Plaintiff.

Regarding the email request, Ms. Snyder testified to speaking with Doug Bierly and Supervisor Keri Miller and asked for all emails responsive to the requested search terms and time period. In response to this request, Plaintiff was initially provided with a fairly sizable packet, admitted as Defendants' Exhibit "D8," with responsive emails that Defendants deemed were not subject to a privilege. After the OOR's Final Determination in favor of Plaintiff, Defendants provided Plaintiff with one more responsive email. Defendant Snyder, at the hearing, testified that there were no more responsive documents related to this request. An agency cannot be made to surrender records that do not exist. See *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

This Court finds the testimony of RTKL officer Jennifer Snyder, regarding all of Plaintiff's requests involved in this matter, credible. Thus, Plaintiff's Petition for a Writ of Mandamus is denied because she has received all responsive records.

ORDER

AND NOW, on this 3rd day of April, 2019, the Court ORDERS as follows:

1. Plaintiff's Petition for a Writ of Mandamus as to Count III is **DENIED**.
2. Plaintiff's Petition for a Writ of Mandamus as to Count IV is **DENIED**.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Pamela A. Ruest", written over a horizontal line.

Pamela A. Ruest, President Judge