



FINAL DETERMINATION

**In the Matter of
TRICIA MEZZACAPPA
Complainant**

v.

**WEST EASTON BOROUGH,
Respondent**

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Docket No. AP 2010-1012

INTRODUCTION

Ms. Tricia Mezzacappa, (the “Requester”) submitted a request to West Easton Borough (the “Borough”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”) seeking code inspections and cease and desist orders. The Borough purportedly granted access, but required that the Requester retrieve the records only at times the agency open records officer was on duty. The Requester timely appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Borough is required to take further action as set forth below.

FACTUAL BACKGROUND

On September 17 and 20, 2010 the Requester submitted requests seeking, among other things, the following:

1. Copies of business licenses/code inspections for Millers’ Hardware;
2. All Cease & Desist orders issued in the last 20 years. (the “Request”)

The agency extended the deadline to respond and on October 25, 2010 the Requester went to the Borough to retrieve and/or inspect the records. The records listed above were not provided and the Requester appealed to the OOR. As part of her appeal, she includes a copy of a request dated July 21, 2010 seeking statements of financial interest. This request is not considered in the instant appeal as the appeals period expired. While the requests sought additional records than those listed above, only denial of the records above is appealed. The Borough was invited to respond to the appeal and advised “[a]ll facts relied upon must be supported by an affidavit made under penalty of perjury by a person with knowledge.”

In response the Borough provides the “Attestation” of Kelly Gross, Borough Open Records Officer stating, in relevant part, as follows:

1. “All code inspections, business licenses for Miller’s Hardware – All permits for Miller’s Hardware were pulled and available in the Right to Know Office by October 21. [The Requester] did not come in to review the file until October 25 *at a time when the Right to Know Officer was not there*. The file is still there. Because the request is vague, the Borough has not made copies of the entire file, but rather intends to allow [the Requester] to review the file and pay only for the copies that she wishes.” (emphasis added).
2. “All cease and desist order for 20 years – [The Requester] by request dated April 28, 2010 has already requested and received cease and desist orders for the last 10 years. With respect to years from 1989 to 2000 (remainder of 20 year period) a search of the Borough records have found no cease and desist orders for that period of time.”

The Attestation was not signed subject to penalty of perjury or notarized. The Requester responded that the Borough directed her to pick up the records only between 12 p.m. and 2 p.m., the hours of the Open Records Officer. The Borough office hours are 8 a.m. to 2 p.m.

LEGAL ANALYSIS

The RTKL is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. 2010). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). An appeals officer is required “to review all information filed relating to the request.” 65 P.S. §67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing.

The Borough is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. §§67.102 and 302. Records in possession, custody or control of a local or Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305. An agency bears the burden of proving the applicability of any cited exemptions, *See* 65 P.S. §67.708(b). Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a)(1) states: “[t]he burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the

evidence.” 65 P.S. §67.708(a). Preponderance of the evidence has been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not," BLACK'S LAW DICTIONARY 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

1. Code Inspections.

The Borough represents that it granted the Request, but the records were not picked up because they can only be retrieved when the Open Records Officer is present. However, the RTKL provides as follows: “Public records ...shall be available for access during the regular business hours of an agency.” The OOR encourages agencies and requesters to work together to set a mutually agreeable time for records review or pick-up; however, accessibility is not limited only to those hours the agency’s open records officer is available. An agency may require a requester to schedule an appointment to inspect records, see *Frame v. Menallen Twp*, OOR Dkt. AP 2009-0878, 2009 PA O.O.R.D. LEXIS 338 (PA O.O.R.D. 2009), but it must make them available and not contingent upon a particular staff member’s presence. Here, the Request sought copies, not inspection, and the Borough denied access by not making the copies available for retrieval during normal business hours of the Borough, 8 a.m. to 2 p.m.

2. Cease and Desist Orders.

The Borough provides an “attestation” of its open records officer asserting that it has provided all cease and desist orders for the last ten (10) years (in response to an April 2010 request) and that no records exist for the period 1989 to 2000. However, this statement is not made under penalty of perjury. Therefore, the OOR cannot consider the statement as evidence of provision or nonexistence of the records. Further, a response to an April request would not include orders issued after April 28, 2010. The Borough is required to provide access to

responsive records or a statement signed under penalty of perjury by a person with actual knowledge attesting to the fact that the requested Cease and Desist Orders do not exist in the possession, custody or control of the Borough.

CONCLUSION

For the foregoing reasons, the Appeal is **granted**. Within (30) days the Borough is required to provide the responsive records or an affidavit signed under penalty of perjury attesting to non-existence of records. The records must be available for pick up during the normal business hours of the Borough, not only the hours that the Open Records Officer is available. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal to the Northampton County Court of Common Pleas. 65 P.S. §1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: November 23, 2010

A handwritten signature in black ink, appearing to read 'Audrey Buglione', written over a horizontal line.

AUDREY BUGLIONE, ESQ.
APPEALS OFFICER

Sent to: Peter Layman, Esquire (Borough Solicitor); Tricia Mezzacappa



Jennifer Snyder <secretarygreggtownship@gmail.com>

Inspect Records

7 messages

Michelle Grove <michelleyvonnegrove@gmail.com>
To: Jennifer Snyder <secretary@greggtownship.org>

Wed, Apr 25, 2018 at 7:27 AM

Hi Jennifer,

I have in my calendar that I am inspecting the remainder of those records tomorrow at 1:00. Can I do that today since the office will be open?

Michelle

Gregg Twp Secretary <secretary@greggtownship.org>
To: Michelle Grove <michelleyvonnegrove@gmail.com>
Bcc: Keri Miller <KeriMiller.GreggTownship@gmail.com>

Wed, Apr 25, 2018 at 8:05 AM

We have a conference call concerning the website at 1 p.m. today. So we will not be able to make that work. Sorry.

[Quoted text hidden]

--

Jennifer Snyder, CGA
Secretary/Treasurer
Gregg Township, Centre County
106 School Street
PO BOX 184
Spring Mills PA 16875
814-422-8218

Michelle Grove <michelleyvonnegrove@gmail.com>
To: Gregg Twp Secretary <secretary@greggtownship.org>

Wed, Apr 25, 2018 at 8:22 AM

What about this morning?

[Quoted text hidden]

Gregg Twp Secretary <secretary@greggtownship.org>
To: Michelle Grove <michelleyvonnegrove@gmail.com>
Bcc: Keri Miller <KeriMiller.GreggTownship@gmail.com>

Wed, Apr 25, 2018 at 8:40 AM

I have a dr. appointment later this morning and am not available for an appointment to review the records.

[Quoted text hidden]

Michelle Grove <michelleyvonnegrove@gmail.com>
To: Gregg Twp Secretary <secretary@greggtownship.org>

Wed, Apr 25, 2018 at 8:44 AM

Is Doug working today or is the office closing?

[Quoted text hidden]

Gregg Twp Secretary <secretary@greggtownship.org>
To: Michelle Grove <michelleyvonnegrove@gmail.com>

Wed, Apr 25, 2018 at 9:09 AM

Doug will be in the office and the office is open.

[Quoted text hidden]

Michelle Grove <michelleyvonnegrove@gmail.com>
To: Gregg Twp Secretary <secretary@greggtownship.org>

Wed, Apr 25, 2018 at 9:20 AM

Okay, please tell him I will be in around 10:00.

[Quoted text hidden]



Jennifer Snyder <secretarygreggtownship@gmail.com>

OGS Cameras

2 messages

adam@oldgreggschool.org <adam@oldgreggschool.org>
To: Jen <secretary@greggtownship.org>

Mon, Feb 12, 2018 at 8:40 PM

Hey Jen,

Do you have any idea how easy (or not) it might be to adjust the angle of some of the surveillance cameras we have set-up? The board wanted me to inquire so that some can perhaps be adjusted to see an area or two better.

Along that same vein of thought - do you know if the folks that had the party when the gym door was suspected to have been broken ever got back to us? It seemed like they were maybe contacted to see if they knew anything? I assume they didn't get back, which is fine, but everyone at least wanted to see if we heard anything - sigh...

Also just so you know - I am totally in favor of the OGS restructuring, it's just I knew everybody else was up-in arms which is why I couldn't recommend it at the time. We'll see what the joint meeting brings....

Best,

Adam

Gregg Twp Secretary <secretary@greggtownship.org>
To: Adam <adam@oldgreggschool.org>

Tue, Feb 13, 2018 at 7:24 AM

It is easy for the technician to adjust the angle on the camera but if your talking about the one in the gym, we messed with that and we either missed the stage or missed the two doors coming into the gym. They way we have it, you can see both side doors and the two doors going to the foyer. Otherwise we miss other key spots in the gym. The OGS board could recommend getting more cameras installed but I think that would be overkill. But adjustment is just a phone call away.

I will email Shannon again to see if she asked the boys about the door.

Yes I know this will be a hard change. You all will just have to figure out how to do it with everything completely laid out so that there is no questions. I am doing scheduling now, fyi. Takes a good bit of time but is a good fit with me being here all day, answering the phones and helping folks as they come in. The only issue I have is that now I have no township cell phone. I would love to be able to and would be fine with giving, people you rent the gym my number to call in case there is questions, but I am not going to do that, so then what to do about that? Just thinking out loud. I am going to work on a sheet with rules/things to know when renting a space here so that we can move away from greeters.

JEN

[Quoted text hidden]

--

Jennifer Snyder, CGA
Secretary/Treasurer
Gregg Township, Centre County



Jennifer Snyder <secretarygreggtownship@gmail.com>

RE: Sign Policy

2 messages

Scott Piersol <scottpiersol@ebrandywine.org>
To: secretary@greggtownship.org

Mon, May 14, 2018 at 1:05 PM

Jenn:

Township owns and will replace the signs that have lost their retro-reflectivity. Did not think of that issue. Most of our requests are just what you posted – Deaf Child (we do ask them to check in every 1-2 years if the sign is still needed), Deer crossing, Hidden driveway, etc. Most of these are not reflective. We have a School Zone sign, and some people are demanding we install the flashing lights – school is not willing to pay for solar-powered lights.

Great job on the Resolutions, and I mean that sincerely. Difficult to stand in front of 3-4,000 people. Assistant Manager Luke Reven and I did this last year for the Annual Communications Award – glad I did not have to speak, although I had a few brief remarks prepared!

I sincerely hope your Supervisors are helping get control of your nut-job constable. It appears you have had a month of “freedom” since his last resolution post – OMG.

Scott

Scott T. Piersol, Township Manager

East Brandywine Township

1214 Horseshoe Pike

Downingtown, PA 19335-1153

(610) 269-8230 x 203 FAX (610) 269-4157

scottpiersol@ebrandywine.org

From: Jennifer Snyder via Pennsylvania State Association of Township Supervisors [mailto:Mail@ConnectedCommunity.org]
Sent: Monday, May 14, 2018 12:53 PM
To: scottpiersol@ebrandywine.org
Subject: RE: Sign Policy

The following message has been sent to you in response to your Discussion message

Message From: Jennifer Snyder

Thanks!!

Can you tell me who owns the sign after all of that? And with the new reflectivity program, what happens in say 15 years or whenever the sign needs to be replaced? Do you go back to the requestor or does the township pay to replace the sign?

JEN

Jennifer Snyder
Township Secretary/Treasurer
Gregg Township, Centre County
Spring Mills PA
(814) 422-8218

Original Message:
Sent: 05-14-2018 12:45
From: Scott Piersol
Subject: Sign Policy

Jenn:

This policy has not been formalized by resolution, but here is what Township Roadmaster Matthew VanLew requires for these requests:

- Original request must be made in writing.
- Road Department conducts the traffic study to determine if the warrants for the specific sign requests have been met.
- If sign is to be posted on a State Highway, will contact PennDOT for their approval, in writing.
- Property owner provided with a cost estimate for the sign equipment and installation cost. They must agree in writing to reimburse the cost prior to sign installation.
- PA One Call placed prior to sign installation.

Good luck.

Scott Piersol
Township Manager & EMC
East Brandywine Township, Chester County
Downingtown PA
(610) 269-8230

Original Message:
Sent: 05-11-2018 10:05
From: Jennifer Snyder
Subject: Sign Policy

We are looking for a policy for signs that residents request...such as who pays for it, who installs it, who maintains it. These would be signs such as Hidden Driveway, Deaf Child Area, Private Drive, etc. Any kind of policy regarding signs would be appreciated. Thanks.

JEN

Jennifer Snyder
Township Secretary/Treasurer
Gregg Township, Centre County
Spring Mills PA
(814) 422-8218

Original Message:

Sent: 05-14-2018

From: Scott Piersol

Subject: RE: Sign Policy

Jenn:

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- Property owner provided with a cost estimate for the sign equipment and installation cost. They must agree in writing to reimburse the cost prior to sign installation.
- PA One Call placed prior to sign installation.

Good luck.

Scott Piersol

Township Manager & EMC

East Brandywine Township, Chester County

Downingtown PA

(610) 269-8230

Original Message:

Sent: 05-11-2018 10:05

From: Jennifer Snyder

Subject: Sign Policy

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JEN

Jennifer Snyder

Township Secretary/Treasurer

Gregg Township, Centre County

Spring Mills PA

(814) 422-8218

Gregg Twp Secretary <secretary@greggtownship.org>

To: Scott Piersol <scottpiersol@ebrandywine.org>

Mon, May 14, 2018 at 1:13 PM

Thanks Scott. Things are getting a little better! Let's hope that continues.

JEN

[Quoted text hidden]

--

Jennifer Snyder, CGA
Secretary/Treasurer
Gregg Township, Centre County
106 School Street
PO BOX 184
Spring Mills PA 16875
814-422-8218



Jennifer Snyder <secretarygreggtownship@gmail.com>

Sign Policy

8 messages

David Gaines <dgaines@mkclaw.com>

Sat, Sep 15, 2018 at 2:23 PM

To: Gregg Twp Secretary <secretary@greggtownship.org>, Keri Miller <kerimiller.greggtownship@gmail.com>, Douglas Bierly <supervisor1@greggtownship.org>, charles stover <cws14@yahoo.com>

All,

We discussed a sign policy at Thursday's meeting. I couldn't find any good templates but put this together. Let me know if you have any questions or concerns. We can also discuss this at the next meeting.

David

David S. Gaines, Jr.
MILLER, KISTLER & CAMPBELL
720 South Atherton Street, Suite 201
State College, PA 16801-4669
814-234-1500 TEL
814-234-1549 FAX

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Gregg Twp Secretary <secretary@greggtownship.org>

Mon, Sep 17, 2018 at 10:18 AM

To: David Gaines <dgaines@mkclaw.com>

I don't think anything was attached to this email.

JEN

[Quoted text hidden]

--

Jennifer Snyder, CGA
Secretary/Treasurer
Gregg Township, Centre County
106 School Street
PO BOX 184
Spring Mills PA 16875
814-422-8218

David Gaines <dgaines@mkclaw.com>

Mon, Sep 17, 2018 at 3:14 PM

To: Gregg Twp Secretary <secretary@greggtownship.org>

Cc: David Gaines <dgaines@mkclaw.com>

Sorry about that, here it is.

David

David S. Gaines, Jr.
MILLER, KISTLER & CAMPBELL
720 South Atherton Street, Suite 201

State College, PA 16801-4669
814-234-1500 TEL
814-234-1549 FAX

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[Quoted text hidden]



Signage_Policy_9-15-18.docx
22K

Gregg Twp Secretary <secretary@greggtownship.org>

Tue, Sep 18, 2018 at 2:03 PM

To: Charles Stover <cws14@yahoo.com>, Douglas Bierly <supervisor1@greggtownship.org>, Keri Miller <KeriMiller.GreggTownship@gmail.com>

See attachment from David that was missing from the email yesterday.

JEN

[Quoted text hidden]



Signage_Policy_9-15-18.docx
22K

Gregg Twp Secretary <secretary@greggtownship.org>

Thu, Oct 18, 2018 at 11:05 AM

To: Charles Stover <cws14@yahoo.com>, Douglas Bierly <supervisor1@greggtownship.org>, Keri Miller <KeriMiller.GreggTownship@gmail.com>, David Gaines <dgaines@mkclaw.com>, Roadmaster-Gregg Township <roadmaster@greggtownship.org>

Attached is the sign policy that David gave to us to review and pass. I have added some comments. Please look this over and give me any of your suggestions for changes so that this can be ready to pass at the next meeting.

JEN

[Quoted text hidden]



Signage_Policy_9-15-18.docx
25K

roadmaster@greggtownship.org <roadmaster@greggtownship.org>

Thu, Oct 18, 2018 at 1:10 PM

To: Jen Snyder <secretary@greggtownship.org>
Cc: Charles Stover <cws14@yahoo.com>, Douglas Bierly <supervisor1@greggtownship.org>, Keri Miller <KeriMiller.GreggTownship@gmail.com>, David Gaines <dgaines@mkclaw.com>

[Quoted text hidden]

roadmaster@greggtownship.org <roadmaster@greggtownship.org>

Thu, Oct 18, 2018 at 1:12 PM

To: Jen Snyder <secretary@greggtownship.org>
Cc: Charles Stover <cws14@yahoo.com>, Douglas Bierly <supervisor1@greggtownship.org>, Keri Miller <KeriMiller.GreggTownship@gmail.com>, David Gaines <dgaines@mkclaw.com>

I think that should work! Brandon

[Quoted text hidden]

cws14 <cws14@yahoo.com>

Mon, Oct 22, 2018 at 10:42 AM

To: Gregg Twp Secretary <secretary@greggtownship.org>

10/31/2018

Gmail - Sign Policy

The sign policy seems reasonable .

Sent from my Verizon 4G LTE smartphone
[Quoted text hidden]

**Gregg Township
Centre County, Pennsylvania
Resolution _____
Nonessential Roadway Signage**

A RESOLUTION OF GREGG TOWNSHIP, CENTRE COUNTY, PENNSYLVANIA, SETTING FORTH POLICIES RELATING TO THE PURCHASE, MAINTENANCE, AND LIABILITY OF NONESSENTIAL ROADWAY SIGNAGE.

WHEREAS, Gregg Township, Centre County, Pennsylvania ("Township"), is a Pennsylvania second-class township that has certain obligations relating to the operating and maintenance of roads within the Township;

WHEREAS, the Township's board of supervisors ("Board") recognizes that, in certain circumstances, property owners may be interested in purchasing nonessential roadway signage for placement within the Township;

WHEREAS, the Board wishes to establish a policy on the purchase, maintenance, and liability of nonessential roadway signage;

NOW, THEREFORE, BE IT RESOLVED by the Gregg Township Board of Supervisors, as follows:

Section One: Reimbursement for Nonessential Roadway Signage. Property owners within the Township shall have the option of requesting the placement of nonessential roadway signage along Township roads. Such signage may include, but not necessarily be limited to, "Children at Play," "Driveway Ahead," and street name signs that are not otherwise required to be posted by applicable law. In the event that a property owner requests the placement of nonessential roadway signage, the Township shall decide, solely at the Township's discretion, whether to grant the request. If the request is granted, the property owner making the request shall reimburse the Township for the costs of purchasing the requested signage and prevailing labor rates to install the signage.

Section Two: Location of Nonessential Roadway Signage. Nonessential roadway signage shall be placed within lawful rights-of-way and comply with all applicable laws regarding the placement and use of such signage. The placement, location, size, material, reflectivity, and all other matters relating to the installation of the signage shall be determined exclusively by the Township.

Section Three: Maintenance of Nonessential Roadway Signage. The Township shall be responsible for the maintenance of nonessential roadway signage, provided, however, that all non-routine maintenance shall be reimbursed for costs and prevailing rates by the property owner who made the request to install said signage.

Section Four: Liability. The Township shall not be responsible for any lost or stolen nonessential roadway signage. In the event that such signage is lost or stolen, the property owner may make a request to replace the signage at the property owner's expense.

Section Five: Repealer. All prior resolutions or policies or portions thereof that conflict with this Resolution are hereby repealed.

RESOLVED and ADOPTED on this ____ day of _____, 2018.

GREGG TOWNSHIP:

Attest:
