



RTK Number: _____

pennsylvania
OFFICE OF OPEN RECORDS
WORCESTER TOWNSHIP, MONTGOMERY COUNTY

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 5/6/14

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

NAME OF REQUESTOR: Tom Miller

REQUESTOR STREET ADDRESS: 1109 Conestoga Ave

REQUESTOR CITY/STATE/COUNTY (Required): Coaldale PA

REQUESTOR TELEPHONE (Optional): _____

REQUESTOR E-MAIL ADDRESS (Optional): _____

RECORDS REQUESTED:

**Provide as much specific detail as possible so the agency can identify the information.*

See attached

DO YOU WANT COPIES? YES or NO

DO YOU WANT TO INSPECT THE RECORDS? YES or NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO

RIGHT TO KNOW OFFICER: TOWNSHIP MANAGER OR ASSISTANT MANAGER

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5)-DAY RESPONSE DUE:

**Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)

From: jim
Sent: Tuesday, May 06, 2014 11:58 AM
To: Lee M; abustard@worcestertwp.com; squigley@worcestertwp.com; scaughlan@worcestertwp.com
Subject: RTK

RTK officer,

I just recently obtained a response to my RTK request of March 26, 2014 on May 2, 2014. In that response, the RTK Officer states,

"The record responsive to part No. 1 of my request is the Meeting Minutes of the October 21, 2009 Board of Supervisors meeting which Meeting Minutes summarize the verbal motion of the Board of Supervisors that authorize the Township Solicitor to file a Petition for appeal of the Office of Open Record's Final Determination at OOR DKT No. 2009-790." This is untrue after review of the meeting video.

Mr. Mangan goes on to state,

"The authorization to file the Petition to Appeal of Final Determination 0790 is captured under the October 21, 2009 Meeting Minutes heading "Office of Open Records Final Determination Appeal # 731." Unfortunately, Final Determination 0790 was referred to by the incorrect number ("731")." Again, this is untrue after review of the meeting video

The Township's RTK Officer also indicates that regarding Final Determination 0731,

"The Township did not file a Petition to Appeal with the Court of Common Pleas and as the meeting minutes indicate, Final Determination 0731, was for all intents and purposes, a complete win for the Township." In review of the OOR Final determination at 2009-0731, that statement is inaccurate and misleading.

The appeal of OOR Final Determination 2009-0731 was partially granted, the appeal of OOR Final Determination 2009-0731 is docketed in the Montgomery County Prothonatary's Office as 2009-36123 and no records from the personal computers and/or email accounts were ever produced by the Township for OOR Final Determination Dkt. 2009-0731. (See 2nd paragraph page 6 of Final determination 09-0731.) In a good faith effort on my part, I attempted to allow the Board, Township Solicitor and you to rectify this error in public several times including at the most recent meeting of the Board of Supervisors. It appears that the Township does not want this opportunity.

On October 21, 2009, the Board held a meeting open to the public. The video recording confirms the following,

1. Mr. Garrity announced that,

"The Pennsylvania Office of Open Records recently rendered 2 decisions on RTK requests from Dr. Mollick. One of them was rendered entirely in the Township's favor, **and the other one, Number 731**, was rendered partially in the Township's favor and partially in Dr. Mollick's favor. The issues which were decided in favor of Dr. Mollick are the same issues that already exist in a couple of other Open Records Appeals that the Township has already taken and which are already pending in front of a Montgomery County Court of Common Pleas in Norristown. So it would be my recommendation that those issues on which the Office of Open Records found against the Township be appealed to the Court of Common Pleas so that the Township takes a consistent position with regard to those issues.".....

"I think if the Township wants to be consistent on these issues, one of which of course is the issue we've talked about so many times which is private emails from a private computer to a private computer, that is one of the issues discussed in **Number 31, I'm sorry, 731**. If we want to be consistent on that issue, we need to simply put, make "the appeal pending" and on the very first appeal we took, that is now pending in that court, when that decision is finally rendered and we get guidance from the court, it will take care of all these appeals then. That should be the end of it because almost all the issues are in the very first appeal."

N.B. "Without being redundant, **in order to be consistent, we need to at least appeal the issues in Number 731 that were decided against the Township because they are the same issues already on appeal in the other Township appeals.**"

2. Supervisor Quigley voiced his strong opposition to the appeal.
3. Supervisor Harris made the following motion, "I would like to make a motion that we authorize the Solicitor to take an appeal for the appropriate portions of the **Office of Open Records Final Determination Appeal Number 731.**"
4. Supervisor Bustard than stated, "I'll second that." "It has been moved and seconded that we appeal the Office of **Open Records Final Determination Appeal Number 731**. All those in favor, aye."

At the October 21, 2009 Board of Supervisors Meeting, the video recording confirms that Mr. Garrity stated, "The Pennsylvania Office of Open Records rendered 2 decisions on RTK requests from Dr. Mollick. One of them was rendered entirely in the Township's favor, and the **"other one", Number 731**, was rendered partially in the Township's favor and partially in Dr. Mollick's favor."

At a recent Board meeting, I asked the Board why Mr. Garrity had filed Petition MCCCPC 2009-36707 (appealing OOR Final Determination Dkt No. 2009-0790) to the Court of Common Pleas without any apparent authorization and approval of the Board. When asked if he could explain this wasteful spending, Chairman Bustard's response was you're catching me "flatfooted." At the 5/5/14 Board of Supervisors meeting, the Board, Solicitor and Manager/RTK Officer refused to provide an explanation as to the contradictions provided by Chairman Bustard and the RTK Officer. I even asked Supervisor Bustard to have Mr. Garrity and the RTK Officer who were present at the meeting to provide an explanation. This request was declined.

In fact there are 2 petitions/appeals filed in the Court of Common Pleas.

1. 2009-36123 appealing OOR Final Determination Dkt. 2009-0731 and
2. 2009-36707 appealing OOR Final Determination Dkt. 2009-0790.

Since it is now the Board's and RTL Officer's position that Final Determination 2009-0731 was NOT appealed, I would like the following,

1. Any and/or all motions, resolutions and/or official actions by the Worcester Board of Supervisors giving Mr. Garrity and/or any member of his law firm approval to file petition No. 2009-36123 for PA Office of Open Records Appeal Dkt. No. 2009-0731 , with the Montgomery County Court of Common Pleas.

2. Any and/or all Client Billing Summary's for any and/or all work performed by the Township Solicitor's Law Firm on Petition No. 2009-36123, the Pa Office of Open Records Appeal Dkt. No. 2009-0731 and the original RTK request/submission associated with it. Please do each separately.

If these are available in electronic format this would be preferred.

Please scan and send electronically.

These records require no legal review and little if any effort to compile. I expect that there will be any delay.

Jim Mollick

ERECTED INTO A TOWNSHIP IN 1735
TOWNSHIP OF WORCESTER
AT THE CENTER POINT OF MONTGOMERY COUNTY
PENNSYLVANIA

Board of Supervisors:
ARTHUR C. BUSTARD, CHAIRMAN
SUSAN G. CAUGHLAN, VICE CHAIRMAN
STEPHEN C. QUIGLEY, MEMBER

1721 Valley Forge Road
P.O. Box 767
Worcester, PA 19490

May 2, 2014

Right-To-Know Response Form

Dr. James Mollick
2114 Country View Lane
Lansdale, PA 19446

**RE: Right-to-Know Law request received on March 26, 2014
Our Request No. 14-1124**

Dear Dr. Mollick:

As you know, I am the Open Records Officer for Worcester Township (the "Township"). The Township received an email from you on March 26, 2014 consisting of three (3) lengthy unnumbered paragraphs and a six (6) part Right-to-Know Law ("RTKL") request (the "Request"). For ease of reference, each part of your Request, followed by the Township's response thereto, is set forth below.

1. **Any and/or all motions, resolutions and/or official actions by the Worcester Board of Supervisors giving Mr. Garrity and/or any member of his law firm approval to file petition No. 2009-36707 for PA Office of Open Records Appeal 2009-0790 with the Montgomery County Court of Common Pleas.**

Part No. 1 of your Request is **granted**. The record responsive to Part No. 1 of your Request is the Meeting Minutes of the October 21, 2009 Board of Supervisors Meeting which Meeting Minutes summarize the verbal motion of the Board of Supervisors that authorized the Township Solicitor to file a Petition for Appeal of the Office of Open Record's Final Determination at OOR Dkt. No. 2009-790 almost five (5) years ago.

As your 3-paragraph prelude to your Request indicates two (2) Final Determination of the Officer of Open Records (at OOR Dkt. No. 2009-0790 (the "0790 Final Determination") and at OOR Dkt. No. 2009-0731 (the "0731 Final Determination")) were discussed at the October 21, 2009 Board of Supervisors meeting.

Although you were intimately involved with both of the Final Determinations (since you filed the appeals with the Office of Open Records) perhaps a brief summary of both matters will help you recall some of the relevant facts and circumstances surrounding the Final Determinations.

Regarding Final Determination 0731, the Township did not file a Petition to Appeal with the Court of Common Pleas. As the Meeting Minutes indicate, Final Determination 0731 was, for all intents and purposes, a complete win for the Township. On July 12, 2009, you submitted an RTKL request with the Township seeking access to certain emails related to the "2-minute

rule". The Township denied your request. On appeal, you voluntarily limited your original July 12, 2009 RTKL request to only seek copies of certain emails referred to by former Supervisor Harris at the April 7, 2008 Board of Supervisors Meeting. The Township identified six (6) potentially responsive emails (by date sent, sender, recipient and a brief description of content); and, the Township claimed that the substance of the potentially responsive emails were protected from disclosure by the attorney-client privilege or work-product privilege. The Office of Open Records agreed with the Township and found that the emails were protected by the attorney-client privilege. Nonetheless, the Office of Open Records directed the Township to disclose "the date, time and identity of the sender and recipient...unless otherwise exempt from disclosure" which the Township had already provided by way of the description identifying the six (6) potentially responsive emails.

Regarding Final Determination 0790, on August 13, 2009, you again sought access to emails concerning the "2-minute rule." The Township denied your request and you subsequently appealed the Township's denial to the Office of Open Records. On appeal, the Office of Open Records upheld the Township's denial of your August 13, 2009 request to the extent that the August 13, 2009 request sought the same records as your July 12, 2009 request. However, the Office of Open Records further directed the Township to attempt to "retrieve" potentially responsive emails "existing on the Supervisors' or Manager's personal computers" and provide those emails to you subject to redaction of any non-public information.

At the October 21, 2009 meeting of the Board of Supervisors, the Township Solicitor informed the Board of the two (2) Final Determinations (0731 and 0790). In light of the fact that the Township was already involved in a multiplicity of appeals with you regarding the sole issue of whether the Township had a duty to inquire of its current Supervisors about the existence of emails (exclusively related to Township business) housed on their personal computers or in their personal email accounts, the Board of Supervisors voted to authorize the Solicitor to file a Petition for Appeal of the 0790 Final Determination. The authorization to file the Petition to Appeal of Final Determination 0790 is captured under the October 21, 2009 Meeting Minutes heading "Office of Open Records Final Determination Appeal #731" (see final paragraph under this agenda item). Unfortunately, Final Determination 0790 was referred to by the incorrect number ("731"). However, it is clear from the context of the description of the issues to be appealed – and the lengthy discussion that ensued during the October 21, 2009 Meeting – that the Supervisors discussed and intended to appeal a final determination to maintain a consistent legal position with the Township's position on matters already pending before the trial court related to the sole issue of whether the Township had a duty to inquire of its current Supervisors about the existence of emails (exclusively related to Township business) housed on their personal computers or in their personal email accounts.

The Meeting Minutes are available through publicly accessible electronic means on the Township's website at: http://worcestertwp.com/minutes_agendas_archive.htm. In the event that you are unwilling or unable to access the Meeting Minutes electronically, you must notify the Township, within thirty (30) days of the date of this letter, and the Township will provide you with a hardcopy of the Meeting Minutes upon payment of the applicable copying fees.

2. Any and/or all Client Billing Summary's [sic] for any and/or all work performed by the Township Solicitor's Law Firm on Petition No. 2009-36707, the Pa Office of

6. SOLICITOR'S REPORT

a. Reiger Property Agricultural Security Area Public Hearing

James J Garrity opened the public hearing at 8:02 and explained the Agricultural Security Area. A public court reporter was present for transcript.

The public hearing was closed at 8:14 P.M.

b. Office of Open Records Final Determination Appeal #731

Mr. Garrity announced that the Pennsylvania Office of Open Records released two decisions, one in favor of the Township and the other decision was split between Dr Mollick and the township. He recommended the township appeal the decision to be consistent with the issue being private e-mails between one private computer to another private computer.

Mr. Quigley discussed his opposition to an appeal based on additional legal fees and spending money just to prove a point.

Mr. Harris discussed support for the appeal based on attorney client privilege, private e-mails and principle.

Following discussion, by way of motion by Mr. Harris, seconded by Mr. Bustard to have the solicitor appeal the Office of Open Records decision. Motion passed two to one vote with Mr. Quigley voting against.

c. Executive Session Report - None

7. OTHER BUSINESS

Mr. Quigley inquired how the sign ordinance is enforced and asked the solicitor if the sign ordinance is equally enforceable on state and township roads. He asked if there are different rules for political signs and what the policy is for the taking of signs and if the Township can be held responsible for taking personal property. Mr. Quigley also suggested the Board consider allowing discussion prior to action on a pending matter, following discussion it was agreed the manager would investigate how other municipalities handle the situation.

Mr. Quigley suggested consider utilizing the township manager to handle township business at the meeting.