

RTK Number: 14-1246



RECEIVED

OCT 08 2014

due 10/15

# pennsylvania

OFFICE OF OPEN RECORDS

WORCESTER TOWNSHIP, MONTGOMERY COUNTY

## STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 10/8/14

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

NAME OF REQUESTOR: Jim Mollica

REQUESTOR STREET ADDRESS: \_\_\_\_\_

REQUESTOR CITY/STATE/COUNTY (Required): \_\_\_\_\_

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 → *see attached*

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.)

#14-1246

**From:** jin  
**Sent:** Wednesday, October 08, 2014 12:53 PM  
**To:** Lee M  
**Subject:** RTK

RTK Officer,

I would suggest that you review Section 902 and 903 of the RTK Law regarding your procedure for responding to requestors, prior to writing and signing your response. Your current practice and procedure when responding to me is outside what is provided for in the Law and is in my opinion an abuse of the RTK process and a waste of taxpayer funds.

Section 902. Extension of time.

(a) Determination.—Upon receipt of a written request for access, the open-records officer for an agency shall determine if one of the following applies:

- (1) the request for access requires redaction of a record in accordance with section 706;
- (2) the request for access requires the retrieval of a record stored in a remote location;
- (3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
- (4) a legal review is necessary to determine whether the record is a record subject to access under this act;
- (5) the requester has not complied with the agency's policies regarding access to records;
- (6) the requester refuses to pay applicable fees authorized by this act; or
- (7) the extent or nature of the request precludes a response within the required time period.

(b) Notice.—

(1) Upon a determination that one of the factors listed in subsection (a) applies, the open-records officer shall send written notice to the requester within five business days of receipt of the request for access under subsection (a).

(2) The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice.

(3) If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.

Section 903. Denial.

If an agency's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority.
- (3) The typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued.
- (4) Date of the response.
- (5) The procedure to appeal the denial of access under this act.

There are no provisions in the law that allow for the type of responses that have been generated by you and the Township which appear to have coincided and escalated with scrutiny of the Solicitor's legal invoices and appear to be retaliatory. Under Section 1308, neither you or the Township can establish policy to limit the number of requests that anyone can file and/or adopt a policy or regulation requiring disclosure of the purpose or motive in requesting records. For the same reason, you should not be trying to impugn those motives in your responses, wasting countless thousands of taxpayer dollars in the process. I would suggest that you confine your responses to the parameters of Sections 902 and 903 as set forth.

I am again attaching invoices that I feel have been improperly redacted by the Township. It appears that when you post my requests to the website, you are deleting them from my request. Please DO NOT alter my request so that I know that it is intact. Please understand this, if you intend to make the extensive, wholesale, unsupported redactions that were made with my prior request, your No. 14-1143, without a privilege log and without proper justification, I will appeal your decision to the OOR as has been articulated in prior requests. **The State Supreme Court affirmed the Commonwealth Court's decision that client names and general description of the legal services WERE NOT protected by the attorney-client privilege (See Levy v. Senate of Pa) and on remand determined that the general description of legal services ARE NOT entitled protection under the Attorney Work Product doctrine, since taxpayers are entitled to know the general nature of the legal services for which they are footing the bill.** This is also consistent with the OOR determination at 2009-0731. A blanket denial will not survive an appeal.

The Solicitor and/or members of his firm have taken the position in responses to RTKL requests that the Township Solicitor **"does not perform a governmental function"** but then notes that the Township Solicitor has only been **"Contracted"** to perform a governmental function. See Requests and responses your No. 13-1089 and 14-1206.

I would like the following,

1. A copy of the original and the most recent independent contractor agreement between the Township Solicitor and/or his Law Firm and Worcester Township. That means that I would like a copy of the original agreement and additionally I would like a copy of the most recent agreement if that exists. If you do not understand these instructions, please let me know.
2. A copy of the original and the most recent RFP (request for proposal) for Mr. Garrity and/or his Law Firm Wisler Pearlstine to provide legal services to Worcester Township.
3. A copy of any and/or all contracts and/or agreements between the Township Solicitor and/or his Law Firm Wisler Pearlstine and Worcester Township that deal with providing legal services to the Township. Please use the time reference period for the search for the past 2 years. The time frame specified here is for the past 2 years. If you do not understand these instructions, let me know.
4. A copy of any and/or all minutes that would document any and/or all motions, resolutions, votes and/or official actions taken by the Worcester Board of Supervisors in approving a contract between Worcester Township and the Township Solicitor and/or his Law firm Wisler Pearlstine to provide legal services to the Township.
5. A copy of the resolution by the Worcester Board of Supervisors approving a contract between Worcester Township and/or its Board of Supervisors and the Township Solicitor and/or his law firm Wisler Pearlstine to provide legal services to the Township.

6. Any and/or all monthly "client summaries" pages of legal bills (Client Billing Summaries) and/or "client prebill" summaries for Billing Attorney Joseph Clement for 2009, 2010, 2011, 2012, 2013 and 2014 to date.
7. I would like certified copies of any and/or all invoices/time slips submitted and/or generated by Wisler, Pearlstine, Talone (the Township Solicitor's Law Firm) for the entire month of September 2014. These would also encompass any bills that were approved at the September regular meeting and detailed but not limited to the Township of Worcester Bank Registry Listing for 8/21/09-9/17/09 as is the usual and customary practice of the Township.
8. Copies of the Audio recordings of the following Township Supervisors meetings, 1/7/08, 2/4/08, 8/4/08, 11/19/08, 12/1/08.
9. A copy of the results of the Phase 1 and Phase 2 studies for the "Nike" Army Base Environmental Study(s) to date, specifically. I believe Mr. Mangan stated that Phase 1 was and is available. Mr. Bustard earmarked \$250,000 of taxpayer dollars to testing for environmental toxins and pollutants. Or better yet, why don't you put the studies on the Township website so that all the Township residents can see what their hard earned tax money is being spent on.

If these records are available in electronic format, this would be preferred.  
Please scan and transmit electronically.

Thanks

Jim Mollick