

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

ALEX WEIDENHOF and THE BUTLER
EAGLE,

CIVIL DIVISION

Plaintiffs,

Case No. 21-10207

v.

**BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

LANCASTER TOWNSHIP,

Defendant.

Code:

Filed on behalf of Defendant,
Lancaster Township

Counsel of record for this party:

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JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

ALEX WEIDENHOF and THE BUTLER EAGLE,)	CIVIL DIVISION
)	
Plaintiffs,)	Case No. 21-10207
)	
v.)	
)	
LANCASTER TOWNSHIP,)	
)	
Defendant.)	

BRIEF IN OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Defendant, Lancaster Township, by and through its attorney, Neva L. Stotler, Esquire, and files the within Brief in Opposition to Plaintiffs’ Motion for Summary Judgment.

Procedure: This case began with a standard public records request under the Right to Know Law, 65 P. S. §§ 67.101 – 67.3104 (the “Law”) by Alex Weidenhof a reporter for the Butler Eagle¹, a local newspaper (hereinafter collectively referred to as the “Reporter”) (See Exhibit A to the Complaint in Mandamus)². The Township responded to the request without providing its statement sworn under penalty of perjury (See Exhibit B to the Complaint in Mandamus), and the Reporter, deeming the response inadequate, appealed to the Office of Open Records (“OOR”) (See Exhibit C to the Complaint in Mandamus). The OOR issued a Final Determination directing the Township to provide *responsive* records to the Reporter within 30 days (See Exhibit D to the Complaint in Mandamus). The Township responded to the Final Determination by submitting to the Reporter an attestation under penalty of perjury providing the

¹ Alex Weidenhof is a “frequent user of the Right-to-Know law” (Exhibit 4, p. 19, quoting Weidenhof’s counsel) who often brags about the weaponization of this law in his publicly posted social media: June 24, 2021 “Is there a better feeling than being mentioned in open records documents? December 8, 2020 “I love the smell of open-records appeal victories in the morning” November 25, 2020 “This year I am thankful for open records officers who don’t know open records laws.” And, tweeting the caption of this case on November 10, 2020 “Truly a beautiful sight, though I think the OOR appeals officers are on a first name basis with me at this point.”

² The Township has referenced the documents attached to the Complaint in Mandamus, as they are a part of the record and accurately reflect the RTKA process.

records that were responsive (See Exhibit E to the Complaint in Mandamus). Again, dissatisfied with the Township's response, the Reporter filed this Complaint in Mandamus. The Township filed an answer and the pleadings closed. The Reporter filed this motion for summary judgment to which the Township now responds asserting that, at the very least, material facts remain for trial, and, at most, this response sheds light on the inadequacy of the Complaint.

Factual Background: The Township is a Second-Class Township with approximately 3000 residents, seven (7) employees, and at the time of the request, had lost a manager, Benjamin Kramer, hired a new manager, Danielle Rich, who lasted only several months, and generally converted employees to remote work as a result of the pandemic (Exhibit 1, Affidavit of Joe Plesniak).

The Reporter's request, dated October 8, 2020, for public records included the following:

1. Any and all agreements made between Benjamin Kramer pertaining to the end of his employment at the Township.
2. Any and all correspondence between Benjamin Kramer, including those made by and through an attorney, and other officials in the Township, including but not limited to communications with members of the Board of Supervisors, communications with the Township Secretary, and non-privileged communications with its solicitor, between 1 January 2018 and 30 September 2020 pertaining to his role as a real estate agent. In this instance, correspondence includes emails, memoranda, and letters, as well as records and minutes of, or notes from, in-person meetings and phone calls.

(Exhibit A to the Complaint in Mandamus).

Request 1. Township Secretary/Treasurer, Christina Senft (hereinafter "Senft"), the Township Open Records Officer, timely responded to the public records request of the Reporter within 5 days of the request, indicating that the Township would provide the employment separation agreement between Benjamin Kramer and the Township as soon as it was approved by the Board. (Exhibit B). That document was in fact provided to the Reporter.

On appeal, the OOR determined that as to the first request, the Township should have provided its response by affidavit or statement sworn under penalty of perjury, indicating what records were available. (Exhibit D, Final Determination Page 5). In response to the OOR's decision, the Township timely submitted (as it had agreed to) a copy of the employee separation agreement for Kramer, and an attestation of Senft made under penalty of perjury, both of which were responsive to the order of the OOR in its Final Determination. (Exhibit E). The Township is in compliance with the decision of the OOR as to the first request, and the Reporter has failed to identify any facts to the contrary.

Request 2. The Township indicated that documents responsive to part 2 of the Reporter's request were not "public records" as defined in the Law (Exhibit B). The OOR found that while this may be accurate, the Township needed to provide "additional information" from which it could be determined if documents related to Kramer's work as a real estate agent "also pertain to a transaction or activity or the Township." (Exhibit D, p. 5). Senft's attestation indicated that there was one email resulting from the search of Township documents concerning Kramer's work as a real estate agent, but that it did not pertain to a transaction or activity of the Township. (Exhibit E, para. 7).

As to his second request, the Reporter takes the position that the efforts of the Township to locate and produce responsive documents were not in good faith. He points to the deposition of Senft, the only discovery taken in this case, to advance this argument. Senft was employed by the Township from 2015 through 2021 as the Township Secretary/Treasurer (Exhibit 4, p. 6). She worked in a similar position in another municipality (2014-2015) prior to her employment with the Township (Exhibit 4, p.16). Senft served as a back up to the manager for the Township in responding to public record requests, and in September 2020 she moved to a primary role in

responding to these requests when the manager left (Exhibit 4, p. 20). In her prior municipal job, Senft also was a secondary in responding to public records requests (Exhibit 4, p. 43). Senft had training on the Right to Know Law during the course of both of her municipal jobs as recently as 2020, including taking a refresher every two years (Exhibit 4, pp. 10, 44). In addition, she read and understood the Right to Know Law (Exhibit 4, p. 45). In her deposition, Senft clearly indicated that she received the October 8, 2020 public records request from the Reporter (Exhibit 4, pp. 20, 22). She responded to the Reporter (Exhibit 4, p. 23). She searched all information in the possession of the Township and requested that the individual members of the Board of Supervisors check their respective emails for responsive documents (Exhibit 4, pp. 24, 26-27). And, in response to the OOR's order, she attested to these facts. (Exhibit E).

Clearly Senft, as indicated in her deposition, is a disgruntled former employee of the Township.³ However, despite her testimony critical of the Township she still clearly articulated that each paragraph of the attestation is true and accurate to the best of her knowledge. The following comparison between the attestation and her deposition testimony is reflective of her efforts to be responsive to Reporter's request on behalf of the Township.

Attestation Paragraph	Deposition Testimony Reference
1. I [Christina Senft] serve as the Open Records Officer for Lancaster Township ("Agency") and am responsible for responding to Right-to-Know requests filed with the Agency.	<p>Q. So, we just covered the year 2020. You didn't serve in a primary role until after Mr. Kramer left.</p> <p>How about the prior year, 2019?</p> <p>P 13.***</p> <p>October 2020. Why did you become the primary person after October 2020?</p>

³For example, she testified that the township made a mistake getting rid of the former manager. P. 16
 She testified that she wished she would have left when the former manager left p. 16. She referred to not leaving the township earlier as the biggest mistake in her life. P. 18
 The job at the township had become difficult. P. 16
 She complained that the solicitor was slow to get back to her. P.49
 She complained about having to train the new manager p. 35

	<p>A. Because the relationship with Ben Kramer and Lancaster Township ended. Exhibit 4, p 14 See also Exhibit 4, p. 51</p>
<p>2. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.</p>	<p>I was responsible for all accounts payable, all accounts receivable, any state or federal preparation of reports that are due on a municipal level. I prepared bi-weekly payroll, I prepared quarterly payroll reports, general public -- you know, giving out building permits, receiving payment, minutes, agendas. Exhibit 4, p. 7. See also Exhibit 4, pp. 51-52</p>
<p>3. Upon receipt of the request and supplemented upon receiving the Final Determination Letter of the OOR, I conducted a thorough examination of files in the possession, custody and control of the Agency for records responsive to the request underlying this appeal, specifically I searched the relevant files, including electronic files and e-mails associated with Lancaster Township e-mails and servers. Assisted by our solicitor, I also requested that each member of the Board of Supervisors conduct the same search of their files, including Lancaster Township's electronic files and e-mails. In doing this, we compiled the relevant documents for review prior to responding to the appeal.</p>	<p>A. My understanding of that is that I had looked through everything that I had in my possession. . . . A. Any emails that I had been copied on, any documents that were in the office, any emails that had been forwarded to Chris Reese that I was not privy to. Q. So, under the good faith search part of it, did you have communications with the supervisors about checking their emails? A. The communication came from Chris Reese to the supervisors, and at that point, I was sort of cut off from that and things were to be sent to Chris Reese. Chris Reese was to be aware of them. They weren't necessarily to be shared with me. Exhibit 4, pp. 24-25 Q. Did you ever have any direct communication with the supervisors about their emails? A. You know, when the request came in, I said I need you three to go through your emails, and if there is something, you need to get it to myself or to Chris Reese. At that point, nothing was turned over to me. I believe there was one email from Tim Zinkham that was turned over to Chris Reese.</p>

	<p>Q. Did you say that verbally or in an email? A. I'm fairly confident it was said verbally and in an email. From the time Ben left, whatever I said to the supervisors I followed up in an email with Chris Reese copied on it. Exhibit 4, pp 26-27.</p> <p>See also Exhibit 4, pp 30-31, 47-48, 52-54, and 57</p>
<p>4. Additionally, I have inquired with relevant Agency Personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession, specifically, as mentioned above, each member of the Board of Supervisors and also our solicitor.</p>	<p>See above</p>
<p>5. After conducting a good faith search of the Agency's files and inquiring with relevant agency personnel, I identified all records within the Agency's possession, custody or control that are responsive to the request and available for public access and provided them to the requester.</p>	<p>Q. In relationship to the October 8th Right-to-Know request, I think you said you read it, forwarded it, and did the best that you could do? A. (Nodding head up and down.) Q. Is that accurate today? A. Yes. Q. So, in the attestation when you say you did a good faith search, is that what that meant to you? A. Yes. Q. So, sitting here today, did you do the best that you could in responding to Alex's October 8th email or request, Right-to-Know request? A. I believe that I did. Q. Did you intentionally not provide documents that you knew were responsive? A. I did everything that I was instructed to do by Chris Reese. Q. Which is like, honestly, Chrissy, a convenient answer, but I'm asking for something, really, like, specific to you. Did you do the best that you could do, given the documents that were in the office, any emails coming in and out of the office on which you were copied, and your ability to</p>

	<p>reach out to others involved in the township? Did you do the best that you could do? A. I believe based on my understanding of Right-to-Know law, yes, I did. Q. That's what I'm asking. In your experience at Lancaster in responding not to this October 8th request but other requests, did you follow a similar process in trying to gather or determine the universe of information available? A. I did. Q. So, just as a process that I've heard from your testimony, you looked in your email and you looked at agency documents and you reached out to whomever, because it could have been the building code professional, or it could have been the road guy. So, you reached out to whomever would have possession of documents and asked them? A. Correct. Q. And you followed that same process here? A. Yes.</p> <p>Exhibit 4, pp. 53-54</p>
<p>6. As a result, I can confirm that we supplied Alex Weidenhof the Separation Agreement between Benjamin Kramer and Lancaster Township as promised and that this was the only record responsive to the request.</p>	<p>So, there was more discussion about this paragraph during your testimony than I thought it warranted, because as I read this, it's saying you confirm that you supplied it to Alex, which I think was your testimony, correct? A. Yes. Q. So, you took possession of the document and sent it by email to Alex? A. Correct. Q. And did you do that because it was responsive to his request? A. I did that because I was instructed to do that from Chris Reese. Q. Did you read that request that was sent and respond to it in providing the document? So, in other words, I get that you asked Chris Reese, but forget that part. Did you understand that you were supposed to provide that? Was it responsive? A. Yes, it was responsive. The document had not been signed by the board and it had not</p>

	<p>been ratified at a public meeting, so my concern primarily with Chris Reese was do we send an agreement to the <i>Butler Eagle</i> that has not been ratified in a public meeting.</p> <p>Q. So, you asked your legal counsel a question and he rendered back legal advice, which I'm not asking you to repeat.</p> <p>A. Yes.</p> <p>Q. All I'm asking you is, is No. 6 accurate, I can confirm that we supplied Alex Weidenhof the agreement?</p> <p>A. Yes.</p> <p>Q. That happened, right?</p> <p>A. Yes.</p> <p>Q. And that's what's reflected in 6?</p> <p>A. Yes. Exhibit 4, pp 54-55</p>
<p>7. I can also confirm that one-e-mail was found, which involved Benjamin Kramer's job as a real estate agent and that the e-mail does no [sic] constitute a record of the Township because it does not document a transaction or activity of the Township. The substance of the e-mail involved a property that was not in Lancaster Township and did not require or request any action or activity involving Lancaster Township.</p>	<p>Q. So, is 7 accurate to your understanding of what you knew, the records you reviewed, and your Right-to-Know training?</p> <p>A. Yes.</p> <p>Exhibit 4, p 56-57</p>

Senft testified that she received the October 8, request, searched emails and documents within the Township office, and reached out to the three supervisors requesting that they search their respective emails. The one thing Senft did not do was request a search of the Township servers by the outside IT company (Exhibit 4 p. 28). Senft recalled the Supervisors discussing a an outside search of emails (beyond what she had access to) but has no idea whether anyone else at the Township searched the servers in response to the request (Exhibit 4, p. 60-61). She testified that she was unaware if anyone else from the Township spoke to the outside IT vendor

about a search of the Township servers. *Id.* As instructed by the Solicitor and Senft, the three Township Supervisors reviewed their respective emails for communications mentioning Kramer and his work as a real estate agent (Exhibit 1, Affidavit of Joe Plesniak; Exhibit 2, Affidavit of Tim Zinkham, Exhibit 3, Affidavit of Kristopher Kneiss, and Exhibit 4 pp. 26-27).

At her deposition, Senft testified that she believed the attestation to be accurate, and she signed it of her own volition. (Exhibit 4, pp. 51-54). Despite the attempt to put words in her mouth, that she was “under duress” when the attestation was signed, Senft clarified that she was under stress of short time frames and lawyers who operate on a last-minute basis. (Exhibit 4, pp. 48-50). That said, there are no facts asserting legal duress. Moreover, Senft had time to have her own personal attorney review the attestation, and she still signed it and then confirmed its accuracy in her deposition testimony, under oath (Exhibit 4, p. 50).

A view of the facts in the light most favorable to the Township indicates that Senft with the support of the Solicitor and Township Supervisors reviewed the public records request, performed a good faith search of Township records, and produced them to the Reporter. The Township provided an attestation under penalty of perjury that the search occurred, and those responsive documents were provided.

Argument: The standard of review of this court in deciding a summary judgment motion has long been as follows:

A trial court should grant summary judgment only in cases where the record contains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Summers v. Certaineed Corp.*, 606 Pa. 294, 997 A.2d 1152, 1159 (Pa. 2010). The moving party has the burden to demonstrate the absence of any issue of material fact, and the trial court must evaluate all the facts and make reasonable inferences in a light most favorable to the non-moving party. *Id.* The trial court is further required to resolve any doubts as to the existence of a genuine issue of material fact against the moving party and “may grant summary judgment only where the right to such a judgment is clear and free from doubt.” *Toy v. Metro. Life Ins. Co.*, 593 Pa. 20, 928 A.2d 186, 195 (Pa. 2007).

Bourgeois v. Snow Time, Inc., 242 A.3d 637, 649-50 (Pa. 2020). Mandamus is appropriate only where the plaintiff has established a clear legal right, in this case, to have an agency produce public records. *Capinski v. Upper Pottsgrove Twp.* 164 A.3d 601 (Pa. Commw Ct. 2017).

The only issue in this case is whether the Plaintiff has established the absence of material facts as to his clear legal right to have the Township produce documents that it has not yet produced. When reviewing a public records request, the Township is first required to identify the documents that may be responsive to the request. "Records" is a defined term that includes: "Information, . . . *that documents a transaction or activity of an agency* and that is created, received or retained pursuant to law *or in connection with a transaction, business or activity of the agency.*" 65 Pa. Stat. Ann. § 67.102 (emphasis added). In response to the decision of the OOR, the Township provided in its attestation that one document existed that met the search criteria but did not meet the definition of "record" because it did not reflect "a transaction or activity of the agency," and so therefore was not provided.

Senft's obligation under the Right to Know Law was to "make a good faith effort to determine if the record requested is a public record . . . and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request." 65 P.S. § 67.901. The evidenced adduced during discovery indicates that this is exactly what Senft did.

The Township's business is conducted only through the actions of its governing body. More specifically, a majority of a quorum of public officials conducting business in a public meeting is necessary to approve any activity or transaction of the Township. 53 P.S. § 65603. So, when Senft reviewed relevant files, including electronic files and emails and reached out to supervisors requesting that they search their respective emails she did so with the understanding

that responsive documents that reflected a transaction or activity of the Township would be contained within the documents she reviewed. *See Exhibit 4, pp. 57.* Documents that simply referenced Kramer and his work as a real estate agent, were not *de facto* public records. Had a single “record” resulted from Senft’s search that implicated a transaction or activity of the Township *and* Kramer and his job as a real estate agent, perhaps a further inquiry would have made sense. But, no such documents were revealed and no additional search by Senft was required as part of her “good faith” response.

Summary judgment is a significant burden. This is not a case where no effort was made, or the open records officer made assumptions about the presence or absence of documents but did not perform a search. *Cf. Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Cmwlth. Ct. 2018). Lancaster is a small Township with few employees, almost no management for a period during 2020-2021, an overburdened Township Secretary who despite her sour taste for the Township said she did her best to respond to the Reporter’s request. No facts have been offered by the Reporter showing that the Township acted with recklessness, willful or wanton disregard for the Law, or bad faith.

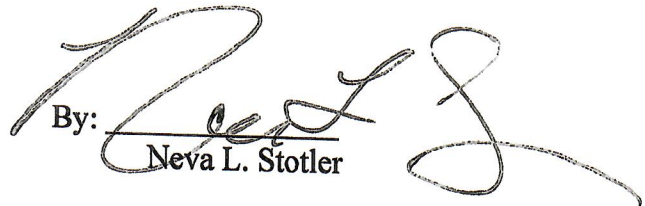
The Township’s position that it complied with the Final Determination of the OOR, and that the Reporter failed to set forth an absence of disputed material facts for trial. Therefore, no relief should be granted. “[T]he purpose of Section 1305 of the Right to Know Law is ... to penalize conduct of [an] agency and to provide a deterrent in the form of a monetary penalty in order to prevent act taken in bad faith in the future.” *Uniontown Newspapers, Inc.*, 185 A.3d 1161, 1175. The *Uniontown* Court awarded sanctions because the agency failed to perform a **search** of the relevant records. That is not the case here; there is no conduct to deter, and the

Reporter has put forth no facts that establish that the Township Acted in a way that was intended to deprive him of public documents.

Conclusion: The Reporter has failed to meet his burden to demonstrate to this court that considering all the facts in the light most favorable to the Township, there exists no material issue of fact to be reviewed by a jury. The motion for summary judgment must be denied.

Respectfully submitted,

N. STOTLER LAW

By: A handwritten signature in black ink, appearing to read 'Neva L. Stotler', written over a horizontal line. The signature is stylized and cursive.

Attorney for Defendant,
Lancaster Township


CERTIFICATE OF SERVICE

I, Neva L. Stotler, Esquire, hereby certify that true and correct copies of the foregoing Brief in Support of Motion for Summary Judgment have been served this 4 day of April , 2022, via First Class Mail, to counsel of record listed below:

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By:


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CERTIFICATE OF COMPLIANCE

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

Submitted by: Neva L. Stotler, Esquire

Signature: 

Name: Neva L. Stotler Esquire

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