

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

MURRAY, MATTHEW E

vs.

NO. 2025-18276

UPPER POTTS GROVE TOWNSHIP

COVER SHEET OF RESPONDENT

Date of Filing September 24, 2025

Respondent MATTHEW E. MURRAY

Counsel for Respondent ARIEL SHAPELL

I.D. No. 330409

Counsel's email address: ASHAPPELL@ACLUPA.ORG

Document Filed (Specify) PLAINTIFF MATTHEW E. MURRAY'S ANSWER TO

DEFENDANT UPPER POTTS GROVE TOWNSHIP'S PRELIMINARY OBJECTIONS

RULE RETURN DATE of Motion 09/25/2025

07/23

COVER SHEET OF RESPONDENT

Date of Filing: September 24, 2025 Respondent Matthew E. Murray

Counsel for Respondent Ariel Shapell I.D. No. 330409

Counsel's email address: ashapell@aclupa.org

Document Filed (Specify) Plaintiff's Answer to Defendant Upper Pottsgrove Township's

Preliminary Objections

RULE RETURN DATE of Motion September 25, 2025

Answer to History of the Case

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Plaintiffs admit that the Township's RTKL Case made such allegations, without merit.
6. Denied. *See* Transcript of Oral Arg. on Township's Pet. for Prelim. and Final Inj. at 2, *Upper Pottsgrove Township v. Matthew Murray*, No. 2025-00481 (Mont. Co. Ct. Com. Pl. Jan. 22, 2025) ("we're asking for a preliminary injunction to temporarily stop the right-to-know requests being submitted by the defendant in this matter").
7. Denied. By way of further response, Plaintiffs incorporate their response to Paragraph 6 above as if fully restated here.
8. Denied. By way of further response, Plaintiffs incorporate their response to Paragraph 6 above as if fully restated here.
9. Plaintiffs admit that Mr. Murray sought immunity under section 8340.15 in the RTKL Case through his January 17, 2025 Response of Defendant Matthew E. Murray in the Nature of a Motion to Dismiss the Petition of Plaintiff Upper Pottsgrove Township for Preliminary and Final Injunction and Asserting a Motion Under the Pennsylvania SLAPP Law, his February 3, 2024 Defendant Matthew E. Murray's Preliminary Objections to the Complaint, and his counsel's March 27, 2025 letter titled Request to Schedule an Anti-SLAPP Hearing in Upper Pottsgrove Township v. Matthew E. Murray, No. 2025-00481. *See* Compl. at ¶ 31. But Judge Saltz declined to rule on Mr. Murray's section 8340.15 immunity claims. *See id.* at ¶ 32 (citing April 8, 2025

Email from Melody Infantolino, Judicial Assistant to Judge Saltz, to Plaintiff’s counsel (“Per the Judge ... relief [under section 8340.15] cannot be sought through Preliminary objections”). The Court did not grant a pretrial motion for immunity under 42 Pa.C.S.A. § 8340.16 as the Supreme Court of Pennsylvania has not yet promulgated the necessary procedural rules for such a motion.

10. Admitted.

11. Admitted.

Answer to Legal Standard

12. This paragraph consists of legal conclusions, to which no response is required.

13. This paragraph consists of legal conclusions, to which no response is required.

14. This paragraph consists of legal conclusions, to which no response is required.

15. This paragraph consists of legal conclusions, to which no response is required.

16. This paragraph consists of legal conclusions, to which no response is required.

17. This paragraph consists of legal conclusions, to which no response is required.

18. This paragraph consists of legal conclusions, to which no response is required.

19. This paragraph consists of legal conclusions, to which no response is required.

Answer to Preliminary Objection I

20. This paragraph consists of legal conclusions, to which no response is required.

21. This paragraph consists of legal conclusions, to which no response is required.

22. This paragraph consists of legal conclusions, to which no response is required.

Insofar as a response is required, it is denied.

23. This paragraph consists of legal conclusions, to which no response is required.

Insofar as a response is required, it is denied.

24. This paragraph consists of legal conclusions, to which no response is required.

25. Denied.

26. Denied. By way of further response, Plaintiffs incorporate their response to Paragraph 6 above as if fully restated here.

27. This paragraph consists of legal conclusions, to which no response is required. Insofar as a response is required, it is denied.

28. This paragraph consists of legal conclusions, to which no response is required.

29. This paragraph consists of legal conclusions, to which no response is required.

30. This paragraph consists of legal conclusions, to which no response is required. Insofar as a response is required, it is denied.

31. This paragraph consists of legal conclusions, to which no response is required. Insofar as a response is required, it is denied.

32. This paragraph consists of legal conclusions, to which no response is required.

33. This paragraph consists of legal conclusions, to which no response is required.

Insofar as a response is required, it is denied.

34. This paragraph consists of legal conclusions, to which no response is required.

35. This paragraph consists of legal conclusions, to which no response is required.

36. This paragraph consists of legal conclusions, to which no response is required.

37. This paragraph consists of legal conclusions, to which no response is required.

38. This paragraph consists of legal conclusions, to which no response is required.

Insofar as a response is required, it is denied.

Answer to Preliminary Objection II

39. This paragraph consists of legal conclusions, to which no response is required.

40. Plaintiffs admit that the Township's RTKL Case made such allegations, without

merit.

41. Admitted.

42. This paragraph consists of legal conclusions, to which no response is required.

Insofar as a response is required, it is denied.

43. This paragraph consists of legal conclusions, to which no response is required. By way of further response, the Township's citation to *Pa. Stat Educ. Ass'n v. Dep't of Cmty. & Econ. Dev.*, 50 A.3d 1263 (Pa. 2012), provides no support for its argument that injunctive relief can "be used as a mechanism to enforce the provisions of the RTKL." In the cited case, the Court held that the OOR was an indispensable party to the teachers' union's suit for declaratory relief, seeking to protect school employees' home addresses from disclosure under the RTKL. 50 A.3d at 1277. The underlying case did not seek to enforce the provisions of the OOR; rather it asked the court to enjoin the release of school employees' home addresses under the RTKL as violative of their constitutionally protected right to privacy. *Pennsylvania State Educ. Ass'n ex rel. Wilson v. Com., Dep't of Cmty. & Econ. Dev., Off. of Open Recs.*, 981 A.2d 383, 385 (Pa. Commw. Ct. 2009), *aff'd*, 606 Pa. 638, 2 A.3d 558 (2010).

44. This paragraph consists of legal conclusions, to which no response is required.

Insofar as a response is required, it is denied.

Dated: September 24, 2025

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

Dated: September 24, 2025

/s/ Ariel Shapell
Ariel Shapell

CERTIFICATE OF SERVICE

I certify that this on the date set forth below, I caused a true and correct copy of the foregoing Answer to Defendant's Preliminary Objections to be served, together with all documents in support thereof, via electronic mail on counsel of record for Defendant Upper Pottsgrove Township.

Dated: September 24, 2025

/s/ Ariel Shapell
Ariel Shapell

COVER SHEET OF RESPONDENT

Date of Filing: September 24, 2025 Respondent Matthew E. Murray

Counsel for Respondent Ariel Shapell I.D. No. 330409

Counsel's email address: ashapell@aclupa.org

Document Filed (Specify) Plaintiff's Brief in Opposition to Defendant Upper Pottsgrove Township's Preliminary Objections

Oral Argument Requested

RULE RETURN DATE of Motion September 25, 2025

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Plaintiff Matthew E. Murray, by counsel, submits this Brief in Opposition to the Preliminary Objections filed by Upper Pottsgrove Township (the “Township”) on August 22, 2025.

I. INTRODUCTION

Matthew E. Murray, a resident of Upper Pottsgrove Township, is a dedicated advocate for the preservation of his Township’s public land. When Mr. Murray learned that the Township was planning to unlawfully develop the Thomas Smola Farm (the “Smola Farm”), which the Township had purchased in 2008 for the purpose of preserving it as open space, he began filing public records requests with the Township under Pennsylvania’s Right-to-Know Law (“RTKL”) seeking information about the Township’s development plans. Mr. Murray used information gathered from his RTKL requests to inform his advocacy in the press, on social media, at Board meetings, and through litigation to stop the Board from unlawfully developing a municipal complex on the Smola Farm. On October 18, 2024, the Montgomery County Court of Common Pleas ruled in Mr. Murray’s favor in *Matthew Murray, et al. v. Trace Slinkerd, et al.*, No. 2023-02216 (Mont. Co. Ct. Com. Pl.) (the “Smola Case”), holding that the Township could not develop the municipal complex on the Smola Farm. In response to Mr. Murray’s constitutionally-protected advocacy, the Township filed a meritless lawsuit on January 9, 2025, alleging that Mr. Murray’s filing of RTKL requests constituted abuse of process and wrongful use of civil proceedings. *Upper Pottsgrove Township v. Matthew Murray*, No. 2025-00481 (Mont. Co. Ct. Com. Pl.) (the “RTKL Case”). The Township’s case was dismissed on June 2, 2025, when the Court held that the Township, through its Board of Commissioners (the “Board”), had no legal basis on which to state a claim for the unprecedented relief it had requested.

On July 15, 2025, Mr. Murray filed the instant complaint in this Court alleging that the Township’s RTKL Case violated Pennsylvania’s anti-SLAPP (“Strategic Lawsuit Against Public Participation”) statute. The General Assembly unanimously passed the anti-SLAPP statute, Act 72 of 2024, in response to “a disturbing increase in lawsuits brought primarily to chill the valid exercise of protected public expression.” 42 Pa.C.S.A. § 8340.12. The Anti-SLAPP law “grants immunity” and “awards attorney fees to parties that are forced to defend against meritless claims arising from the exercise of the rights to protected public expression.” *Id.* The Township’s RTKL Case was a SLAPP case under Pennsylvania’s anti-SLAPP statute because it was brought in retaliation for Mr. Murray’s protected public expression – his advocacy opposing the Township’s effort to develop Smola Farm.

In its preliminary objections, the Township asserts, without support, that filing RTKL requests does not constitute “protected public expression” under Pennsylvania’s anti-SLAPP statute. But the Township’s argument must fail for at least three reasons. First, Mr. Murray alleges that the Township filed the RTKL Case to punish him for, and silence, his broader advocacy campaign, not solely to prevent him from filing RTKL requests. Second, Mr. Murray’s RTKL requests were First Amendment-protected activity. Third, Mr. Murray’s RTKL requests represented communication on an issue under consideration or review in an executive proceeding. The Township also raises a preliminary objection claiming that it should be exempted from the anti-SLAPP statute because it claims that the Township was seeking to enforce a law through its RTKL Case. But this objection must also fail because Section 506 of the RTKL, not a civil action for injunctive relief, is the exclusive remedy for allegedly disruptive RTKL requests.

II. MATTER BEFORE THE COURT

The Township filed preliminary objections on August 22, 2025, requesting that this Court enter an Order sustaining its preliminary objections and dismissing Mr. Murray’s Complaint. On September 9, 2025, Mr. Murray filed a Stipulation for an Extension of Time for Plaintiff to File Answer and Brief in Opposition to Defendant’s Preliminary Objections, in which the parties stipulated to a 14-day extension (until September 25, 2025) for Mr. Murray to file his answer and brief in opposition to the preliminary objections. Mr. Murray now submits this Brief in Opposition to Defendant’s Preliminary Objections with the accompanying Answer to Defendant’s Preliminary Objections.

III. STATEMENT OF QUESTIONS INVOLVED

1) Was the Township’s RTKL Case, which was filed in response to Mr. Murray’s advocacy through RTKL requests, on social media, in the press, at Board meetings, and through litigation to stop the Township from unlawfully developing the Smola Farm, “based on protected public expression” under 42 Pa.C.S.A. § 8320.1(a)?

Suggested Answer: Yes.

2) Was the Township seeking to “enforce” the RTKL under 42 Pa.C.S.A. § 8340.14(b)(2) when it filed the RTKL Case seeking relief that contravened the terms of the RTKL?

Suggested Answer: No.

IV. FACTS

Mr. Murray, a resident of the Township, believes strongly in the preservation of public land. Compl. at ¶ 11. This case, and the RTKL Case that prompted it, are the product of the

Township's retaliatory efforts to punish Mr. Murray for advocating for the preservation of the Smola Farm.

In 2008, the Township purchased the Smola Farm from Thomas Smola, whose family had farmed the tract since the mid-nineteenth century, based on assurances by Township leadership that the land would remain undeveloped, public land. *Id.* at ¶¶ 12, 14, 15. To purchase the land, the Township used funds raised in accordance with the Pennsylvania Open Space Act from Open Space tax revenues approved by the Township's voters in a referendum. *Id.* at ¶ 12. Property purchased under the Open Space Act can only be used to achieve limited, preservation-oriented purposes. 32 P.S. § 5005. Despite the Township's promises to Mr. Smola and its obligations under the Open Space Act, the Board began developing plans in 2020 to build a municipal complex on the Smola Farm. Compl. at ¶ 16.

In response, Mr. Murray started a campaign of public advocacy against the Board's planned development of the Smola Farm: he spoke up at public Board of Commissioners and Open Space and Recreation Board meetings, *id.* at ¶ 17(a), he engaged with the press by speaking with reporters and endorsing an editorial in the *The Mercury*, *id.* at ¶ 17(b), he communicated with other Township residents through dozens of social media posts and comments regarding the Smola Farm, *id.* at ¶ 17(c), he filed a civil action against the Township and its Commissioners alleging that their plans to develop the Smola Farm violated the Open Space Act (the "Smola Case"), *id.* at ¶ 17(e), and he filed RTKL requests with the Township seeking information about the development of the Smola Farm, *id.* at ¶ 17(d). Mr. Murray's RTKL requests served a dual purpose: they demonstrated to the Board that Mr. Murray was monitoring and disapproving of the Board's unlawful development efforts and they provided vital information about the Board's development efforts which Mr. Murray used to inform and effectuate his other advocacy efforts. *Id.* at ¶ 17(d).

Most significantly, Mr. Murray offered numerous documents that he received from the Board in response to his RTKL requests as exhibits at trial in the Smola Case. *Id.* at ¶ 22. The Montgomery County Court of Common Pleas referenced these documents specifically in its decision in the Smola Case finding that the Township had violated the Open Space Act. *Id.* at ¶ 21. Mr. Murray’s advocacy drew considerable public and press attention to the Township’s efforts to unlawfully develop the Smola Farm: Mr. Murray raised \$27,372 from 149 donations for a “Save Smola Farm” GoFundMe, a “Save Smola Farm” Facebook page has attracted 249 followers, and several local press outlets published multiple articles on the subject. *Id.* at ¶ 18.

In response to Mr. Murray’s RTKL requests and other advocacy on the Smola Farm, the Board initiated a retaliatory campaign to punish Mr. Murray for his advocacy and limit his ability to express his views going forward. It filed a defamation lawsuit against Mr. Murray and his attorney Kate Harper over an April 2024 opinion piece written by Ms. Harper and endorsed by Mr. Murray regarding the Township’s use of land purchased with Open Space tax revenues for development, which mentioned that the police chief sent a letter to Mr. Murray in January 2024 warning him about speaking out at public meetings and implying he could be arrested. *Trace Slinkerd, Donald Read, Henry Lewellyn, and James H. Fisher v. Matt Murray*, No. 2024-14043 (Ct. Com. Pl. Mont. Co.). And on January 9, 2025, the Board filed a civil action in the Montgomery County Court of Common Pleas, the RTKL Case, alleging that Mr. Murray’s filing of RTKL requests for documents from the Township constituted abuse of process and wrongful use of civil proceedings and seeking a permanent injunction barring Mr. Murray from filing RTKL requests on the Township in the future. Compl. at ¶¶ 23-25. The Township has admitted that it filed the RTKL Case in part over its frustration with Mr. Murray using information gleaned from RTKL requests to advocate against the Township unlawfully developing the Smola Farm. *See, e.g.,*

Township’s Prelim. Obj. Resp. Br., RTKL Case at 2 (“Defendant has utilized the RTK Requests as a discovery tool in the” Smola Case).

Prior to filing the RTKL Case, the Township knew that such extraordinary injunctive relief was unavailable under the RTKL. It had already lost an appeal before the Office of Open Records on the same argument. Compl. at ¶ 27. The Township explained that it sought extraordinary “equitable relief above and beyond that which may be considered by the Office of Open Records” under Section 506(a). Exhibit A, Township’s Resp. to Prelim. Obj., RTKL Case, Feb. 24, 2025 at ¶ 12; *see also* Township’s Prelim. Obj. at ¶ 42 (“The Township RTKL Case ... [sought] injunctive relief where the RTKL did not empower the Office of Open Records to do so.”); *id.* at ¶ 24 (“Section 506 of the RTKL ... does not empower the Office of Open Records to take action to prevent disruptive requests in the future.”); Exhibit B, Transcript of Oral Argument on Motions in Limine at 8-9, RTKL Case, Jun. 2, 2025 (“the Office of Open Records informed us [] that they only have the ability under the law to stop right-to-know requests if they are repetitive and unduly burdensome.”).

At a January 22, 2025, hearing to consider the Township’s Petition for Preliminary and Final Injunction, the Honorable Judge Jeffrey S. Saltz denied the Township’s requested preliminary relief, on the basis that “[t]he legislature has created the remedy [under Section 506] that is available for disruptive requests, but for a particular category of disruptive requests, and has denied the right of the township to preclude a repetitive requester from requesting new records.” *See* Exhibit C, Transcript of Oral Arg. on Pls. Pet. for Prelim. and Final Inj. at 25, RTKL Case, Jan. 22, 2025. Judge Saltz sustained Mr. Murray’s preliminary objections and dismissed the RTKL Case for the same reason. Transcript of Oral Arg. on Motions in Limine at 15-16, RTKL Case,

Jun. 2, 2025 (“adher[ing] to that ruling [that the township was not entitled to injunctive relief] based under Section 506 of the right-to-know law which I discussed at the prior hearing”).

Mr. Murray subsequently brought this action on July 15, 2025, under 42 Pa.C.S.A. § 8320.1 for the Township’s violation of Pennsylvania’s anti-SLAPP statute. Mr. Murray could not have been granted a pretrial motion for immunity under 42 Pa.C.S.A. § 8340.16 in the RTKL Case as the Supreme Court of Pennsylvania has not yet promulgated the necessary procedural rules for such a motion. Compl. at ¶ 31-32.

V. ARGUMENT

a. Legal Standard for Addressing Preliminary Objections.

Preliminary objections must be overruled unless “it is *clear and free from doubt* that the facts pled are legally insufficient to establish a right to relief.” *Dotterer v. Sch. Dist. of Allentown*, 92 A.3d 875, 880 (Pa. Commw. Ct. 2014) (emphasis added). If there is any doubt that the complaint is “legally insufficient to establish a right to relief,” the objection should be overruled. *Werner v. Zazyczny*, 681 A.2d 1331, 1335 (Pa. 1996).

In reviewing preliminary objections, the Court must “accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts.” *Raynor v. D’Annunzio*, 243 A.3d 41, 52 (Pa. 2020) (internal citation and quotation marks omitted); *accord Meggett v. Pa. Dep’t of Corr.*, 856 A.2d 277, 279 (Pa. Commw. Ct. 2004) (citing *Kreamer v. Dep’t of Corr.*, 834 A.2d 710 (Pa. Commw. Ct. 2003)). The merits of a claim are also not considered—the inquiry is limited to whether any valid claim has been alleged. *Ins. Adjustment Bureau v. Ins. Comm’r for Pa.*, 485 A.2d 858, 860 (Pa. Commw. Ct. 1984). And if “any theory of law will support a claim, preliminary objections are not to be

sustained.” *Goodheart v. Thornburgh*, 522 A.2d 125, 128 (Pa. Commw. Ct. 1987), *on remand*, 545 A.2d 399 (Pa. Commw. Ct. 1988).

b. The Township’s RTKL Case Was a Cause of Action Based on Protected Public Expression Because its Purpose was to Restrict Mr. Murray’s Advocacy.

The crux of the Township’s preliminary objections is that filing RTKL requests does not constitute “protected public expression” under the Act. Township’s Prelim. Obj. at ¶¶ 20-38. The Township’s argument fails for three reasons. First, Mr. Murray claims that the Township filed the RTKL Case to stifle his broader advocacy efforts, not merely to prevent him from filing RTKL requests. Second, the requesting of public records to inform other First Amendment-protected activity is itself protected by the First Amendment. And finally, the filing of RTKL requests constitutes communication on an issue under consideration or review in a legislative, executive, judicial or administrative proceeding.

i. Mr. Murray Has Sufficiently Alleged that the Township Filed the RTKL Case Based on Mr. Murray’s Advocacy Campaign Against the Development of the Smola Farm, which Constitutes Protected Public Expression under the Anti-SLAPP Law.

The Township’s claim that the RTKL Case was based solely on Mr. Murray’s RTKL requests ignores Mr. Murray’s allegations that those requests were related to Mr. Murray’s successful advocacy campaign opposing the Township’s efforts to unlawfully develop the Smola Farm. In addition to filing RTKL requests to learn more information about the Township’s unlawful efforts to develop Smola Farm, Mr. Murray engaged in numerous forms of protected public expression to oppose the Township’s development of Smola Farm: He spoke at public Board of Commissioners and Open Space and Recreation Board meetings, *id.* at ¶ 17(a), he engaged with the press by speaking with reporters and endorsing an editorial in the *The Mercury*, *id.* at ¶ 17(b), he communicated with other Township residents through dozens of social media posts and comments regarding the Smola Farm, *id.* at ¶ 17(c). Most notably, he also filed a

successful civil action against the Township and its Commissioners alleging that their plans to develop the Smola Farm violated the Open Space Act (the “Smola Case”). *Id.* at ¶ 17(e). The claims in that case were based in part on records he obtained through RTKL requests to the Township. *Id.* at ¶¶ 17(d), 22. The Township filed the RTKL case not just to prevent him from filing RTKL requests but to retaliate against Mr. Murray for his advocacy and prevent him from engaging in future advocacy to expose unlawful Township actions or galvanize community opposition to Township proposals.

Indeed, the Township admitted in its complaint in the RTKL Case that it filed the RTKL Case partly in response to Mr. Murray’s using information gleaned from RTKL requests in the Smola Case. Exhibit D, RTKL Case Compl. at ¶ 9 (“the Township is in the midst of a contentious litigation matter [the Smola Case], in which Defendant [Matthew Murray] is a named plaintiff, regarding the Township’s plans to relocate and build a new Township municipal building”); *id.* at ¶ 10 (Mr. Murray “has utilized the RTK Requests as a discovery tool in the” Smola Case); *id.* at ¶ 6 (Mr. Murray has filed an excessive number of discovery requests, submitted under the Right to Know Law”).

Mr. Murray’s advocacy campaign to protect Smola Farm from unlawful development plainly constitutes “protected public expression” under the anti-SLAPP law. The law defines protected public expression in three ways, one of which being the:

exercise, on a matter of public concern, of the rights of freedom of speech or of the press, the right to assemble or petition or the right of association, guaranteed by: (i) the First Amendment to the Constitution of the United States; or (ii) section 7 or 20 of Article I of the Constitution of Pennsylvania.

42 Pa.C.S.A. § 8340.13, definition of “protected public expression” at (3). Mr. Murray’s advocacy on social media, in the press, and at Board meetings, and his litigation challenging development of the Smola Farm all related to a matter of public concern. *See* Compl. at ¶ 18;

Oberholzer v. Galapo, 322 A.3d 153, 183 (Pa. 2024) (quoting *Snyder v. Phelps*, 562 U.S. 443, 453 (2011)) (“[s]peech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.”). His advocacy was also protected by the First Amendment to the United States Constitution and Article I, Section 7 of the Pennsylvania Constitution. *See, e.g., Packingham v. North Carolina*, 582 U.S. 98, 108 (2017) (the First Amendment protects the right to use social media); *Lozman v. Riviera Beach*, 585 U.S. 87, 101 (2018) (the First Amendment’s right to petition protects an individual’s right to sue local entities and officials). The Township’s contention that it filed the RTKL Case based solely upon Mr. Murray’s filing of RTKL requests—and not based on his broader advocacy efforts opposing the Township’s effort to develop Smola Farm—is thus inconsistent with the Complaint’s allegations.

ii. Mr. Murray Has Sufficiently Alleged that His RTKL Requests Themselves Constituted Protected Public Expression under the Anti-SLAPP Law.

Even in the absence of any broader advocacy efforts, Mr. Murray’s filing of RTKL requests would nevertheless constitute protected public expression because the requests were submitted to obtain records related to the Township’s controversial development of Smola Farm, an issue of public concern at the time. *See Campbell v. Pennsylvania Sch. Boards Ass’n*, 972 F.3d 213, 225 (3d Cir. 2020) (holding that “the First Amendment protected all of Campbell’s alleged activities,” including the sending of hundreds of RTKL requests), *Sawicki v. Kipphan*, No. 1:21-CV-2031, 2024 WL 197637, at *8 (M.D. Pa. Jan. 18, 2024) (unpublished) (“Sawicki requesting records from the Borough office is speech protected by the First Amendment”).¹

¹ A growing consensus of Federal Circuit Courts of Appeal has held that the filing of open records requests represents protected speech under the First Amendment. *Campbell*, 972 F.3d at 225; *O’Brien v. Welty*, 818 F.3d 920,

In addition, Mr. Murray has alleged that he filed the RTKL requests for the purpose of informing his other First Amendment-protected activity, Compl. at ¶¶ 2, 17(d), which is itself protected by the First Amendment. Although the Township contends that RTKL requests are not expressive, it cites no case law in support of that argument. Nor does it explain how its claim that “[t]here is no absolute guarantee by the First Amendment or Pennsylvania Constitution to access public records,” Township’s Prelim. Obj. Br. at ¶ 35, supports its argument. Mr. Murray is not challenging the denial of access to a public record; he is challenging the Township’s filing of a frivolous lawsuit against him to punish him for his advocacy and make it more difficult to expose unlawful Township actions in the future. Compl. at ¶¶ 3, 33-37.

At least one other court has interpreted their state anti-SLAPP laws to protect the filing of public records requests. *See Iloh v. Regents of Univ. of California*, 312 Cal. Rptr. 3d 674, 678 (Cal. App. 5th 2023), *review denied* (Dec. 13, 2023). In *Iloh*, the California Court of Appeals considered an anti-SLAPP motion filed by a non-profit against a professor seeking to bar a university from providing records about the professor to the non-profit. The court held that “[i]n issuing the [public records] request, [the non-profit] was engaging in newsgathering so it could report on matters of public interest, such as how a public university funded largely by taxpayer dollars resolves quality or integrity problems in its professors’ publications” and that the non-profit “was therefore engaged in protected activity when it issued the ... request.” *Id.* at 678. Mr. Murray’s claims are analogous. He filed his RTKL requests to gather information related to the Township’s

933 (9th Cir. 2016) (Plaintiff “engaged in speech and conduct protected by the First Amendment” by making public records requests and posting his opinions to his website), *Dear v. Nair*, No. 21-2124, 2022 WL 2165927, at *3 (10th Cir. June 16, 2022) (unpublished) (“[A] citizen’s public records requests and lawsuits against the government can clearly constitute protected First Amendment activity.” (quoting *DeMartini*, 942 F.3d at 1289)), *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1305 (11th Cir. 2019) (noting that “public records requests and lawsuits typically constitute protected speech under the First Amendment”); *but see Allen v. Lang*, 738 F. App’x 934, 938 (10th Cir. 2018) (Plaintiff “failed to establish that he engaged in constitutionally protected activity” by requesting public records under the Oklahoma Open Records Act).

development of Smola Farm so that he could disseminate it to others in the community and use the records to support his successful legal challenge to the Township's development of Smola Farm. Mr. Murray has alleged that he sought records on matters of public concern from the Township and used them to support his advocacy. That is sufficient to allege that he was engaged in protected public expression under the anti-SLAPP law.

iii. Mr. Murray Has Sufficiently Alleged that His RTKL Requests Were Protected Public Expression under the RTKL Because They Constituted Communications on an Issue under Consideration in an Executive Proceeding.

In addition to protecting individuals' exercise of their speech and petition rights on a matter of public concern, the anti-SLAPP statute includes as protected public expression "communication on an issue under consideration or review in a legislative, executive, judicial or administrative proceeding." 42 Pa.C.S.A. § 8340.13. Mr. Murray's RTKL requests are protected under this definition because they conveyed a message to the Board that Mr. Murray was monitoring and gathering information related to the Board's attempts to develop the Smola Farm.

The comments to Pennsylvania's Anti-SLAPP statute, drawn from the Uniform Public Expression Protection Act, note that "[c]ommunication' should be construed broadly--consistent with holdings of the Supreme Court of the United States--to include any expressive conduct that likewise implicates the First Amendment." 42 Pa.C.S.A. § 8340.14, Uniform Law Comment at 6. The Township asserts that Mr. Murray's filing of RTKL requests did not constitute protected public expression because "[a] request under the RTKL is not expressive - it is simply a request for records of an agency," which "do[es] not convey a message." *Id.* at ¶¶ 30-31.

But Mr. Murray's RTKL requests did convey a message. They "demonstrated to the Board that their unlawful conduct was being monitored and disapproved of." Compl. at ¶ 17(d), and "impressed on the Board that he was monitoring their unlawful attempts to develop the

Smola Farm.” Indeed, the Township acknowledged in the RTKL Case that Mr. Murray’s RTKL requests represented “speech.” Township’s Resp. to Prelim. Obj., RTKL Case, at ¶ 11 (“It is well established that a Constitutional right to free speech is not absolute, and does not protect all types of speech, especially when that speech becomes abusive (as seen in Defendant’s behavior of filing more than 100 Right-to-Know requests”). While Mr. Murray strongly disputes that he had any intent of harming the Township through his RTKL requests, the Township’s filings in the RTKL Case clearly acknowledge that RTKL requests can be expressive.

c. Mr. Murray Has Sufficiently Alleged that the Township’s RTKL Case Did Not Seek to Enforce a Law, Regulation, or Ordinance.

Although the anti-SLAPP law exempts from its protections claims asserted in a civil action by a government unit acting in an official capacity to enforce a law, regulation or ordinance, 42 Pa.C.S.A. § 8340.14(b)(2), the Township’s RTKL case was not such an enforcement action. Section 506 of the RTKL, not a civil action for injunctive relief², is the exclusive remedy for allegedly disruptive RTKL requests. Compl. ¶ 26; 65 P.S. § 67.506(a)(1).

The General Assembly intended the RTKL to impose a broad obligation to respond to records requests. *See* 65 P.S. § 67.301(a) (“[a] Commonwealth Agency *shall* provide public records in accordance with this act.”) (emphasis added); *State Employees’ Ret. Sys. v. Fultz*, 107 A.3d 860, 866 (Pa. Commw. Ct. 2015) (“the RTKL must be construed to maximize access to public records that are in an agency’s possession.”). The General Assembly established an

² The Township’s citation to *Pa. Stat Educ. Ass’n v. Dep’t of Cmty. & Econ. Dev.*, 50 A.3d 1263 (Pa. 2012), provides no support for its argument that injunctive relief can “be used as a mechanism to enforce the provisions of the RTKL,” Township’s PO Brief at ¶ 43. In the cited case, the Court held that the OOR was an indispensable party to the teachers’ union’s suit for declaratory relief, seeking to protect school employees’ home addresses from disclosure under the RTKL. 50 A.3d at 1277. The underlying case did not seek to enforce the provisions of the OOR; rather it asked the court to enjoin the release of school employees’ home addresses under the RTKL as violative of their constitutionally protected right to privacy. *Pennsylvania State Educ. Ass’n ex rel. Wilson v. Com., Dep’t of Cmty. & Econ. Dev., Off. of Open Recs.*, 981 A.2d 383, 385 (Pa. Commw. Ct. 2009), *aff’d*, 606 Pa. 638, 2 A.3d 558 (2010).

exclusive remedy for disruptive requests under Section 506(a) of the RTKL.³ If relief is unavailable under Section 506(a), an agency is obligated to fulfil its obligations under the RTKL, even when fulfilling those obligations is costly or difficult.⁴ *Com., Dep't of Env't Prot. v. Legere*, 50 A.3d 260, 266 (Pa. Commw. Ct. 2012) (“[t]here is simply nothing in the RTKL that authorizes an agency to refuse to search for and produce documents based on the contention it would be too burdensome to do so.”). The RTKL makes clear that governmental entities may not adopt policies to limit the number of records requested, 65 P.S. § 67.1308(1), or the number of requests made by the same party, *see Advisory Opinion on Agency Policies Limiting RTKL Requests*, Office of Open Records (Aug. 19, 2022), https://www.openrecords.pa.gov/Documents/RTKL/2022-08-19_PaNewsMedia_AdvisoryOpinion.pdf (last visited Sep. 19, 2025). Thus, rather than compelling obedience to the RTKL or giving it force, the extraordinary equitable relief the Township requested in the RTKL Case—exempting it from its statutory obligation to respond to Mr. Murray’s requests—would frustrate the RTKL’s purpose.

The Township has acknowledged that its RTKL Case sought extraordinary “equitable relief above and beyond that which may be considered by the Office of Open Records” under Section 506(a). Township’s Resp. to Prelim. Obj., RTKL Case, Feb. 24, 2025 at ¶ 12. This Court

³ The General Assembly clearly intended to make Section 506(a) agencies’ exclusive remedy for addressing disruptive requests under the RTKL. In debate prior to the RTKL’s passage, the Pennsylvania House of Representatives expressly rejected an amendment to remove Section 506(a) from the RTKL. *See* Legislative Journal - House of Representatives, Session of 2007, No. 112 (Dec. 10, 2007) at 2840, <https://www.legis.state.pa.us/WU01/LI/HJ/2007/0/20071210.pdf#page=11> (last visited Sep. 19, 2025) (referencing Amendment A04728 to Senate Bill 1 of 2007-2008). Speaking in opposition to the amendment, Representative Keith R. McCall emphasized that Section 506(a) “is a useful tool in the open records act, and I think we should be protecting local governments as well as other State agencies and government agencies, for repeated requests for the same record.” *Id.* The amendment failed. *Id.* The RTKL was subsequently passed unanimously in the House and Senate.

⁴ The remedy under Section 506(a) is limited to the denial of a single repetitive and burdensome request – “[a] denial under this subsection shall not restrict the ability to request a different record.” *Id.* at 67.506(a)(2).

dismissed the RTKL Case precisely because the Township had disregarded the clear terms of the RTKL: “[t]he legislature has created the remedy [under Section 506] that is available for disruptive requests, but for a particular category of disruptive requests, and has denied the right of the township to preclude a repetitive requester from requesting new records.” *See* Transcript of Oral Arg. on Township’s Pet. for Prelim. and Final Inj. at 25, RTKL Case, Jan. 22, 2025; *see* Transcript of Oral Arg. on Motions in Limine at 15-16, RTKL Case, Jun. 2, 2025 (“adher[ing] to that ruling [that the township was not entitled to injunctive relief] based under Section 506 of the right-to-know law which I discussed at the prior hearing”).

As such, the Township was not enforcing the RTKL under 42 Pa.C.S.A. § 8340.14(b)(2) when it litigated its RTKL Case. Here, the Complaint’s allegations make clear that the Township’s RTKL Case was not an effort to enforce Section 506 of the RTKL. The RTKL cannot be “enforced” against a requestor, only an agency. Accordingly, the Township’s preliminary objection should be overruled.

VI. CONCLUSION

For each of the foregoing reasons, Mr. Murray respectfully requests that the Court overrule the Township’s preliminary objections.

Dated: September 24, 2025

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Respectfully submitted,

/s/ Ariel Shapell
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Counsel for the Plaintiff

CERTIFICATE OF COMPLIANCE

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

Dated: September 24, 2025

/s/ Ariel Shapell
Ariel Shapell

CERTIFICATE OF SERVICE

I certify that this on the date set forth below, I caused a true and correct copy of the foregoing Brief in Opposition to Defendant’s Preliminary Objections to be served, together with all documents in support thereof, via electronic mail on counsel of record for Defendant Upper Pottsgrove Township.

Dated: September 24, 2025

/s/ Ariel Shapell
Ariel Shapell

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

UPPER POTTSGROVE TOWNSHIP

vs.

NO. 2025-00481

MURRAY, MATTHEW E

COVER SHEET OF RESPONDENT

Date of Filing February 24, 2025

Respondent UPPER POTTSGROVE
TOWNSHIP

Counsel for Respondent ERIC C. FREY, ESQUIRE

I.D. No. 76051

Counsel's email address: EFREY@DBDLAW.COM

Document Filed (Specify) PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT

MATTHEW E MURRAY'S PRELIMINARY OBJECTIONS TO THE COMPLAINT

RULE RETURN DATE of Motion _____

DISCHELL, BARTLE & DOOLEY, P.C.
BY: Eric C. Frey, Esquire
Attorney ID #76051
224 King Street
Pottstown, PA 19464
(610) 323-3306
Solicitor for Plaintiff, Upper Pottsgrove Township

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|--------------------------|---|-----------------------|
| UPPER POTTGROVE TOWNSHIP | : | COURT OF COMMON PLEAS |
| 1409 Farmington Avenue | : | MONTGOMERY COUNTY, PA |
| Pottstown, PA 19464-29 | : | |
| Plaintiff | : | |
| v. | : | |
| | : | NO: 2025-00481 |
| MATTHEW E. MURRAY | : | |
| 1530 Aspen Drive | : | |
| Pottstown, PA 19464 | : | CIVIL ACTION - LAW |
| Defendant | : | |

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT MATTHEW E. MURRAY'S
PRELIMINARY OBJECTIONS TO THE COMPLAINT**

Plaintiff, Upper Pottsgrove Township (the "Township"), by and through its solicitor, Eric C. Frey, Esquire of Dischell, Bartle & Dooley P.C., respectfully submits this Response in Opposition to Preliminary Objections to the Complaint of Defendant, Matthew E. Murray and avers as follows:

1. Admitted.
2. Denied as conclusions of law. Strict proof of same is demanded at the time of trial.
3. Admitted in part, denied in part. It is admitted that the Township is subject to the Right-to-Know Law. It is specifically denied that the Township argued or litigated the issues raised in this matter before any other Court or agency having jurisdiction over Right- to-Know matters. The remainder of the allegations are denied as conclusions of law. Strict proof of same is demanded at the time of trial.

4. Admitted.

5. Admitted in part and denied in part. It is admitted that this Court did deny the Township's request for a preliminary injunction. It is denied, however, that this Court ruled in any capacity with regards to the Township's request for a final injunction. Strict proof of same is demanded at the time of trial. By way of further response, the case at hand is a novel issue with little caselaw existing on the issue. There is currently no relief under the Right-to-Know Law which protects a municipality from instances of a citizen "exercising" their rights by filing an inordinate amount of Right-to-Know Requests and costing a municipality and its citizens more than \$50,000 in a two year period, as Defendant in this case has.¹

6-8. Denied as a conclusion of law. Strict proof of same demanded at time of trial.

9. Admitted in part and denied in part. The Township is seeking an injunction as to Defendant's abusive submission of more than 100 Right-to-Know requests which continue to be a drain on the Township's resources and taxpayer money. The allegations are further denied as conclusions of law, and are otherwise expressly denied. Strict proof of same is demanded at the time of trial.

10. Denied as a conclusion of law. Strict proof of same demanded at time of trial.

11. Admitted in part, and denied in part as a conclusion of law. Defendant has a right to *properly* avail himself of the Right-to-Know Law. It is well established that a Constitutional right to free speech is not absolute, and does not protect all types of speech, especially when that speech becomes abusive (as seen in Defendant's behavior of filing more than 100 Right-to-Know requests). Additionally, in many cases, Defendant failed to retrieve the requested documents for

¹ While not precedential on this Court, note that other state legislators are revising similar right to know laws to give municipalities the authority to deny requests that were intended to disrupt and harm governmental function. As one example, see the recent narrowing of New Jersey's Open Public Records Act C.47:1A-5(g) which allows a municipality the right to refuse a request if it will "substantially disrupt agency operations[.]"

months after costing the Township excessive dollars in processing the Right-to-Know requests. All other conclusions averred by Defendant are strictly denied.

12. Denied as a conclusion of law. Strict proof of same is demanded at time of trial. By way of further response, the Office of Open Records is limited to its determination of “repetitive or burdensome.” In this matter, the Township is seeking equitable relief above and beyond that which may be considered by the Office of Open Records.

13. Admitted in part, and denied in part as a conclusion of law. Defendant has a right to *properly* avail himself of the Right-to-Know Law. Defendant should not have the right to improperly seek the same records repeatedly so as to be a burden on the Township’s resources, especially when the Defenant is in litigation with the Township and is submitting an excessive number of Right-to-Know requests. All other conclusions averred by Defendant are strictly denied.

14. No response required.

(A)-(D) Denied as conclusions of law. Strict Proof of same demanded at time of trial.

15. Denied as a conclusion of law. Strict Proof of same demanded at time of trial.

WHEREFORE, Plaintiff requests that Defendant’s Preliminary Objections be stricken and that the case be scheduled for trial.

DISCHELL BARTLE & DOOLEY, P.C.

BY:


ERIC C. FREY, ESQUIRE
Solicitor for Plaintiff,
Upper Pottsgrove Township

DISCHELL, BARTLE & DOOLEY, P.C.
BY: Eric C. Frey, Esquire
Attorney ID #76051
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(610) 323-3306
Solicitor for Plaintiff, Upper Pottsgrove Township

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| Pottstown, PA 19464-29 | : | |
| Plaintiff | : | |
| v. | : | |
| | : | NO: 2025-00481 |
| MATTHEW E. MURRAY | : | |
| 1530 Aspen Drive | : | |
| Pottstown, PA 19464 | : | CIVIL ACTION - LAW |
| Defendant | : | |

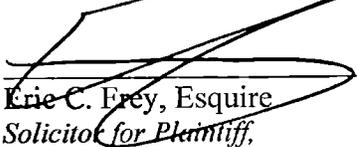
CERTIFICATE OF SERVICE

I, Eric C. Frey, Esquire, hereby certify that on this day, I served true and correct, time-stamped copies of Plaintiff's Response in Opposition to Defendant Matthew E. Murray's Preliminary Objections to the Complaint, and Plaintiff's Memorandum of Law in Support of the same upon Defendant's counsel of record via email and first class mail, postage prepaid addressed as follows:

charper@timoneyknox.com
Catherine M. Harper, Esquire
Timothy Knox, LLP
400 Maryland Drive
P.O. Box 7544
Ft. Washington, PA 19034
Counsel for Defendant, Matthew E. Murray

DISCHELL BARTLE & DOOLEY, P.C.

Dated: *2-24-25*

BY: 
Eric C. Frey, Esquire
Solicitor for Plaintiff,
Upper Pottsgrove Township

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| v. | : | |
| | : | NO: 2025-00481 |
| MATTHEW E. MURRAY | : | |
| 1530 Aspen Drive | : | |
| Pottstown, PA 19464 | : | |
| Defendant | : | |

ORDER

And now this _____ day of _____, 2025, after consideration of Defendant’s Preliminary Objections to Complaint, and Plaintiff’s Response thereto, it is hereby ordered that Defendant's Preliminary Objections are dismissed and that Defendant is ordered to answer the complaint within twenty (20) days.

BY THE COURT

J.

DISCHELL, BARTLE & DOOLEY, P.C.
BY: Eric C. Frey, Esquire
Attorney ID #76051
224 King Street
Pottstown, PA 19464
(610) 323-3306
Solicitor for Plaintiff, Upper Pottsgrove Township

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| 1530 Aspen Drive | : | |
| Pottstown, PA 19464 | : | CIVIL ACTION - LAW |
| Defendant | : | |

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF
ITS RESPONSE IN OPPOSITION TO DEFENDANT'S
PRELIMINARY OBJECTIONS TO THE COMPLAINT**

I. COUNTER STATEMENT OF THE CASE

Pursuant to Pennsylvania Rule of Civil Procedure 1531, Petitioner, Upper Pottsgrove Township (“Township”), filed a complaint alleging abuse of process and wrongful use of civil process related specifically to the submissions by Defendant, Mathew E. Murray (“Defendant”), of the now over 100 Right-to-Know requests, and to restrain Defendant from pursuing RTK Requests (as defined below) to the Township and/or appeals to the Pennsylvania Office of Open Records (“OOR”). The Township’s action was field solely to protect its rights and to preserve taxpayer resources

Defendant, with an apparent desire to hamper the Township's financial and professional resources, has filed an excessive number of discovery requests, submitted under the Right to Know Law, 65 Pa.C.S. §101 et seq. (the "RTKL"), all of which require the Township's immediate attention. Currently, the ever growing list of Defendant's RTKL applications (the "RTK Requests") sit at over one hundred (100) requests since 2022. It must be noted that a number of the RTK Requests are derivative in nature and seek substantially similar information as to the information found in prior RTK Requests.

Defendant's RTK Requests have been rightfully denied by the Township on at least eight (8) occasions (the "RTK Denials"). Defendant has also appealed the RTK Denials to the OOR, and lost all but one (1) of those appeals. Despite these losses, Defendant continues to file RTK Requests which further harm the Township and its citizens financially through the diversion of the Township's limited resources.

In just a two year period, from October of 2022 to October 2024, Respondent's excessive RTK Requests have cost the Township and its residents, in addition to Township staff time and resources, more than Fifty-Five Thousand Dollars (\$55,000.00) in legal costs alone.

Currently, the Township is in the midst of a contentious litigation matter, in which Defendant is a named plaintiff, regarding the Township's plans to relocate and build a new Township municipal building (the "Municipal Litigation"). Defendant has utilized the RTK Requests as a discovery tool in the Municipal Litigation.

Defendant has utilized the RTKL process to monopolize the resources of the Township; as follows:

- a. The Township staff has had to expend substantial time and resources to timely address the Defendant's RTK Requests;

- b. The Township has had to utilize its solicitor, at great expense to the Township, to process Defendant's RTK Requests.
- c. The Township has, on several occasions, had to utilize its outside IT consultant, at great expense to the Township, to process Defendant's RTK Requests.

Despite the excessive amount of RTK Requests being submitted by Defendant, the Township properly and timely processed the same. Defendant, however, failed to retrieve a number of the requested documents from the Township for over four months. There were at least six (6) matters in which the Township processed Defendant's RTK Requests and Defendant failed to pick up the responsive documents compiled by the Township (the "Outstanding Documents"). In each of these six (6) matters, in which Defendant failed to timely retrieve records from the Township, Defendant owed fees and costs to the Township (the "Outstanding Fees", and collectively with the Outstanding Documents, the "Outstanding Requests"); as follows:

- a. Murray #91 - \$6.00;
- b. Murray #92 - \$25.50;
- c. Murray #96 - \$23.00;
- d. Murray #98 - \$1.75;
- e. Murray #99 - \$9.50; and
- f. Murray #100 - \$1.00.

Despite multiple notices for the Outstanding Requests, until recently Defendant failed or refused to either pick up the Outstanding Documents or pay the Outstanding Fees due to the Township. Only when Defendant was notified that he would not be able to obtain any further documents related to any future RTK Request, until the Outstanding Requests were satisfied, did Defendant finally retrieve the records and pay the Outstanding Fees.

II. THE PRELIMINARY OBJECTIONS SHOULD BE DENIED

Defendant, by filing the excessive and often redundant RTK Requests, is intentionally using the RTKL legal process as a strategy to hamper and damage the financial and professional resources of the Township and its citizens. The Township and its citizens have suffered, and will continue to suffer, substantial expense and drain of resources due to Defendant filing over one hundred (100) RTKL Requests which is a clear abuse of the RTKL.

Defendant is using the legal process of filing RTKL Requests with the Township, and appeals with the OOR, as a tactical weapon to financially damage the Township and consume its professional resources so that the Township cannot adequately complete its other obligations, which includes the Municipal Litigation filed by Defendant. Defendant has perverted the RTKL process in an effort to punish the Township for defending itself in the Municipal Litigation.

Of the eight (8) Final Determinations the OOR made on Defendant's appeals, all but one (1) of the OOR proceedings have been determined in favor of the Township. Defendant has shown that he has no desire to actually obtain the records by his failure to timely retrieve documents prepared by the Township in response to at least the six (6) of his RTK Requests. The Township and its citizens have suffered, and will continue to suffer, substantial damages as a result of Defendant's abusive and retaliatory conduct of filing over one hundred (100) RTK Requests and eight (8) appeals in just two (2) years' time. The filing of the RTK Requests to the Township has necessitated the use of substantial staff and consultant time and extensive document production, at the expense of the Township taxpayers.

While the RTKL was intended to ensure transparency and access to government records, it was never intended to be used as a weapon to hold hostage and financially drain a township of its limited resources or to hinder a township from engaging in the lawful purposes for which it was created. Defendant has acted in a grossly negligent manner and/or without probable cause in filing

repeated RTK appeals with OOR. As evidenced above, Defendant's purpose in filing RTK Requests, and the corresponding appeals with the OOR, is not to obtain documents for clarity, but to harass and retaliate against the Township.

Pursuant to the RTKL, the Township, upon receipt of any RTKL request, is required to process that request regardless of the status of past due fees. The Township's only recourse is to refuse the delivery of future documents until all current and past due fees are paid. Accordingly, the Township must continue to expend staff time, consultant time, and copying fees to process any new RTK Request submitted by Defendant.

The provisions under the Pennsylvania RTKL do not currently provide any potential relief for the Township or its citizens to protect from Defendant's continued misuse of the RTKL.¹ As a result, the Township is forced to bring this action for abuse of process against Defendant to protect the rights, financial funds and the professional resources of the Township and its citizens, and herein seeks both a preliminary and permanent injunction stopping Defendant's continued abuse of the RTKL.

Equitable relief is the only potential relief that the Township may seek under the current Pennsylvania RTKL.² As such, Defendant's Preliminary Objections should be dismissed and the Defenant should be ordered to answer the Complaint.

¹ While not precedential on this Court, note that other state legislators are revising similar right to know laws to give municipalities the authority to deny requests that were intended to disrupt and harm governmental function. As one example, see the recent narrowing of New Jersey's Open Public Records Act C.47:1A-5(g) which allows a municipality the right to refuse a request if it will "substantially disrupt agency operations[.]"

² As seen in the 2018 case of Londonderry v. Harmon (Court of Common Pleas of Dauphin County Docket No. 2018-CV-778-MD), the court allowed the narrowing of a citizen's rights under the RTKL, and reduced the amount of RTK requests that the citizen was allowed to submit in any given period. Additionally, this narrowing included the citizen's immediate family members and enjoined the citizen from "directing, encouraging or acting in concert or participation with another person or group of people to file RTK requests with the Township[.]" See Decision and Stipulated Order attached hereto as Appendix "A."

III. CONCLUSION

Based upon the foregoing, Plaintiff requests that this Court deny Defendant's Preliminary Objections and order the Defendant to answer the Complaint.

DISCHELL, BARTLE & DOOLEY, P.C.

BY: _____

*Eric C. Frey, Esquire
Solicitor for Plaintiff,
Upper Pottsgrove Township*

APPENDIX "A"

**LONDONDERRY V. HARMON
DECISION AND ORDER**

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IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

Londonderry Township,

Plaintiff

v.

Glenn Harmon,

Defendant,

CIVIL ACTION

No. 2018-CV-778-MD

FINAL ORDER AND DECREE

AND NOW, THIS 20 DAY OF April, 2018, upon consideration of the Parties' Joint Stipulation for Entry of Permanent Injunction, it is hereby Ordered and Decreed that:

1. The Defendant, Glenn Harmon, is permanently enjoined from filing requests with Londonderry Township, Dauphin County for records under the Right to Know Law, 65 P.S. 67.101, et seq. (referred to herein as RTKL), except as per the terms of this Order.
 - a. Beginning May 1, 2018, Defendant Harmon may submit no more than two (2) RTKL requests, inclusive of subparts, per month.

- b. Each request shall encompass a single subject for a specific record or record set.
- c. Defendant Harmon shall comply with the requirements for submission of a RTKL request for public records under the RTKL, including, but not limited to, the requirement that such requests be submitted on the appropriate form.
- d. Defendant Harmon shall work with the Township to clarify questions, if any, regarding his RTKL requests prior to the Township responding to the RTKL request.
- e. Defendant Harmon is permitted to file good faith appeals to the Pennsylvania Office of Open Records in relation to RTKL requests made in compliance with this Order.

2. The Permanent Injunction and requirements of Paragraph 1 of this Order shall extend to Defendant Harmon's immediate family members including his spouse and adult children.

3. Defendant Harmon is further enjoined from directing, encouraging or acting in concert or participation with another person or group of people to file RTKL requests with the Township in contravention of the provisions of this Order.

4. To the extent the Township receives a RTKL request that is compliant with paragraphs 1-3 of this Order, the Township shall not deny such a request on the basis that the Defendant is not acting in good faith.

5. Within forty-five (45) days of the date of this Order, the Township shall provide documents, to the extent such documents exist and are not subject to an

exception, exclusion or privilege under the RTKL, underlying the following Office of Open Records Determinations:

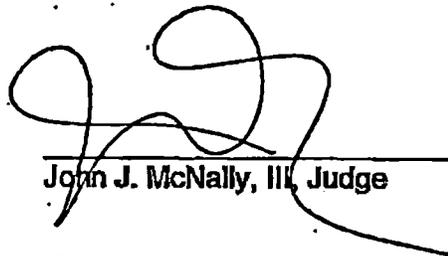
AP 2017-2309; AP 2017-2344; AP 2017-2345; AP 2017-2352; AP 2017-2354; AP 2017-2357; AP 2017-2358; AP 2017-2372; AP 2017-2374; 2017-2376; 2017-2378; AP 2017-2404; AP 2017-2375; and AP 2018-0150.

6. Defendant Harmon shall pay all copying costs for the production of such records as provided under the RTKL.

7. The Township shall discontinue its Petitions for Review docketed at 2018-CV-779-MD and 2018-CV-1032-MD.

8. Each party shall bear its own costs in relation to this matter, as well as the matters docketed at 2018-CV-779-MD and 2018-CV-1032-MD.

4/20/18
Date


John J. McNally, III, Judge

Distribution:

Mark S. Stewart, Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor,
Harrisburg, PA 17101

William J. Cluck, Law Office of William J. Cluck, 587 Showers Street, Harrisburg, PA
17104-1663

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IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

Londonderry Township,

Plaintiff

v.

Glenn Harmon,

Defendant,

CIVIL ACTION

No. 2018-CV-778-MD

DAUPHIN COUNTY
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JOINT STIPULATION FOR ENTRY OF PERMANENT INJUNCTION

This Joint Stipulation for Entry of Permanent Injunction is made this 18th day of April, 2018, by and between Londonderry Township and Glenn Harmon (collectively, the Parties). In furtherance thereof, the Parties aver and stipulate as follows:

1. Londonderry Township, the Plaintiff in the above-captioned matter, is a second-class township organized under the laws of the Commonwealth with its principal place of business at 783 South Geyers Church Road, Middletown (Londonderry Township, Dauphin County), Pennsylvania 17057.
2. Glenn Harmon is the Defendant in the above-captioned matter, with a current address of 1445 Vendome Court, Cape Coral, Florida 33904.
3. Plaintiff filed a Civil Complaint on January 31, 2018, in the above-captioned matter alleging abuse of process and wrongful use of civil proceeding seeking a permanent injunction to enjoin Defendant Harmon from filing requests for documents under the Right to Know Law, 65 P.S. § 67.101, et. seq (referred to herein as the RTKL), or from filing appeals of Township determinations to the Pennsylvania Office of Open Records (referred to herein as the OOR). Defendant Harmon was not formally served the Civil Complaint until February 5, 2018.
4. On the same date as the filing of the Civil Complaint, the Township simultaneously filed a Petition for Preliminary Injunction seeking to temporarily enjoin Defendant Harmon pending the outcome of the underlying Civil

Complaint. The Township transmitted the Complaint and the Petition, comprising approximately 100 pages, which included, as exhibits thereto, over 300 pages of Defendant Harmon's RTKL requests and subsequent appeals, in nine (9) separate electronic messages to Defendant Harmon.

5. In addition to the aforementioned, on January 31, 2018 and on February 9, 2018, Plaintiff filed Petitions for Review in the Dauphin County Court of Common Pleas against Defendant Harmon and the OOR, docketed at 2018-CV-779-MD and 2018-CV-1032-MD, appealing twelve (12) OOR Determinations, as listed below:

- a. OOR Determination 2017-2404**
- b. OOR Determination 2017-2309**
- c. OOR Determination 2017-2344**
- d. OOR Determination 2017-2345**
- e. OOR Determination 2017-2352**
- f. OOR Determination 2017-2354**
- g. OOR Determination 2017-2357**
- h. OOR Determination 2017-2358**
- i. OOR Determination 2017-2374**
- j. OOR Determination 2017-2376**
- k. OOR Determination 2017-2378**
- l. OOR Determination 2017-2372**

6. On February 5, 2018, after a hearing on the Petition for Preliminary Injunction, which was not attended by Defendant Harmon, a Preliminary Injunction was issued preliminarily enjoining Defendant Harmon from submitting additional RTKL requests with the Township or filing appeals of Township denials to the OOR. The Court sent its Preliminary Injunction Order via electronic mail to Defendant Harmon on February 5, 2018.

7. On February 6 and 7, 2018, Defendant Harmon filed a total of four (4) RTKL appeals to the OOR. On February 9, 2018, Defendant Harmon submitted two (2) RTKL requests to the Township. Defendant Harmon received the February 5, 2018 Order by United States mail on February 10, 2018.

8. On February 13, 2018, the Plaintiff filed a Motion for Contempt of the Preliminary Injunction Order. On the same date, Defendant Harmon withdrew the four (4) RTKL appeals filed with the Pennsylvania Office of Open Records. Defendant Harmon filed a response to the Motion for Contempt on March 5, 2018.
9. After negotiations, the Parties hereto wish to settle fully all outstanding matters without the need for further litigation and mutually agree to resolve outstanding matters in accordance with the terms contained herein.
10. To effectuate such resolution, the Parties agree to the following terms and request the Court to approve and adopt the same as the Final Order and Decree in this matter:
 - a. Defendant shall be permanently enjoined from filing future RTKL requests with the Township except as specified herein:
 - i. Beginning on May 1, 2018, Defendant Harmon may submit up to two RTKL requests, inclusive of all subparts, per month.
 - ii. Defendant Harmon's requests must encompass a single subject for a specific record or record set.
 - iii. Defendant Harmon agrees to comply with the requirements for submission of RTKL requests, including that the RTKL requests submitted to the Township be submitted on the proper form and in accordance with the Township's RTKL policy. A copy of the current RTKL form is attached hereto as Exhibit A.
 - iv. Defendant Harmon agrees to work with the Township to clarify questions, if any, regarding his RTKL requests prior to the Township responding to the RTKL request.
 - v. Defendant Harmon maintains his right to file good faith appeals to the OOR.
 - b. The Township agrees not to raise as a basis for denial of any future RTKL requests submitted in accordance with subparagraph (a) that Defendant Harmon is not acting in good faith or that the request is duplicative of a request that was filed prior to the execution of this Stipulation. The

Township reserves its right to deny future RTKL requests based on the statutory requirements, exceptions, exemptions or privileges recognized under the RTKL as to any requests.

- c. The provisions enumerated in subparagraph (a) apply to Defendant Harmon and his immediate family members, to include his wife and adult children, and Defendant Harmon is enjoined from directing, encouraging or acting in concert with another person or group of people to submit RTKL requests with the Township in contravention of the provisions of this Stipulation.
- d. Within forty-five (45) days of the issuance of the Court's Final Order, the Township agrees to provide documents, to the extent such documents exist and are not subject to an exception, exemption or privilege under the RTKL, underlying the following OOR Determinations, which were the subject of the Township's Petitions for Review:
 - AP 2017-2309;
 - AP 2017-2344;
 - AP 2017-2345;
 - AP 2017-2352;
 - AP 2017-2354;
 - AP 2017-2357;
 - AP 2017-2358;
 - AP 2017-2372;
 - AP 2017-2374;
 - AP 2017-2376;
 - AP 2017-2378;
 - AP 2017-2404.
- e. The Township agrees not to file appeals of, and within forty-five (45) days of the issuance of the Court's Final Order, to provide documents, subject to any exception, exemption or privilege, related to the additional OOR Determinations docketed at AP 2017-2375 and AP 2018-0150.
- f. To the extent documents exist and are produced in conjunction with paragraphs (a), (d) and (e), Defendant Harmon shall be responsible for the payment of copying costs, as provided under the RTKL.
- g. Defendant Harmon reserves the right to file appeals to OOR to the extent

any of the requests or determinations in paragraphs (a), (d) or (e) following issuance of the Court's Final Order are denied.

- h. Following the issuance of the Court's Final Order, the Township agrees to discontinue its Petitions for Review docketed at 2018-CV-779-MD and 2018-CV-1032-MD.
- i. Each of the Parties agree to be responsible for their respective costs incurred to date.

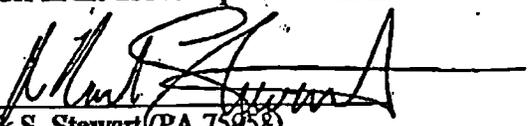
11. The Parties' resolution is reasonable, represents a balance of the interests involved in this matter, will preserve the Parties' resources and advance judicial economy.

WHEREFORE, the Parties respectfully request that the Court approve the stipulated terms set forth herein and adopt the same as the Final Order in the above-captioned matter.

By: 
 William J. Cluck (PA 52892)
 Law Office of William J. Cluck
 587 Showers Street
 Harrisburg, Pennsylvania 17104-1663
 Telephone: 717.238.3027

Email: billcluck@billcluck.com
Attorney for Defendant

Dated: Apr. 18, 2018

By: 
 Mark S. Stewart (PA 75958)
 Eckert Seamans Cherin & Mellott, LLC
 213 Market Street, 8th Floor
 Harrisburg, Pennsylvania 17101
 Telephone: 717.237-6000
 Fax: 717.237-6019
 Email: mstewart@eckertseamans.com
 Attorney for Plaintiff

Dated: 4/18/18

Exhibit A
(To Joint Stipulation)

{L0755004.1}

LONDONDERRY TOWNSHIP
DAUPHIN COUNTY, PA

Office of Open Records

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: _____

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

NAME OF REQUESTOR: _____

STREET ADDRESS: _____

CITY/STATE/COUNTY (Required): _____

TELEPHONE (Optional): _____

RECORDS REQUESTED:

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

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: _____

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)**

**IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA**

Londonderry Township,

Plaintiff

v.

Glenn Harmon,

Defendant,

CIVIL ACTION

No. 2018-CV-778-MD

FINAL ORDER AND DECREE

AND NOW, THIS ___ DAY OF April, 2018, upon consideration of the Parties' Joint Stipulation for Entry of Permanent Injunction, it is hereby Ordered and Decreed that:

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 - a. Beginning May 1, 2018, Defendant Harmon may submit no more than two (2) RTKL requests, inclusive of subparts, per month.

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- c. Defendant Harmon shall comply with the requirements for submission of a RTKL request for public records under the RTKL, including, but not limited to, the requirement that such requests be submitted on the appropriate form.
- d. Defendant Harmon shall work with the Township to clarify questions, if any, regarding his RTKL requests prior to the Township responding to the RTKL request.
- e. Defendant Harmon is permitted to file good faith appeals to the Pennsylvania Office of Open Records in relation to RTKL requests made in compliance with this Order.

2. The Permanent Injunction and requirements of Paragraph 1 of this Order shall extend to Defendant Harmon's immediate family members including his spouse and adult children.

3. Defendant Harmon is further enjoined from directing, encouraging or acting in concert or participation with another person or group of people to file RTKL requests with the Township in contravention of the provisions of this Order.

4. To the extent the Township receives a RTKL request that is compliant with paragraphs 1-3 of this Order, the Township shall not deny such a request on the basis that the Defendant is not acting in good faith.

5. Within forty-five (45) days of the date of this Order, the Township shall provide documents, to the extent such documents exist and are not subject to an

exception, exclusion or privilege under the RTKL, underlying the following Office of Open Records Determinations:

AP 2017-2309; AP 2017-2344; AP 2017-2345; AP 2017-2352; AP 2017-2354; AP 2017-2357; AP 2017-2358; AP 2017-2372; AP 2017-2374; 2017-2376; 2017-2378; AP 2017-2404; AP 2017-2375; and AP 2018-0150.

6. Defendant Hamon shall pay all copying costs for the production of such records as provided under the RTKL.

7. The Township shall discontinue its Petitions for Review docketed at 2018-CV-779-MD and 2018-CV-1032-MD.

8. Each party shall bear its own costs in relation to this matter, as well as the matters docketed at 2018-CV-779-MD and 2018-CV-1032-MD.

Date

John J. McNally, III, Judge

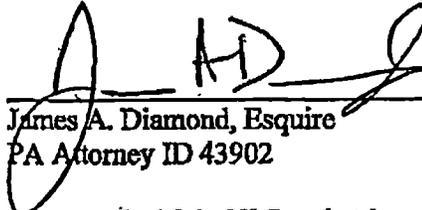
Distribution:

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Harrisburg, PA 17101
William J. Cluck, Law Office of William J. Cluck, 587 Showers Street, Harrisburg, PA
17104-1663

CERTIFICATE OF COMPLIANCE

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'JAD', is written over a solid horizontal line.

James A. Diamond, Esquire
PA Attorney ID 43902

Attorney for Plaintiff, Londonderry Township

EXHIBIT B

IN THE COURT OF COMMON PLEAS

IN AND FOR THE COUNTY OF MONTGOMERY, PENNSYLVANIA

CIVIL DIVISION

UPPER POTTS GROVE TOWNSHIP :
 :
 vs. : NO. 2025-00481
 :
 MATTHEW E. MURRAY :
 :
 - - -

Oral Argument on Motions in Limine

- - -
 Monday, June 2, 2025
 Commencing at 11:15 a.m.

- - -
 Odalys Cummins, CSR
 Official Court Reporter
 Montgomery County Courthouse
 Courtroom G
 Norristown, Pennsylvania

- - -
 BEFORE: THE HONORABLE JEFFREY S. SALTZ, JUDGE
 - - -

COUNSEL APPEARED AS FOLLOWS:

ERIC C. FREY, ESQUIRE
 for the Plaintiff

CATHERINE M. HARPER, ESQUIRE
 for the Defendant

- - - Oral Argument - - -

2

THE COURT: Good morning, everyone.

This is Upper Pottsgrove Township v. Murray, Number 2025-0481, and we are here on the defendant's preliminary objections to the complaint.

Of course I did make a preliminary ruling on certain of the legal issues raised by the preliminary objections. That was a preliminary ruling. So I am happy to hear both sides on whether I was right or wrong. We'll see how that goes.

All right. This is -- defendants are the moving party here, so I am happy to hear from you.

MS. HARPER: Thank you, Your Honor. Kate Harper on behalf of Matt Murray, who is sitting next to me. We also have Ariel Shapell from the American Civil Liberties Union, who's cocounsel in this case. I'm going to handle the argument, unless I forget something and then Ari will remind me.

Your Honor, I do think that most of the issues that are raised by these preliminary objections are the same that were raised in response to the request for a preliminary injunction. Of course I agree with your ruling on that, not granting the preliminary injunction, but basically they come down to a number of things.

1
2 The right-to-know law doesn't permit
3 injunctions against any and all right-to-know requests.
4 You have to deal with each request separately. In this
5 case, this has already been adjudicated by the Office
6 of Open Records, which is the place where it should be
7 adjudicated first, and the Office of Open Records said,
8 we don't grant injunctions against all future
9 right-to-know requests. You have to deal with each one
10 individually. And you have not proven -- there's only
11 one case where you have a repeated request that they
12 might tell my client not to send it again. But the
13 township did not prove that that was the case here.

14 He sent a number of requests, true.
15 They were for different things.

16 THE COURT: Of course the Office of Open
17 Records doesn't have authority to issue an injunction,
18 does it?

19 MS. HARPER: No. But it could have
20 ruled that it was appropriate to do so and didn't do
21 it.

22 Here's the next thing. In this case
23 that ruling was not appealed. And it would have been
24 appealed right here to Montgomery County Court of
25 Common Pleas. So I think it's collateral estoppel, if

1 not res judicata on this particular issue.

2
3 But the law was correct in the Office of
4 Open Records opinion, which I attached to one of my
5 pleadings, and Your Honor was correct, as I believe on
6 the preliminary injunction, which I also attached to
7 one of my pleadings. It was a transcript on that, a
8 citizen has a right to ask about public documents, to
9 get public documents.

10 The right-to-know law provides a
11 procedure or a process for doing that. He follows the
12 process. He is allowed to ask those questions. And
13 the right-to-know law doesn't say that if you ask too
14 many times, sorry, we're shutting you down. You're not
15 allowed to do that.

16 There is this one specific way that you
17 can shut somebody down, and that would be for repeated
18 requests, the same repeated request that turned into
19 burdensome or harassment for the local government. And
20 it didn't.

21 And so in each case, Your Honor, my
22 client made a right-to-know request. Sometimes
23 documents came that were redacted. Sometimes he got a
24 response that the document didn't exist yet because it
25 was a draft. Most often that was given in response to

1
2 request for plans for the municipal complex, which Your
3 Honor is familiar with from our other case. And the
4 township kept saying they were only drafts and they
5 didn't have to give them. And when they finally gave
6 them, they redacted every page -- every page.

7 Now, as a municipal solicitor myself --

8 THE COURT: How do I know this? It's
9 not in the complaint.

10 MS. HARPER: It is not in the complaint.

11 THE COURT: We're here on preliminary
12 objections. I'm assuming the truth of the averments in
13 the complaint.

14 MS. HARPER: Well, the averments of the
15 complaint are only that he asked for too many records
16 too many times. Period. End of story. And that's not
17 a reason under the right-to-know law for stopping him
18 from asking for records.

19 I could sit down now, Your Honor.
20 Probably you want me to, and that's okay.

21 THE COURT: No, no, no. You take the
22 time you need.

23 MS. HARPER: I just want to add one more
24 thing.

25 THE COURT: Yes.

1
2 MS. HARPER: We do believe -- it's not
3 in the complaint, but here's one of the records they
4 provided. The township is playing a game, and that's
5 why we raised the strategic lawsuit against public
6 participation law, because they're playing a game.
7 They're trying to run him out. My client, as a
8 taxpayer in Upper Pottsgrove, is actually paying both
9 sides of this lawsuit. He's paying for me and Ari and
10 he's paying for the township.

11 THE COURT: I hope he's paying a higher
12 percentage of your bills than he is of the township's
13 bills.

14 MS. HARPER: Well, when I charge him, he
15 does pay them. That's true, Your Honor. But I'm just
16 saying that this is so unfair, and that's why a
17 provision exists, that if a local government is
18 bringing lawsuits against somebody that they ought to
19 be looked at to see whether they have a reason that is
20 inappropriate, improper, and entitles my client to
21 collect attorney's fees for doing it. And I think this
22 is one such lawsuit. They already knew they didn't
23 have a right to injunction. They knew that, and they
24 did it anyway.

25 And then, when you turned them down and

1
2 very cogently explained what the right-to-know law
3 allows and what it doesn't allow, they didn't withdraw
4 the lawsuit. The only thing they're asking for is an
5 injunction. That's it. They're not asking for
6 damages. They're not asking for anything else. Not
7 that they would be appropriate in any event.

8 So why are we here? I mean, that's
9 really -- the preliminary objections.

10 THE COURT: I think we're here on the
11 request for a permanent injunction --

12 MS. HARPER: Well --

13 THE COURT: -- which I have not ruled
14 on.

15 MS. HARPER: You have not ruled on that,
16 Your Honor. But the same reasoning that was applied to
17 the preliminary injunction, where I raised the issue of
18 the likelihood of success on the merits, and Your Honor
19 responded to that argument, that this type of
20 injunction is not permitted.

21 And they haven't produced a case showing
22 an injunction was permitted except one where an
23 injunction was entered by stipulation of the parties.
24 Everybody agreed to it. That's not controlling
25 precedent here. That doesn't prove that the

1
2 right-to-know law gives the township the basis to shut
3 down a citizen exercising his rights. It doesn't.

4 So we preliminarily objected and we've
5 also raised the issue that this is probably a slap
6 suit, and we're entitled to some kind of a hearing on
7 that allegation as well.

8 Thank you, Your Honor.

9 THE COURT: All right.

10 Mr. Frey, good morning.

11 MR. FREY: Good morning. Eric Frey for
12 the township.

13 Your Honor, we are -- it's quite simple.
14 This defendant submitted 100 requests in 24 months.
15 That's nearly one a week that he submitted. And we
16 have a small township, four staff members. It was
17 overriding the staff keeping up with the right-to-know
18 requests from this individual and others as well as
19 their other duties for the township. They couldn't
20 keep up.

21 And we actually went to the Office of
22 Open Records. We discussed with them the appeals that
23 had gone up to the Office of Open Records dealing with
24 this defendant. There were eight of them. The
25 township won all but one of them.

1
2 And you're right, a lot of the requests
3 that I have issues with are the requests for plans.
4 And what the Office of Open Records informed us is that
5 they only have the ability under the law to stop
6 right-to-know requests if they are repetitive and
7 unduly burdensome. They explained to us that
8 repetitive is very hard for them to quantify because --
9 this defendant would ask for plans. He would phrase it
10 in a way saying, I would like plans that were drafted
11 between January and February. They would get back to
12 him and say there aren't any for these various reasons.
13 He would appeal. We would win on appeal. The next
14 request, I want plans that are completed in March or
15 April. So to us they were the same request, and the
16 same response would be they're draft plans. Under the
17 right-to-know request, we don't have to give draft
18 documents.

19 THE COURT: Am I correct that under the
20 right-to-know law, the township once it responds to a
21 request is not under a duty to supplement it on its own
22 initiative?

23 MR. FREY: That's correct. However, in
24 this case we did, Your Honor. When the plans were
25 finalized -- and this is what we told the defendant

1 while this was going on: Once they're finalized, you
2 will get them. And what the township did is they
3 posted them up to the website so everybody has them.
4 We weren't hiding anything.
5

6 The case law on why you don't give draft
7 plans was a PennDOT case where PennDOT had two
8 different versions of the road. They didn't want to
9 get draft plans out because giving both versions of the
10 road, you're going to anger this group of citizens and
11 this group of citizens, when PennDOT knew they were
12 only going to build one road. So until the plans were
13 finalized, they didn't want to release them because at
14 that point --

15 THE COURT: Yes. And the issue whether
16 or not Mr. Murray was entitled to draft plans or
17 whether the township was entitled to withhold them is
18 not before me.

19 MR. FREY: Correct.

20 THE COURT: But when you say that
21 Mr. Murray made a request for plans prepared during
22 time period A and the answer is nothing final, just in
23 draft, and the township has no obligation to supplement
24 that when the plans are finalized -- and I give the
25 township kudos for offering to do so anyway -- but

1
2 without an obligation, doesn't Mr. Murray have to make
3 seriatim requests until the point that the -- that
4 there is a final plan to be produced?

5 MR. FREY: If we hadn't taken a position
6 in that once they're finalized they will be released,
7 we --

8 THE COURT: But if you said that and you
9 didn't release them, what would be Mr. Murray's remedy?

10 MR. FREY: He would have to do a written
11 request. You are correct, Your Honor.

12 So it's our position that it was
13 repetitive and burdensome. That's our position.

14 The other one is there is no adequate
15 remedy of law here because the Office of Open Records,
16 their hands are tied. That is their standard. And
17 that's why we brought ourselves before the equity side
18 of this court in that we're not solely bound by what
19 the statute says that you have some way to give relief
20 to the township where it's not getting relief under the
21 law.

22 In addition to that, why we think these
23 requests were malicious essentially is that on six
24 occasions or more than six occasions, Mr. Murray
25 submitted requests, was told that the documents were

1 ready, and he did not pick them up for months. They
2 were sitting there. The work was done. All the
3 township's efforts were there. The township's expenses
4 were done. Documents are sitting there and they are
5 left there for months. And every time -- so
6 essentially what the township would do on those
7 occasions -- Mr. Murray would submit a request. We
8 would say, hey, these are available. You owe \$5 for
9 the copies.
10

11 He would then submit the next one, and
12 we would say, these are ready; you can't get any until
13 you pay the \$5 for the last one and the \$4 for this
14 one. That went on for months. And they sat there, I
15 believe, from September to January, and he finally
16 picked them up right as this case was being filed.

17 So we think there's a maliciousness on
18 his side in that he was submitting these requests
19 without actually wanting the documents. They were just
20 done to cost the township time and expenses. Because
21 the law on that is that even if we have ten piled up as
22 he submits them, we still have to process them. We
23 can't send him a letter saying we're not processing
24 these or spending any time with it until you pay these
25 fees. We have to process it, give him the letter

1
2 saying they're available before -- and then not deliver
3 any of them until he's paid the fees in full.

4 So we don't think we have adequate
5 remedy of law here given the Office of Open Records
6 position on representative and burdensome. That's why
7 we wanted to come here and see if there was another
8 avenue.

9 And, actually, it was the Office of Open
10 Records who gave us the citations to the Dauphin County
11 Court. They said, hey, here's another avenue you can
12 try and look into it. They were successful up there,
13 so we tried it here.

14 Thank you.

15 MS. HARPER: Your Honor, couple of
16 things?

17 THE COURT: Yes.

18 MS. HARPER: If we had a hearing, my
19 client would testify that when he went to the township
20 building to pick up documents that were allegedly ready
21 for pickup, he had to wait an hour while they copied
22 the documents.

23 THE COURT: That is not on the record
24 before me today.

25 MS. HARPER: I understand. If there

1
2 were a hearing, though, that's what he would testify
3 to.

4 Secondly, and this is public knowledge,
5 every month they were paying an engineering firm
6 hundreds of thousands of dollars to develop plans for
7 the municipal complex which was at issue in the other
8 lawsuit. My client wanted to make sure that he got the
9 plans that were being paid for. And because they kept
10 telling him they're not ready, they're not ready,
11 they're not ready, although they already authorized the
12 solicitor to put bids out. That's public knowledge.
13 That was in the record. Public. Okay. They kept
14 telling him they're not ready.

15 So he had to ask every month to see what
16 he's spending hundreds of thousands of dollars on and
17 what are you authorizing your solicitor to bid. Where
18 are the plans? And it took them forever.

19 And Your Honor is correct they don't
20 have an obligation to produce them later. Once you
21 make the request and they answer it, done. He has to
22 make another request to make sure that he could get the
23 plans, which he wanted for the trial that we had in the
24 fall of 2024.

25 I would also say that the right-to-know

1 law has one section dealing with things like this.
2
3 It's Section 506. Okay? And it says: "An agency may
4 deny a request or access to a record if the requester
5 has made repeated requests for that same record and the
6 repeated requests have placed an unreasonable burden on
7 the agency. A denial under this section shall not
8 restrict the ability to request a different record."

9 So the law itself says you can't just
10 deny all requests. You have to show that it was a
11 repeated request that caused the burden. Since they're
12 denying all the requests for the plans, we don't have
13 them yet, we don't have them yet, we don't have them
14 yet. They didn't even have to redact them until they
15 were willing to release them. I can't see that that's
16 an unreasonable burden. And I don't think those facts
17 are in dispute, Your Honor.

18 THE COURT: All right.

19 Thank you both for your presentations.

20 At the hearing on the preliminary
21 injunction, I did make a preliminary ruling that the
22 township was not entitled to injunctive relief. And
23 after reviewing the briefs and hearing argument, I
24 adhere to that ruling based under Section 506 of the
25 right-to-know law which I discussed at the prior

- - - Oral Argument - - -

1
2 hearing and, in addition, based on Section 1308 of the
3 right-to-know law, which is also raised in the papers
4 on the preliminary injunctions.

5 So for those reasons, we will issue an
6 order that the preliminary objections are sustained and
7 the township's complaint is dismissed.

8 All right. Thank you.

9 MR. FREY: Thank you, Your Honor.

10 MS. HARPER: Thank you, Your Honor.

11 THE COURT: Thank you, everyone.

12 (At 11:32 a.m., the proceedings were
13 concluded.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that this is a correct transcript of the same.

ODALYS CUMMINS, CSR
Official Court Reporter

- - -

EXHIBIT C

IN THE COURT OF COMMON PLEAS IN AND FOR
THE COUNTY OF MONTGOMERY, PENNSYLVANIA
CIVIL DIVISION

- - -
UPPER POTTS GROVE TOWNSHIP : NO. 2025-00481
:
vs. :
:
MATTHEW E. MURRAY :
- - -

**Plaintiff's Petition for
Preliminary and Final Injunction**

- - -
Courtroom 12
Wednesday, January 22, 2025
Commencing at 1:05 p.m.

- - -
Norma Gerrity
Official Court Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

- - -
BEFORE: THE HONORABLE JEFFREY S. SALTZ, JUDGE

- - -
COUNSEL APPEARED AS FOLLOWS:

ERIC C. FREY, ESQUIRE
for the Plaintiff

CATHERINE M. HARPER, ESQUIRE
for the Defendant

- - -

1 Upper Pottsgrove vs. Murray

2 (The following proceedings occurred in
3 open court:)

4 THE COURT: Good afternoon, everyone.

5 MR. FREY: Good afternoon, Your Honor.

6 MS. HARPER: Good afternoon, Your Honor.

7 THE COURT: This is Upper Pottsgrove
8 Township versus Matthew Murray, Number 2025-00481, and
9 we are here on the township's Petition for Preliminary
10 Injunction.

11 So Mr. Frey?

12 MR. FREY: Yes. Good afternoon, Your
13 Honor.

14 THE COURT: Good afternoon.

15 MR. FREY: We are here, we're asking
16 for a preliminary injunction to temporarily stop the
17 right-to-know requests being submitted by the defendant
18 in this matter.

19 We can show you that he's put in
20 numerous requests to the township over the past
21 several years, much more than any other resident in
22 the township, to the tune of over a hundred requests,
23 and they drain on the staffing and financial of the
24 township.

25 That's why we're asking for it. I can

1 Upper Pottsgrove vs. Murray
2 go into more detail, if you want. I don't know how
3 you want to handle it.

4 THE COURT: The first question that
5 comes to mind is whether there's any precedent for an
6 injunction of this type.

7 MR. FREY: I actually have a case out of
8 Lehigh County, very similar complaint to what we filed,
9 all the same counts.

10 In that court case, the court did enter
11 an injunction on this matter. Now, I don't want to
12 mislead the court.

13 What resulted there is the parties did
14 have a joint stipulation in that matter, which resulted
15 from the complaint and the petition for the injunction
16 to be issued.

17 There is precedent. The court then
18 adopted that as their order, and I have it here for
19 you, if you would like.

20 THE COURT: I think that you've got the
21 same circumstances?

22 MR. FREY: Agreed, yes.

23 THE COURT: I mean, is there any analysis?
24 Is there an opinion? Is there --

25 MR. FREY: There is not.

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Upper Pottsgrove vs. Murray

THE COURT: Simply signed off on the stipulation or the agreement?

MR. FREY: Correct, yes.

THE COURT: All right. Other than that, there's no precedent?

MR. FREY: Not that I'm aware of, no.

THE COURT: Well, why don't you, why don't you tell me by offer of proof what you expect the evidence to show?

MR. FREY: So I have the township manager here, who would be my witness.

She would testify that she is the township right-to-know officer; that she was preceded by an employee who was the right-to-know officer, and because of the sheer volume of the right-to-know requests that were coming in, that employee resigned, which then she had to take over the right-to-know position.

There's been 102 right-to-know requests since November of 2022 by this defendant. In 2023 that was 55 percent of the right-to-know requests received by the whole township. In 2024 it was about 40 percent of the right-to-know requests received by the whole township.

1 Upper Pottsgrove vs. Murray

2 In some weeks she's spent, she had spent
3 over that duration 80 percent of her time responding to
4 the defendant's right-to-know requests, and over that
5 time, \$58,000 has been spent just on the defendant's
6 right-to-know requests, not right-to-know requests in
7 general at the township, but just this defendant's
8 right-to-know requests.

9 THE COURT: Are you allocating a portion
10 of the township manager's salary to come up with that
11 figure?

12 MR. FREY: It's probably a line item or
13 it's probably legal. I can have her testify. It's not
14 designated separately, but a lot of that's legal.

15 That's just a legal expense, not her
16 time at all. We do not allocate or don't account for
17 her time --

18 THE COURT: We're talking about out of
19 pocket?

20 MR. FREY: Correct. Just so you know,
21 what the right-to-know law allows municipalities to
22 charge, they can't charge for staff time in compiling
23 the documents.

24 They can't charge for the legal time in
25 reviewing them to make sure you're not putting out

1 Upper Pottsgrove vs. Murray
2 defendant has picked up those documents. I believe at
3 the end of December, I think he went in and actually
4 picked up those six categories.

5 Again, the reason that -- typically we
6 obtain the documents. We simply e-mail them off to
7 the requester, regardless of who it is.

8 In this situation, however, since money
9 was owed, we said, once you pay the money, we'll give
10 you the documents, and that's allowed by the
11 right-to-know law.

12 In all matters, despite the fact that
13 the six were outstanding, the right-to-know law also
14 does not allow us not to process additional requests.

15 Even if he hasn't picked up six of them
16 and they're sitting there and we know he's not going
17 to pick them up, if he submits a new request, we still
18 have to process and we still have to spend our time,
19 staffing time, attorney time to review and compile the
20 documents and then notify him that they're ready.

21 So simply, we have no ability to stop
22 that. We have to do that under the right-to-know law,
23 which is why we're here.

24 And on those six items, for the first
25 one, every time he submitted a right-to-know request,

1 Upper Pottsgrove vs. Murray

2 and kept getting denied, and that was the subject of
3 numerous appeals to the Office of Open Records. Again,
4 in each case, the township won those appeals.

5 And you may recall, Your Honor, that the
6 other thing she would testify to is that the defendant
7 was, for a large duration of the timeframe that these
8 requests were being sent to the township, he was a
9 plaintiff suing the township.

10 So one of our issues also is that he was
11 really weaponizing the right-to-know law and using it
12 as discovery requests.

13 So while he had the right to obtain
14 something in five days, we were subject to the
15 Pennsylvania Rules of Civil Procedure to obtain
16 documents from the other party.

17 THE COURT: I've seen many instances
18 where a municipal entity was a party in a civil action,
19 and the opposing party obtained documents through a
20 right-to-know law request.

21 MR. FREY: It does happen, Your Honor.
22 I'm just showing that, it's an arrow and a quiver, that
23 this whole thing is really showing that he's
24 weaponizing.

25 He's using it to harass the township.

1 Upper Pottsgrove vs. Murray

2 He doesn't actually want the documents. He's just
3 putting us through this process.

4 THE COURT: Well, in six percent of the
5 time.

6 MR. FREY: But then also the ten requests
7 for plans, the ten requests for the plans, he kept
8 asking for those, even though he was told he'll get
9 them once they're final.

10 The most, the two most recent requests,
11 I think, goes to the fact also this is done for
12 harassment and not for legitimate purposes is, I don't
13 know if I have these in the right order, request 101
14 and 102 on the list of items requested is, one was a
15 copy of the bill list for the township, and the second
16 one was a copy of the budget adopted by the township.

17 Why these are harassment is that the
18 copy of the bill list is provided to the public,
19 copies are provided to the public at every township
20 meeting.

21 His wife attends every township meeting
22 and picks up these documents, I assume she picks them
23 up, picks them up regularly.

24 So a right-to-know request isn't even
25 required for that in that they're given to the public

1 Upper Pottsgrove vs. Murray

2 at every meeting.

3 Secondly, the budget is posted on the
4 website, so he can go to the website and it's there.

5 And that's actually a response to a
6 right-to-know request, is that it's on the website,
7 you're free to have it, you already have access to
8 it.

9 It just shows that the issuing
10 right-to-know request really serves no purpose in
11 that he already has those documents.

12 So in a nutshell, that's what she would
13 testify to in support of the fact that we satisfied
14 all of these six criteria for the injunction.

15 Thank you.

16 THE COURT: Ms. Harper?

17 MS. HARPER: Thank you, Your Honor.

18 It's nice to be back. I hope you feel the same way.

19 I filed an answer, and I did send it to
20 chambers because of the holiday situation here.

21 Did you get it?

22 THE COURT: I did.

23 MS. HARPER: Great. It's in the nature
24 of a Motion to Dismiss, and that's because the
25 injunction that counsel --

1 Upper Pottsgrove vs. Murray

2 THE COURT: Dismiss what?

3 MS. HARPER: The preliminary injunction.

4 THE COURT: All right.

5 MS. HARPER: Although I also think the
6 complaint should be dismissed. I haven't gotten to
7 filing my preliminary objections on that, because it
8 was not served until a couple days ago; right?

9 So my answer to that is not due, and I
10 will file a Motion to Dismiss when I get there.

11 I did this on the petition, because what
12 he's really asking for is a preliminary injunction,
13 which is not permitted under the law.

14 In order to get an injunction, he has
15 to show a substantial likelihood of success on the
16 merits, and he's not going to be able to win this case.
17 I think if you look at my answer, there are several
18 reasons why.

19 But the second thing is, this is also --
20 the right-to-know law is a first amendment right. It
21 is a freedom of speech right. It is a freedom that
22 belongs to every citizen making the request.

23 THE COURT: Are you saying that the
24 first amendment -- what was the law before the
25 right-to-know statute was passed?

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Upper Pottsgrove vs. Murray

MS. HARPER: You could stand up and ask in a public meeting, can I see the budget? You could do that.

THE COURT: But you couldn't make the kind of requests that Mr. Murray is making?

MS. HARPER: That's right, and I'll get to that. But if you read the opinion of the Office of Open Records, which I have attached to the response to the petition, it points out that every right-to-know request must be considered separately and on its merits.

And so by asking for an injunction that this citizen can't make any requests -- and, by the way, it says this citizen and anyone acting on his behalf.

So what does that mean? His wife can't file one? The folks in the room who are supporting him can't file one because they're acting on his behalf?

So it's a prior restraint on a first amendment right of people who aren't even served in this case, that this township doesn't have to comply with the state law.

The Office of Open Records points out,

1 Upper Pottsgrove vs. Murray
2 you could deal with each one individually, and then
3 you can appeal it if you don't like the way it turned
4 out. He took advantage of the appeal practice a few
5 times. That's true.

6 The Office of Open Records also said
7 that they can't just say, you can't make any more
8 right-to-know requests, and they said that in this
9 case it wasn't burdensome, and that opinion is only a
10 couple of months old.

11 So I think the township is collaterally
12 estopped from making that argument before Your Honor
13 today, because they already had a ruling, and they
14 lost.

15 And they had a ruling in the place
16 where they should have brought this action -- no
17 offense, Your Honor -- because a right-to-know request
18 goes on appeal to the Office of Open Records.

19 The Office of Open Records then makes a
20 decision, and then you can appeal that, I believe, to
21 the Commonwealth Court.

22 THE COURT: I believe to the Common
23 Pleas Court.

24 MS. HARPER: Common Pleas Court. Okay.
25 I'm sorry.

1 Upper Pottsgrove vs. Murray

2 THE COURT: I wish you were right.

3 MS. HARPER: Right. But, unfortunately,
4 it's going to come to you. Okay.

5 But they didn't do that, and they didn't
6 take an appeal of this decision where the Office of
7 Open Records actually ruled on whether or not there
8 were too many requests and too burdensome and said,
9 no, no.

10 So in two ways, the opinion of the
11 Office of Open Records is instructive in that it
12 says, look, you've got to consider each right-to-know
13 request separately, and the law says the documents
14 shall be produced.

15 It's not, hey, maybe I can, maybe I
16 can't. You have to produce them.

17 There's something in there about
18 frivolous requests or repetitive requests or something
19 like that, but the Office of Open Records ruled that
20 he wasn't guilty of any of that.

21 Now, I can address specifically -- I did
22 in my answer in a footnote -- the request for plans.
23 Your Honor is familiar with the case.

24 My client stopped a municipal complex
25 from being built on the Smola Farm, which was bought

1 Upper Pottsgrove vs. Murray

2 with open space tax moneys.

3 Some of the documents we entered into
4 evidence in that case were, in fact, obtained by a
5 right-to-know request and not by discovery, because
6 when we sent the discovery, the township hewed to the
7 position that it had not used open space money.

8 So we went and got budgets, and we went
9 and got documents that showed that they absolutely did
10 use open space money to buy the Smola Farm.

11 The reason we kept asking for plans
12 was, they spent \$340,000 on engineers and architects
13 for plans for this municipal complex on the Smola
14 Farm, and they claim they don't exist.

15 Today counsel said that they're drafts,
16 so we don't have to give them to you.

17 I think the right-to-know law would
18 require that they ask their own agents, which would
19 include the architects and the engineers who are being
20 paid hundreds of thousands of dollars to create these
21 plans, for those documents, and they didn't do it.

22 So my client was forced to file multiple
23 requests, okay, you don't have them yet, you don't have
24 them yet, you don't have them yet, you don't have them
25 yet.

1 Upper Pottsgrove vs. Murray

2 So he did request those documents more
3 than once, because they claim they didn't exist, and
4 the Office of Open Records agreed that they didn't
5 have to produce them if they were in a draft format.

6 So he has to make requests. What else
7 can a citizen do if he wants to know what the
8 government is spending his money on?

9 He'll probably have to make a request
10 to find out how much the government's paying to sue
11 him here today to stop him from exercising his first
12 amendment right to know what his government is doing
13 with his money.

14 He's allowed to do that. So they have
15 to show a substantial likelihood of success on the
16 merits.

17 I think the Office of Open Records'
18 opinion both collaterally estops, is res judicata, but
19 also outlines that you can't do that.

20 You can't issue a prior restraint on
21 right-to-know requests. You have that right as a
22 citizen. And so why are we here?

23 But I don't know why we're here, and I
24 actually think that they're claiming my client is
25 using it as a weapon.

1 Upper Pottsgrove vs. Murray

2 This is a township that has sued this
3 poor guy twice, once for defamation for an editorial,
4 and now today he's to stop making requests.

5 THE COURT: All right. So they're only
6 one ahead of him.

7 MS. HARPER: Right. Well, they've sued
8 him twice, and he's only sued them once.

9 THE COURT: Thank you.

10 MS. HARPER: Be that as it may, the
11 reason he doesn't go to public meetings anymore is
12 because he got a letter from the police chief that had
13 me, as his lawyer, saying, don't go to any more public
14 meetings, I think they want to lead you out in
15 handcuffs.

16 THE COURT: We're getting a little far
17 afield.

18 MS. HARPER: We are. And I'm sorry for
19 that. But it was alleged that my client is weaponizing
20 the right-to-know law.

21 I would suggest the township should take
22 the beam out of its own eyes on that one, because if
23 anybody is weaponizing the court system, it's them,
24 and not him.

25 So my client's here. He'll testify that

1 Upper Pottsgrove vs. Murray

2 when he went to pick up those documents, he got a
3 reminder from them, hey, we got some documents here.

4 He had to wait an hour because they
5 hadn't copied them. He had to sit there in the lobby
6 and wait an hour.

7 So I don't think that counsel is
8 entirely correct that they're being overburdened by
9 legitimate requests for public documents.

10 A budget is a public document. It just
11 is. They should just say to him, go on the website.

12 They should say on the bill list, if
13 it's not on the website, here it is. What's the
14 problem? These are all public documents.

15 And so I think that the Petition for an
16 Injunction should be dismissed, because there is no
17 reason for an injunction and because they're
18 collaterally estopped from claiming that he's abusing
19 the system, because the Office of Open Records already
20 ruled on that claim against this township on behalf of
21 this requester.

22 Thank you, Your Honor.

23 THE COURT: Mr. Frey, has the township
24 availed itself of Section 506(a) of the right-to-know
25 law related to disruptive requests?

1 Upper Pottsgrove vs. Murray

2 MR. FREY: We have, Your Honor. In
3 many of the appeals to the Office of Open Records, we
4 have asked them or argued to them that they were
5 repetitive and duplicative.

6 THE COURT: Well, okay. Has the
7 township denied a request submitted by Mr. Murray on
8 the grounds that he has made repeated requests for the
9 same records and that those repeated requests have
10 placed an undue burden on the township?

11 MR. FREY: I don't believe so, Your
12 Honor. Again, I didn't review all 102 of them.

13 However, on the appeal -- so we would
14 deny them for a different reason, and if I can, I'll
15 address the plan, and there is an exception for plans,
16 and there's a reason for it, and case law
17 substantiates the position.

18 But it is one of the exceptions to
19 documents that you have to present, and that is,
20 documents that are in draft form.

21 And while, yes, we did spend significant
22 funds on plans for the township building, they weren't
23 finished.

24 And there's case law, PennDOT plans for
25 roadways, that's what the preeminent case is on that

1 Upper Pottsgrove vs. Murray
2 one, is that you don't want to hand out draft plans,
3 because then we're going to be in court arguing about
4 a draft plan when it's not finalized, we're still
5 working through DEP and things like that.

6 But we don't have to give them to
7 anybody until the plans are finalized, and in this
8 case, as soon as they were finalized, they were on the
9 website. They went out. So they're available to
10 everybody.

11 Getting to repetitive and duplicative,
12 while it wasn't the reason we denied them, we denied
13 them because they were draft plans, and that's why we
14 won on those cases, we did argue that they're being
15 duplicative and all that.

16 And the way the defendant got around
17 that was essentially he had asked for final plans
18 from January and February of 2023. There aren't any.

19 He then asked for final plans from March
20 and April of 2023, and the right-to-know opinion there
21 said, hey, it's very specific.

22 Unless you're asking for the exact same
23 document for the exact same time period, they're
24 handcuffed and they can't say it's repetitive.

25 So there is crafty ways the requesters

1 Upper Pottsgrove vs. Murray
2 can get out of that finely interpreted, and they don't --
3 again, the Office of Open Records there, they're going
4 to tell you, they're going to take the most transparent
5 way of interpreting this, and they do.

6 So there's ways around beating that
7 unduly repetitive request, and that's how it was done
8 in this case. It was over and over and over, even
9 though it was explained, you'll get them when they're
10 finalized.

11 And also why we didn't appeal those to
12 the Court of Common Pleas, we won the underlying case,
13 so I don't know how we appeal an opinion that we won.

14 We may not have won one part of it, our
15 argument, but we won the appeal in that we didn't have
16 to present the plan, so we really had no decision to
17 appeal to bring in here.

18 We started this action -- actually, we
19 called the Office of Open Records and asked what our
20 options were.

21 They're the ones who gave us the Lehigh
22 County case and said, hey, this is something that's
23 worked other places, this is the avenue.

24 They can only do the right-to-know.
25 That's their jurisdiction. They can't do an

1 Upper Pottsgrove vs. Murray
2 injunction. They can't do anything unless it's unduly
3 repetitive.

4 It's not in this case. However, we feel
5 it was. It was just a crafty way of draftsmanship to
6 get around it.

7 THE COURT: All right.

8 MS. HARPER: I would just point out,
9 Your Honor, that the opinion I attached to my response
10 is the Office of Open Records' opinion where they said
11 that he'd been repetitive and burdensome, and they
12 denied that.

13 THE COURT: All right. I am going to
14 assume that the township's witness will testify as Mr.
15 Frey has represented and that her testimony will be
16 credible.

17 MR. FREY: Thank you, Your Honor.

18 THE COURT: So assuming the facts as
19 Mr. Frey has laid them out and without regard to any
20 facts asserted by Ms. Harper as to what her client
21 will testify to, I am focused on Section 506(a) of the
22 right-to-know law, which is titled disruptive requests,
23 and that reads:

24 One: An agency may deny a request or
25 access to a record if the requester has made repeated

1 Upper Pottsgrove vs. Murray
2 requests for that same record and the repeated request
3 placed an unreasonable burden on the agency.

4 Two: A denial under this subsection
5 shall not restrict the ability to request a different
6 record.

7 So this section tells me two things
8 about the intent of the legislature.

9 First, that if a requester abuses the
10 process by making repeated requests for the same
11 record, the township can simply say, no, you're done.

12 But it also says that a denial under
13 that subsection shall not restrict the ability to
14 request a different record, which means that the
15 legislature contemplated that that same requester may
16 go on to request different records.

17 Given this legislative intent as
18 reflected in 506(a), I don't believe that the evidence
19 proffered by the township makes out a clear right of
20 relief to injunctive relief.

21 The legislature has created the remedy
22 that is available for disruptive requests, but for a
23 particular category of disruptive requests, and has
24 denied the right of the township to preclude a
25 repetitive requester from requesting new records.

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Upper Pottsgrove vs. Murray

So based on my reading of the statute and based on the requirement that a petitioner for preliminary injunction must establish a clear right to relief, I will deny the petition.

Thank you both.

MR. FREY: Thank you, Your Honor.

MS. HARPER: Thank you, Your Honor.

- - -

(At 1:32 p.m., the proceedings were concluded.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that this is a correct transcript of the same.

Norma Gerrity
Official Court Reporter

- - -

EXHIBIT D

DISCHELL, BARTLE & DOOLEY, P.C.
BY: Eric C. Frey, Esquire
Attorney ID #76051
224 King Street
Pottstown, PA 19464
(610) 323-3306
Solicitor for Plaintiff, Upper Pottsgrove Township

| | | |
|----------------------------------|---|------------------------------|
| UPPER POTTSGROVE TOWNSHIP | : | COURT OF COMMON PLEAS |
| 1409 Farmington Avenue | : | MONTGOMERY COUNTY, PA |
| Pottstown, PA 19464 | : | CIVIL ACTION |
| Plaintiff | : | |
| v. | : | NO: |
| MATTHEW E. MURRAY | : | |
| 1530 Aspen Drive | : | |
| Pottstown, PA 19464 | : | |
| Defendant | : | |

CIVIL COMPLAINT

Plaintiff, Upper Pottsgrove Township, by and through its Solicitor, Eric C. Frey, Esquire, of Dischell, Bartle & Dooley, P.C., hereby files the following complaint against Defendant, Matthew E. Murray, and in support thereof avers the following:

Jurisdiction and Venue

1. Subject to the authority set out in 42 Pa.C.S. §931(a), this Court has jurisdiction over this matter and personal jurisdiction over the Defendant.
2. Subject to the authority set out in in 231 Pa. Code Rule 1006, venue resides with the Court of Common Pleas of Montgomery County as Defendant may be served and the cause of action arose in Montgomery County.

Parties to the Action

3. Upper Pottsgrove Township, a municipal entity, is a First Class Township, organized pursuant to the provisions of the First Class Township Code of Pennsylvania with its principal

Case# 2025-06286-0 (Docketed in Montgomery County, Pottsgrove Township) on 09/22/25 at 03:33 PM. Fee = \$29100.00. The filer certifies that this filing complies with the provisions of the e-filing rules that require filing confidential information and documents differently than non-confidential information and documents.

