

Right to Know Appeal

St. Hilaire, Amanda

Tue 1/9/2018 11:41 AM

To: St. Hilaire, Amanda <AStHilaire@abc27.com>;

1 attachments (82 KB)

Camp hill RTK disruptive requestor.pdf;

From: St. Hilaire, Amanda
Sent: Monday, January 8, 2018 7:50 PM
To: openrecords@pa.gov
Subject: Right to Know Appeal

**RIGHT-TO-KNOW LAW ("RTKL")
APPEAL OF DENIAL, PARTIAL DENIAL, OR DEEMED DENIAL**

Office of Open Records ("OOR")
Email: openrecords@pa.gov
Fax: (717) 425-5343

Commonwealth Keystone Building
400 North St., 4th Floor
Harrisburg, PA 17120-0225

Today's Date: 1/08/18

Requester Name(s): Amanda St. Hilaire

Address/City/State: 3235 Hoffman Street, Harrisburg, PA 17110

Email: asthilaire@abc27.com Phone/Fax: 717-448-1487

Request Submitted to Agency Via: Email

Date of Request: 11/06/17 Date of Response: Final response received on 12/19/17

Name of Agency: Camp Hill Borough

Address/City/State/Zip: 2145 Walnut St. Camp Hill 17011

Email: pdennis@camphillborough.com 717-737-3456

Name & Title of Person Who Denied Request (*if any*): Pat Dennis, Borough Manager and RTK OfficerI was denied access to the following records (**REQUIRED**. Use additional pages if necessary):

All emails, text messages, and Facebook messages to and from the police chief in 2011, 2012, 2013, 2014, 2015, 2016, and 2017 about Jay Klinger, towing, and maintenance/repair work on police vehicles.

I requested the listed records from the Agency named above. By signing below, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I am also appealing for the following reasons (*Optional*. Use additional pages if necessary):

With all due respect to the parties involved, Camp Hill's denial (attached) of my request for records documenting taxpayer-funded activity involving a taxpayer-funded employee, and the subsequent labeling of that request as "disruptive," represents at best a fundamental misunderstanding of Pennsylvania's Right to Know Law, the principles of transparency designed to protect the public, and freedom of the press.

The Borough claims my November 6, 2017 request about towing and vehicle maintenance communications is disruptive because of past requests related to towing. The Right to Know Law says a disruptive requester is someone who files "repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency."

Specifically, the Borough mentions different January 2017 requests about various towing communications (St. Hilaire v Camp Hill Borough, docket #[2017-0416](#)). During the process of that request, the Borough issued a response saying there were no records in existence responding to my request for emails. When I obtained an email with the exact key words from my request, I appealed to the Office of Open Records. Camp Hill chose to appeal the Office of Open Records' final determination, which ordered the Borough to provide additional records. In court, the Borough agreed to turn over additional records (some of which have still been not provided to ABC27).

In its denial of my subsequent request, the Borough claims ABC27 "agreed in a court approved settlement that [ABC27] would not continue to seek these records." I'm not sure what the Borough means by "these records," but we never, at any point, indicated we would stop seeking public records. I have never said nor signed any such statement, nor has anyone else employed by ABC27 News. In fact, the judge made it a point to say we had a right to continue to file requests. If the Borough believes it has documents indicating otherwise, I would invite the parties involved to submit such documents to the Office of Open Records.

In the attached denial, the Borough also discusses the cost of producing records, the cost of defending our challenge to its response, and the cost of its own choice to appeal the decision from the Office of Open Records. None of this has any bearing on whether a record is public or on whether a request is disruptive, per *Borough of West Easton v. Mezzacappa*. If the Borough is dissatisfied with the costs it incurred after denying access to public records and making erroneous claims about the existence of such records, it would appear transparency is a simple and achievable solution. Logic would seem to indicate that the more the Borough denies public records requests, the more Right to Know Requests the public must file in order to access basic information.

The last part of the Borough's denial states that the November 6, 2017 request is disruptive because it seeks, in part, the same records requested on October 26, 2017.

October 26, 2017 request: All letters, emails, text messages, and Facebook messages from mechanics and owners/managers of auto shops to the police chief about repairs to Camp Hill police cars in 2010, 2011, 2012, 2013, 2014, 2015, 2016 and so far in 2017.

November 6, 2017 request: All emails, text messages, and Facebook messages to and from the police chief in 2011, 2012, 2013, 2014, 2015, 2016, and 2017 about Jay Klinger, towing, and maintenance/repair work on police vehicles.

These requests are similar, but also clearly different in scope. The October 26th request only covers repairs to Camp Hill police cars. The November 6th request covers towing, a specific person, and maintenance/repair work on police vehicles. Police departments often have vehicles that are not considered "cars," and the second request covers that category.

Records often overlap for different requests; that reality does not make a request inherently disruptive. Furthermore, *Borough of West Easton v. Mezzacappa* clearly establishes that a second request for a record is not disruptive, and that having a small staff or a large request does not in itself make a request "unreasonably burdensome." In *Mezzacappa*, the repetitive-yet-not-disruptive request was worded in the same way twice, and the staff in question was much smaller and had far fewer resources than the Borough of Camp Hill; the court still found in favor of Mezzacappa.

The Borough's jump to label the request as disruptive is inconsistent with previous statements in response to efforts to obtain public records. In representing the Borough, solicitor Josh Bonn sent me an email saying the Right to Know Law only requires the Borough to disclose records that existed at the time of a request (see his messages below). Mr. Bonn made it a point to say another request is required in order to obtain any records that created after the original request. By that logic, with new emails, text messages, and Facebook messages constantly generated as part of Borough business, a request worded in the same exact way, yet filed on a different day, would be a different request. The Borough is simultaneously asking for additional requests and balking at releasing records responsive to said additional requests.

Camp Hill Borough has not established that it searched the personal and work emails of the police chief, the Facebook messages, or text messages on personal and work devices. As outlined above, I have previously obtained from independent sources records that the Borough had claimed did not exist. Therefore, the blanket denial of the existence of records is now difficult to take at face-value. I would like the Office of Open Records to do an in-camera review of all (now-former) Camp Hill Police Chief Doug Hockenberry's communications to determine what exists and whether it is public.

Furthermore, if the Borough's claims are true and it conducted a thorough search for the records in question and determined they do not exist prior to the November 6 request, it follows that the November 6 request does not put an unreasonable burden on the agency, because that search was already conducted. That unreasonable burden is required by law in order to prove a request disruptive.

Mr. Bonn works for a firm that has experience advocating in favor of the Right to Know Law and transparency. Alternatively, in his representation of Camp Hill, he has in the past threatened sanctions against ABC27 for its Right to Know requests and appeals (see email below) and is now labeling our request as "disruptive." Our position is that the Borough is not denying this request with the good-faith belief that these records are not public, but rather because of their dislike of recent news stories and this particular reporter from ABC27 (<http://abc27.com/2017/11/22/public-records-reveal-police-favoritism-of-one-local-business-drivers-say-its-costing-their-rights-and-money/>). The law makes it clear that the Borough's responsibilities as a custodian of records do not change on a requester-by-requester basis, nor do those responsibilities change because of disdain for the press (no matter how strong that disdain may be).

It is the basic right of all citizens to be fully informed of what their local government is doing and how it is operating. It is the responsibility of the press to obtain that information and give it to the public. By making Right to Know requests to the Borough of Camp Hill, I am fulfilling my role as a member of the press; continued Right to Know denials will not stop me from carrying out those responsibilities. By using time and resources to hide records, deny access, and label requests from the press as disruptive, the Borough is failing to live up to the spirit of Pennsylvania's laws governing open records and transparency.

Respectfully submitted,
Amanda St. Hilaire

I have attached a copy of my request for records. (below)

I have attached a copy of all responses from the Agency regarding my request. (attached)

You should provide the Agency with a copy of this form and any documents you submit to the OOR.

RTK request (sent via email)

Right to Know Request

Date Requested: 11/06/17

Request Submitted by: email

Request Submitted to: Camp Hill

Name of Requester: Amanda St. Hilaire

Street Address: 3235 Hoffman Street Harrisburg, PA Dauphin County

Telephone: 717-448-1487

Records Requested:

All emails, text messages, and Facebook messages to and from the police chief in 2011, 2012, 2013, 2014, 2015, 2016, and 2017 about Jay Klinger, towing, and maintenance/repair work on police vehicles.

Do You Want Copies: Electronic copies, please. If electronic copies are not available, I would like to inspect the records.

I would like to be notified if the request exceeds \$100

Do You Want Certified Copies of the Records? No

Communications with Solicitor Bonn

Joshua Bonn <jbonn@nssh.com>

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Wed 11/22/2017, 11:32 AM

Amanda,

The Borough received your request on October 11, 2017. The Right-to-Know Law requires the Borough to produce records that were in existence on the date of the request. If you want records created after that date, you will have to submit another request.

**Joshua D. Bonn, Esq.
NAUMAN, SMITH, SHISSLER & HALL, LLP
200 North Third Street, 18th Floor
P. O. Box 840**

Harrisburg, PA. 17108-0840
717-236-3010 telephone
717-234-1925 fax

www.nssh.com

Hi Josh,

It is standard practice to show our viewers our process of gathering information, especially if the government agency did not make that process easy. My email to that effect was an effort to be transparent so the borough council members would not be surprised when they saw these details on the news. At this point, there is no way to keep the process out of it and it most certainly will be part of our news story. This is not a threat - I am simply being open about how this process works, since those at the borough appear to be unfamiliar.

If the request was not sufficiently specific, Pat had every opportunity to deny based on that argument (although the office of open records has already established that email requests that give specific topics and time frames are sufficiently specific). Instead, he said the records did not exist. I happen to know for a fact that the email he later found had the exact key words from my request in them and was easily found after I pointed out I did not have all relevant records.

I have a good faith, legal basis for believing every request I file is a public record. Ergo, every appeal is in good faith. If you are suggesting that the borough will attempt to get sanctions filed against a media outlet as a frivolous requestor or appellant, I would recommend taking some time to review the Right to Know Law, prior case law, and the First Amendment.

Pat made it clear to myself, abc27 reporter Kendra Nichols, abc27 reporter Chris Davis, abc27 reporter Dawn White, and abc27 reporter Sari Soffer that he has no interest in cooperating with local media on any matter, including stories that are positive for the borough. Therefore, I am doubtful mediation on this matter will go anywhere, since it requires both parties to come to the table willing to work with the other.

Furthermore, I did attempt to mediate this matter by giving the borough another opportunity to review the records before going to the Office of Open Records. The borough used that as an opportunity to attempt run the clock on the perceived appeal time window and then petition for a dismissal. Respectfully, this does not make me inclined to trust the borough on any future mediation attempts.

Once the OOR has made a decision, we can move forward from there.

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From: Joshua Bonn <jbonn@nssh.com>
Sent: Friday, March 3, 2017 10:57 AM
Subject: RE: St. Hilaire v. Camp Hill Borough OOR Docket AP 2017-0146

To: St. Hilaire, Amanda <asthilaire@abc27.com>

Amanda,

I had to get involved in this matter. Your correspondence to Pat Dennis on January 26, 2017 implied that the Borough did not perform a good faith search. You warned that you may seek "serious penalties" or produce negative content about the Borough. The Borough takes these allegations seriously and these allegations warrant the Solicitor's review and advice.

Please let me know if there is anything I can do to assist in resolving this matter. The Borough values transparency and will continue to fully comply with its obligations to disclose public records under the Right-to-Know Law. However, the Borough cannot assist you any further unless you provide additional information to sufficiently describe the records you seek. The Borough has already conducted a good faith search. The fact that records may exist that Mr. Dennis did not find does not mean that Mr. Dennis did not perform a good faith search. The request was vague. Not finding a needle in a haystack does not mean he did not sort through the hay. Mr. Dennis would have no knowledge of any background information that would assist in finding the records because he didn't work for the Borough during the time frame of the request. Any implication that Mr. Dennis has acted in bad faith is unwarranted.

If you have more specific information that will assist in locating the requested records, I ask that you submit another, more-specific Right-to-Know request.

The time-frame and subject matter of the initial request were very broad. It will assist in finding the records if you provide clearly defined search terms rather than a broad subjects such as "towing" or "media." Filing another request also protects you and preserves your opportunity to pursue timely appeals. I do recommend, however, that you refrain from "immediately appeal[ing] any denials of requests" unless you have a good faith legal basis for doing so. Just as the Borough is subject to sanctions for bad faith denials, requesters are subject to sanctions for pursuing frivolous appeals. 65 P.S. § 67.1304(b).

If the current appeal is not dismissed as untimely, I recommend that we take advantage of the OOR's mediation program. The OOR will provide a neutral mediator to assist in resolving any dispute that may arise. I truly hope to resolve your concerns without the expense of further appeals or litigation. I remain open to speak with you further by phone or email.

Josh

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<http://nssh.com/topic/right-to-know-law/>

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From: St. Hilaire, Amanda [<mailto:AStHilaire@abc27.com>]
Sent: Thursday, March 02, 2017 6:53 PM
To: Joshua Bonn <jbonn@nssh.com>; mzeppos@pa.gov
Cc: Pat Dennis <pdennis@camphillborough.com>
Subject: Re: St. Hilaire v. Camp Hill Borough OOR Docket AP 2017-0146

Since the borough agreed to give the request a second look, and the letter I received on February 8th details the borough's stance after taking a second look, that letter is the final response. Writing "this is not a final response," does not make it any less final. If the January 18th notice truly were the final response, there would have been no need to issue a formal letter in February.

In fact, when I picked up the letter at the borough office on February 8th, the borough manager and right to know officer stated the letter was written by the borough's solicitor. I'm curious as to why the borough's solicitor would need to author this letter if a final response had already been issued. It would seem as though tax dollars could be put to better use than to pay a solicitor to write a letter that was not intended to operate within the parameters of the Right to Know Law.

Additionally, it does not bode well for the borough if the "second look" it took at the records is not considered part of the Right to Know Request. This second look produced additional records (although they were withheld) that were stated to "not exist" in the original January 18th letter. If the Office of Open Records decides the Right to Know procedure ended with the January 18th letter, that means the borough itself released a later document admitting a separate search of those records was more thorough than the one conducted under the procedures of the law and yielded more records. It would then appear that abc27 would have a compelling case that the borough did not truly conduct a good faith search when looking under the parameters of the law.

If the position is taken that the February response is not final, it in fact penalizes a requester for attempting to resolve an issue with a municipality before going to the Office of Open Records and any subsequent court proceedings. In the correspondences with Camp Hill's borough manager and right to know officer, he said he appreciated the professional courtesy abc27 afforded him to give the request and second look and would like that courtesy to continue in the future. That courtesy cannot be provided if the borough is going to use it as an opportunity to run the clock on the time of an appeal.

Should the Office of Open Records decide that the January 18th letter is the final response, abc27 will respect that decision and going forward, will immediately appeal any denials of requests instead of giving the borough any opportunity to resolve issues outside Right to Know or court proceedings. Given the volume of Right to Know requests that is forthcoming, I doubt that is the outcome the borough would like to see.

Amanda St. Hilaire
Investigative Reporter
WHTM abc27 Working For You
3235 Hoffman Street

1/9/2018

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