

MARY F. RINALDI
LACKAWANNA COUNTY

2012 JAN 30 A 10:12

**IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY**

CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

In the Matter of

Christopher P. Cullen, Esquire,
2 West Olive Street
Scranton, PA 18508-2532

Petitioner
(Complainant Below)

vs.

City of Scranton
340 North Washington Avenue
Scranton, PA 18503

Respondent
(Respondent Below)

RIGHT TO KNOW APPEAL

NO. 2012-CV- 586

PETITION TO ENFORCE ORDER

**PETITION TO ENFORCE FINAL DETERMINATION
OF THE OFFICE OF OPEN RECORDS
ISSUED AND MAILED DECEMBER 14, 2011**

I. PARTIES

1. The Petitioner (Complainant) is Christopher P. Cullen, Esquire, 2 West Olive Street, Scranton, PA 18503.
2. The Respondent is the City of Scranton, Open Records Officer Ryan McGowan, 340 North Washington Avenue, Scranton, PA 18503.

II. JURISDICTION

3. This Court possesses the requisite jurisdiction to hear and decide this instant Petition to Enforce pursuant to 65 P.S. Section 67.1302(a).

III. FACTUAL AVERMENTS

4. On December 14, 2011, the Office of Open Records (“OOR”) issued and mailed a Final Determination of the appeal taken by the then Complainant Christopher P. Cullen, Esquire docketed at AP 2011-1500. See, Exhibit A – OOR December 14, 2011 Final Determination.

5. Complainant Cullen filed on or about November 8, 2011 a timely appeal with the OOR, after the Open Records Officer of the City of Scranton failed to timely respond to the Complainant’s October 27, 2011 Right to Know Request (“Request”) and the Request was deemed denied. See, Exhibit B – Complainant’s October 27, 2011 Right to Know Request; See, Exhibit C Complainant’s November 8, 2011 Appeal.

6. Complainant Cullen’s October 27, 2011 Right to Know Request in the “**Matter**” section reads as follows:

Right to Know Request for Records or Public Records In the Control of, Created, Received or Retained by the City of Scranton; the Zoning Code Enforcement Officer of the City of Scranton; the City of Scranton Departments of Community Development, Licensing, Inspections and Permits and Public Safety; the City Council of the City of Scranton; the Planning Commission of the City of Scranton; and the Zoning Hearing Board of the City of Scranton Regarding: (1) an Application for License and Certificate of Compliance for Land Use, as a Scrap Yard (License For a Scrap Yard or Junk Yard and Certificate of compliance Under Zoning Ordinance File of Counsel #28, 1958 and #13, 1959); (2) the Approval or Denial of Such Described Application for License and Certificate of Compliance; and (3) An Application for the Approval/ Issuance of scrap Yard (Junk Yard) Licnese Submitted By or On Behalf of: A Schlessor Demolition Co., 1500 North Keyser Avenue, Scranton, PA 18508; B Boots and Hanks, 1 Wood Street and Keyser Avenue, Scranton, PA 18508; C

Edward Zymblosky, Gail Zymblosky and/or Edward Zymblosky, III, 1602 Wood Street, Scranton, PA 18508; D Bladts Auto Core, 403 North-South Road, Scranton, PA 18504; E Benjamin G. and Elaine M. Stanton, 105 Middle Street, Scranton, PA 18508; and F Albert Panaci, Wood Street and Keyser Avenue, Scranton, PA 18508, from 1950 to present.

Exhibit B.

7. The "Introduction" and "Factual Background" sections of the OOR's December 14, 2011 Final Determination read as follows:

INTRODUCTION

Christopher Cullen ("Requester") submitted a request ("Request") to the City of Scranton ("City") pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, ("RTKL") seeking applications for junk yard licenses submitted by certain individuals. The City did not timely respond, and the Request was deemed denied. The Requester timely appealed to the Office of Open Records ("OOR"). For the following reasons in this Final Determination, the Request is **granted** and the City is required to take further action as directed.

FACTUAL BACKGROUND

On October 27, 2011, the Requester filed the Request seeking applications for junk yard licenses submitted on behalf of various individuals for addresses within the City. As the City did not timely respond to the Request, the Request was deemed denied. *See* 65 P.S. § 67.901.

On November 14, 2011, the Requester timely appealed to the OOR, stating grounds for disclosure. On November 14, 2011, the OOR invited the parties to supplement the record and submit evidence. The City submitted a correspondence from its legal counsel dated November 10, 2011 addressed to the Requester and purporting to respond to the Request. The City's unsworn and unverified letter of counsel stated that the Request was denied on the basis that the requested documents were previously provided, and that the Request was denied due to pending litigation between the City and the Requester.

Exhibit A.

8. Pertinent part of “Legal Analysis” section, and the “Conclusion” section of the OOR’s December 14, 2011 Final Determination read as follows:

In the present case, the City did not comply with the RTKL by substantively responding to the Request, nor did it provide any factual or legal support for denying access to responsive records. The OOR notes that the City’s letter of counsel states that the requested documents were previously provided to the Requester. Pursuant to 65 P.S. § 67.506(a), the fact that a request has been “repeated” is irrelevant unless the request also places an “unreasonable burden on the agency.” *See also Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011) (“under this section ... an agency must demonstrate that (1) ‘the requester has made repeated requests for th[e] same record[(s)]’ and (2) ‘the requests have placed an unreasonable burden on the agency’”). As the City has not offered any evidence that it was unreasonably burdened by responding to the repeated request, the City has not meet its burden of proof. *See* 65 P.S. § 67.305.

CONCLUSION

For the foregoing reasons, Requester’s appeal is **granted** and the City is required to provide all responsive records within thirty (30) days. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal to the Lackawanna County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties and the OOR must be served with notice of the appeal as per Section 1303. This Final Determination shall be placed on the OOR website at <http://openrecords.state.pa.us>.

Exhibit A.

9. Respondent City of Scranton, neither through its Open Records Officer nor through its Solicitor, did timely file with this Court within 30 days of the December 14, 2011 mail and issuance date an appeal of the OOR’s Final Determination. 65 P.S. Section 67.1302(a).

10. Consequently, Respondent City of Scranton is required to provide to Complainant Cullen “all responsive records” to his October 27, 2011 Request.

11. Respondent City of Scranton failed to comply with the order of the OOR, namely:
“For the foregoing reasons, Requester’s (Cullen’s) appeal is granted, and the City is required to provide all responsive records within thirty (30) days. This Final Determination is binding on all parties.”

12. 65 P.S. Section 67.1305 reads as follows:

(a) Denial of access.— A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith.

(b) Failure to comply with court order.— An agency or public official who does not promptly comply with a court order under this act is subject to civil penalty of not more than \$500 per day until the public records are provided.

WHEREFORE, based upon the foregoing, Petitioner (Complainant) Christopher P. Cullen, Esquire, respectfully requests that this Honorable Court grant the instant Petition to Enforce, and issue an Order: directing the City of Scranton to provide the Petitioner all records responsive to the Petitioner’s October 27, 2011 Request, specifically noting the records in the possession of the City of Scranton responsive to the Request and identifying that part of the Request the City may or does not possess records responsive thereto, within thirty (30) days; directing the City of Scranton to file to the docket an Affidavit of the Open Records Officer documenting and identifying those records responsive to the request which are (or are to be) provided to the Petitioner and those portions of the Request for which the City does not possess any responsive records; awarding the Petitioner \$1,500.00 as a civil penalty for the City’s bad

faith denial of access to a public record; and granting the Petitioner such other relief, including attorney fees and costs, as may be deemed just and appropriate under the circumstances.

Respectfully submitted:

January 30, 2012

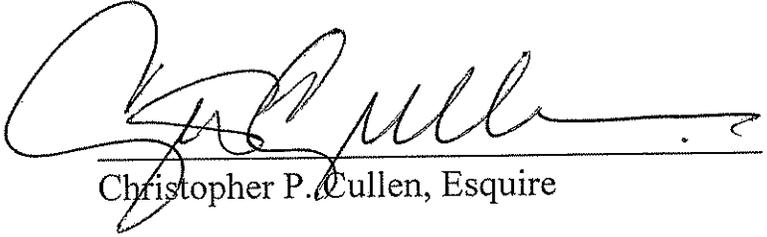
A handwritten signature in black ink, appearing to read "Chris Cullen", written over a horizontal line.

Christopher P. Cullen, Esquire
Petitioner
Law Office
2 West Olive Street
Scranton, PA 18508-2532
(570) 343-6256
(570) 344-1604 – fax
Sup. Ct. Id. No. 36314

VERIFICATION

I, Christopher P. Cullen, Esquire, the petitioner herein, verify that the factual averments set forth in the instant Petition to Enforce are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

January 30, 2012



Christopher P. Cullen, Esquire

EXHIBIT A

**OOOR FINAL DETERMINATION
DECEMBER 14, 2011
(ISSUANCE AND MAIL DATE)**



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

CHRISTOPHER CULLEN,
Complainant

v.

CITY OF SCRANTON,
Respondent

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:

Docket No.: AP 2011-1500

INTRODUCTION

Christopher Cullen (“Requester”) submitted a request (“Request”) to the City of Scranton (“City”) pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”) seeking applications for junk yard licenses submitted by certain individuals. The City did not timely respond, and the Request was deemed denied. The Requester timely appealed to the Office of Open Records (“OOR”). For the following reasons in this Final Determination, the Request is **granted** and the City is required to take further action as directed.

FACTUAL BACKGROUND

On October 27, 2011, the Requester filed the Request seeking applications for junk yard licenses submitted on behalf of various individuals for addresses within the

City. As the City did not timely respond to the Request, the Request was deemed denied. *See* 65 P.S. § 67.901.

On November 14, 2011, the Requester timely appealed to the OOR, stating grounds for disclosure. On November 14, 2011, the OOR invited the parties to supplement the record and submit evidence. The City submitted a correspondence from its legal counsel dated November 10, 2011 addressed to the Requester and purporting to respond to the Request. The City's unsworn and unverified letter of counsel stated that the Request was denied on the basis that the requested documents were previously provided, and that the Request was denied due to pending litigation between the City and the Requester.

LEGAL ANALYSIS

The RTKL is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. OOR*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *appeal granted* 15 A.3d 427 (Pa. 2011). The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the request" and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing and the OOR has

the necessary, requisite information and evidence before it to properly adjudicate the matter.

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

In the present case, the City did not comply with the RTKL by substantively responding to the Request, nor did it provide any factual or legal support for denying access to responsive records. The OOR notes that the City’s letter of counsel states that the requested documents were previously provided to the Requester. Pursuant to 65 P.S. § 67.506(a), the fact that a request has been “repeated” is irrelevant unless the request

also places an “unreasonable burden on the agency.” *See also Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011) (“Under this section ... an agency must demonstrate that (1) ‘the requester has made repeated requests for th[e] same record[(s)]’ and (2) ‘the repeated requests have placed an unreasonable burden on the agency’”). As the City has not offered any evidence that it was unreasonably burdened by responding to the repeated request, the City has not meet its burden of proof. *See* 65 P.S. § 67.305.

CONCLUSION

For the foregoing reasons, Requester’s appeal is **granted** and the City is required to provide all responsive records within thirty (30) days. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal to the Lackawanna County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties and the OOR must be served with notice of the appeal as per Section 1303. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: December 14, 2011



APPEALS OFFICER
CHARLES REES BROWN, ESQ.

Sent to: Christopher Cullen, Esq.; F. Stuart Renda

EXHIBIT B

**OCTOBER 27, 2011
RIGHT TO KNOW REQUEST**

Christopher P. Cullen
ATTORNEY AT LAW

October 27, 2011

Mr. Ryan McGowan
Open Records Officer
Business Administration
City of Scranton
City Hall
340 North Washington Avenue
Scranton, PA 18503

RE: RIGHT TO KNOW REQUEST, 65 P.S. Section 67.101 et seq., Right to Know Law

Matter: Right to Know Request for Records or Public Records In the Control of, Created, Received or Retained by the City of Scranton; the Zoning Code Enforcement Officer of the City of Scranton; the City of Scranton Departments of Community Development, Licensing, Inspections and Permits and Public Safety; the City Council of the City of Scranton; the Planning Commission of the City of Scranton; and the Zoning Hearing Board of the City of Scranton Regarding: (1) an Application for License and Certificate of Compliance for Land Use, as a Scrap Yard (License For a Scrap Yard or Junk Yard and Certificate of compliance Under Zoning Ordinance File of Counsel #28, 1958 and #13, 1959); (2) the Approval or Denial of Such Described Application for License and Certificate of Compliance; and (3) An Application for the Approval/ Issuance of scrap Yard (Junk Yard) Licnese Submitted By or On Behalf of: A Schlessler Demolition Co., 1500 North Keyser Avenue, Scranton, PA 18508; B Boots and Hanks, 1 Wood Street and Keyser Avenue, Scranton, PA 18508; C Edward Zymblosky, Gail Zymblosky and/or Edward Zymblosky, III, 1602 Wood Street, Scranton, PA 18508; D Bladts Auto Core, 403 North-South Road, Scranton, PA 18504; E Benjamin G. and Elaine M. Stanton, 105 Middle Street, Scranton, PA 18508; and F Albert Panaci, Wood Street and Keyser Avenue, Scranton, PA 18508, from 1950 to present.

Dear Mr. McGowan:

Enclosed and made a part hereof, please find true and correct copies of the following documents: A Application for License and Certificate of Compliance for Land Use as a Scrap

Mr. Ryan McGowan
October 27, 2011
Page Two

Yard; B 9/26/2010 letter regarding Scrap Yard License expiration/renewal signed by Carl Graziano, Jr., Building Inspector, and C 8/16/2009 letter regarding Scrap Yard License expiration/renewal signed by Carl Graziano, Jr., Building Inspector.

The above-listed “**matter**” section identifies and describes the public records being sought with sufficient specificity to enable the City’s designated open records officer to ascertain which public records are presently being requested.

Specifically, but not limited to, your attention is directed to that part of the instant Right to Know Request which requests records/public records of a Scrap Yard (Junk Yard) License being applied for, and/or granted, issued, or denied to Schlessler Demolition Co., 1500 North Keyser Avenue, Scranton, PA., Charles D. Schlessler, Edward C. Schlessler and Therisa Schlessler, deceased, or to Albert Panaci, Wood Street and Keyser Avenue, Scranton, PA. at any time from 1950 to present.

As to the erroneous statements set forth in sentences 3 and 4 appearing in the second full paragraph on page 2 of the October 17, 2011 response to the Right to Know Requests dated September 13, 2011, reference is respectfully made to Sections 806A; 806B; 806C; 806.C.(2) – Special Exception granted by ZHB required; 806.C.(3) – Special Exception granted by ZHB required; 806.E.(3) – Special Exception granted by ZHB required; 806.G.(2) – Special Exception granted by ZHB required; and 806.I – Approval of the ZHB required, of the Zoning Ordinance, File of Council #74, 1993, Effective December 21, 1993, with amendments to counter the mistaken argument that “[t]here is no application or ‘reapplication’ required for junk yards.” Additionally, please note page 3-9 “District Regulation” of said Zoning Ordinance, wherein a Special Exception granted by the ZHB is required for junk (outdoor storage/processing) and a conditional use decision by City Council with review by the Planning Commission is required for a junk yard (See, Section 402.24, page 4-8 of said Zoning Ordinance).

As set forth in the above-referenced second full paragraph appearing on page 2 of the October 17, 2011 response, it would appear that the City’s position is for the simple payment of \$500.00, anyone can purchase a junk yard -or- scrap yard license, and there are no “documents” created, received or retained by the City regarding the “approval” of a junk yard or junk yards. Nothing could be further from the law and truth. All junk yards operating in the City of Scranton required, either by statute and/or ordinance, the approval or grant of an application as either a conditional use or a special exception or variance by either the ZHB or the City Council with review by the Planning Commission. Is it truly the City’s position that an applicant (without

Mr. Ryan McGowan
October 27, 2011
Page Three

records, of course) for a junk yard license can secure for the payment of a \$500.00, not one but two scrap yard licenses, both issued in a given calendar for a site, a leased parcel of land, upon which and where previously a licensed junk yard was not operated by the property owner?

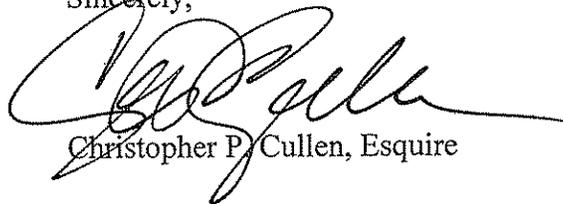
Kindly revisit the said paragraph of the said letter.

Enclosed please find a check made out to the City Treasurer in the amount of \$7.00 for 28 pages at \$.25 per page.

Should you have any questions, or require any additional information, please feel free to contact me.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "C. P. Cullen", with a long horizontal flourish extending to the right.

Christopher P. Cullen, Esquire

CPC/cw
Enclosure

SCRANTON, PENNSYLVANIA

APPLICATION FOR LICENSE AND CERTIFICATE OF COMPLIANCE
FOR LAND USE AS A SCRAP YARD

Department of Community Development
Bureau of Inspections and Licensing
City Hall
Scranton, Pennsylvania 18503

Date: _____

Application is hereby made on behalf of owner or lessee of premises herein described for a License for a Scrap or Junk Yard and Certificate of Compliance under Zoning Ordinance File of Council #28, 1958 and #13, 1959.

NAME OF PROPERTY OWNER(£) _____

ADDRESS OF OWNER _____

OCCUPANT OR OPERATOR OF YARD _____

ADDRESS OF OCCUPANT/OPERATOR _____

LOCATION OF YARD _____

TYPE MATERIAL STORED _____

SIZE OF YARD-WIDTH _____ DEPTH _____ AREA _____

TYPE OF STRUCTURES _____

USE OF STRUCTURES _____

ITEMIZED LIST OF EQUIPMENT USED ON PREMISES

<u>ITEM</u>	<u>SERIAL #</u>	<u>DATE PURCHASED</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

FENCING CONDITION: N.S.W.E. POOR _____ FAIR _____ GOOD _____

ORIGINAL DATE BUSINESS ESTABLISHED _____

STORAGE OF MATERIALS NOT TO EXCEED 10' HIGH YES () NO ()

SIGNATURE _____

FOR OFFICE USE ONLY

License Fee _____

Date Received _____

Approved By _____

License Number _____

Date Issued _____

Ward _____ Zone _____

Department of
Licensing, Inspections and Permits

City Hall
4th Floor
340 North Washington Avenue
Scranton, Pennsylvania 18503
Tel: (570) 348-4193
Fax: (570) 348-4171



SCRANTON

07/26/2010

To Whom It May Concern:

This letter is to inform you that your Scrap Yard License for the year 2009/2010 will expire on August 31, 2010. Please complete the enclosed application and return it along with a check in the amount of \$500.00, made payable to the City of Scranton.

Return all applications and payments to:

Department of Licensing and Inspections
City Hall 4th Floor
340 N. Washington Avenue
Scranton, PA 18503

Thank you for your cooperation,

A handwritten signature in cursive script, appearing to read 'Carl Graziano Jr.', written in black ink.

Carl Graziano Jr.
Building Inspector

Department of
Licensing, Inspections and Permits

City Hall
4th Floor
340 North Washington Avenue
Scranton, Pennsylvania 18503
Tel: (570) 348-4193
Fax: (570) 348-4171



SCRANTON

August 16, 2009

To Whom It May Concern:

This letter is to inform you that your Scrap Yard License for the year 2009-2010 is now due. Your current license will expire on August 31, 2009.

Please complete the enclosed application and return it along with a check in the amount of \$500.00 payable to the City of Scranton to:

Department of Licensing and Inspections
City Hall, 4th Floor
340 N. Washington Avenue
Scranton, PA 18503

Thank you for your cooperation.

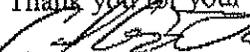

Carl Graziano Jr.
Building Inspector

EXHIBIT C

**NOVEMBER 8, 2011 RIGHT TO
KNOW APPEAL TO THE
OFFICE OF OPEN RECORDS**

Christopher P. Cullen
ATTORNEY AT LAW

November 8, 2011

Executive Director
Office of Open Records
Commonwealth of Pennsylvania
Commonwealth Keystone Building
400 North Street Plaza Level
Harrisburg, PA 17120-0225

Re: Right to Know Law Appeal – No Response from Agency

Dear Executive Director:

This appeal is filed under the Pennsylvania Right-to-Know Law, 65 P.S. §67.101, *et seq.* By letter dated October 27, 2011, I requested documents from Mr. Ryan McGowan, Open Records Officer, Business Administration, City of Scranton, City Hall, 340 North Washington Avenue, Scranton, PA 18503. I did not receive a response as required by the Right-to-Know Law, 65 P.S. Section 67.901 and my request was therefore deemed denied on or about November 7, 2011. I am appealing the denial of my requests under Section 1101 of the Right-to-Know Law, 65 P.S. Section 67.1101, and provide the following information in accordance with the Law:

Requestor's name:	Christopher P. Cullen, Esquire
Address/City/State/Zip:	2 West Olive Street, Scranton, PA 18508-2532
Date of Right to Know request:	October 27, 2011 (See attached)
Telephone and fax number:	570-343-6256 570-344-1604
Email:	

Name and address of Agency:
City of Scranton (See above and attached.)

Name and title of Agency official to whom the request was made:
See above and attached.

Description of the records requested: See attached.

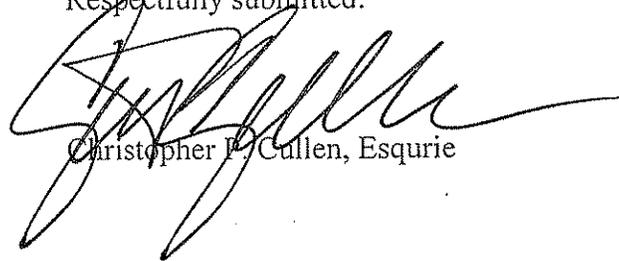
List all grounds upon which the requestor asserts that the record is a public record – why you believe the requested record is a public record – a general statement that it is public under the Right-to-Know Law is insufficient: (may attach additional pages if necessary)

Executive Director Office of Open Records
November 8, 2011
Page Two

Copies of my original Right to Know request is attached. I will send a copy of this appeal to the local agency.

Records requested and sought are public records under the Act. Public records sought and requested are described in detail in the matter section of the letter/request dated October 27, 2011. The public records sought and requested are for application(s) or request(s) submitted by the party so indicated to the City of Scranton Zoning Hearing Board (ZHB); the City of Scranton Planning Commission (PC); the City Council of the City of Scranton (CC); the Zoning Code Enforcement Officer of the City of Scranton (ZCEO); the City of Scranton Department of Public Safety (PS); and the City of Scranton Department of Licensing, Inspections and Permits (LIP), and record/minutes of any official action taken to approve or deny, an application or a request or to issue or grant an approval or denial of an application or request either by the ZHB, or the PC or the CC or the ZCEO, or the PS or the LIP.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Chris Cullen", written over a printed name.

Christopher P. Cullen, Esquire

CPC/cw
attachments

cc: w/attachments

Mr. Ryan McGowan, Open Records Officer, City of Scranton

**BEFORE THE PENNSYLVANIA
OFFICE OF OPEN RECORDS**

Christopher P. Cullen, Esquire, :
2 West Olive Street :
Scranton, PA 18508-2532 :

Appellant, :

vs. :

Open Records Officer :
City of Scranton :
City Hall :
340 North Washington Avenue :
Scranton, PA 18503 :

Appellee :

AFFIDAVIT

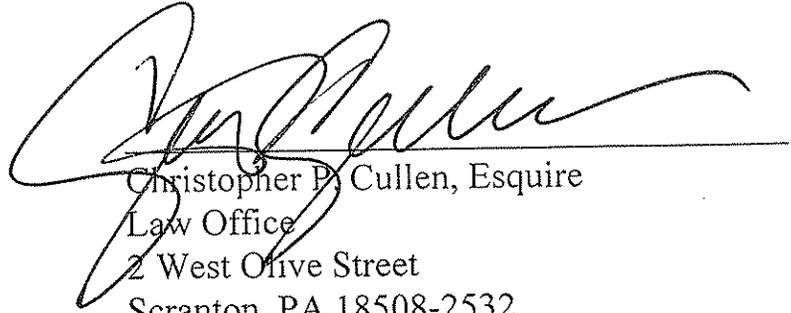
Commonwealth of Pennsylvania

County of Lackawanna

I, Christopher P. Cullen, Esquire, being duly sworn according to law, depose and say that I am the appellant in the instant Appeal and as such, am submitting this Affidavit in support of the facts and statement of facts set forth in the November 8, 2011 Notice of Appeal. The facts and factual statements set forth in the November 8, 2011 Notice of Appeal and the appellant's letter dated October 27, 2011, are true and correct to the best of my knowledge, information and belief. I understand false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities. The local agency's failure to act within the statutory time period set forth in the Right to

Know Law constituted a deemed denial of appellant's right to know request dated October 27, 2011. 65 P.S. Sections 67.901 and 67.1101. The local agency may not now raise any exceptions or new grounds in the instant appeals.

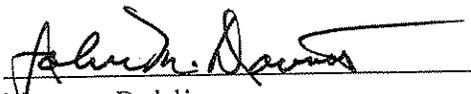
November 9, 2011



Christopher P. Cullen, Esquire
Law Office
2 West Olive Street
Scranton, PA 18508-2532
(570) 3436256
(570) 344-1604 – fax
Sup. Ct. Id. No. 36314

Sworn to and subscribed

before me this 9th day of
November, 2011.


Notary Public

my commission expires _____

NOTARIAL SEAL
John M. Davies, Notary Public
Scranton, Lackawanna County PA
My Commission Expires Feb 14 2014

CERTIFICATE OF SERVICE

I, Christopher P. Cullen, Esquire, hereby certify that I served a true and correct copy of the foregoing Petition and Order Setting Down a Rule to Show Cause upon each of the below-listed persons by depositing the same into First Class United States Mail postage prepaid, at Scranton, PA, addressed as follows:

- (1) Paul A. Kelly, Jr., Esquire
Solicitor, City of Scranton
Department of Law
340 North Washington Avenue
Scranton, PA 18503
- (2) Charles Rees Brown, Esquire
Appeals Officer
Office of Open Records
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
- (3) Mr. Ryan McGowan
Open Records Officer
City of Scranton
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January 30, 2012



Christopher P. Cullen, Esquire