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December 30, 2015

**VIA: E-MAIL AND FIRST CLASS  
U.S. MAIL**

Brendan P. Lucas, Esquire  
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Pittsburgh, PA 15219-1410

Jill S. Wolfe, Appeals Officer  
Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

**Re: The Municipality of Mt. Lebanon v. Elaine Gillen And Pennsylvania  
Office of Open Records  
No. SA 15-000963**

Dear Counsel:

Please find enclosed the Answer and New Matter to Petition for Judicial Review that was filed today with the Department of Court Records in the above-referenced matter.

Should you have any questions or comments, please do not hesitate to call.

Very truly yours,

Kim Maiorano  
Legal Assistant

/km  
Enclosure

cc: Ronald D. Barber, Esquire (w/out encl.)  
Gretchen E. Moore, Esquire (w/out encl.)  
Edward A. Knafelc, Esquire (w/out encl.)  
Elaine Gillen (w/encl.)

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

THE MUNICIPALITY OF MT.  
LEBANON,

Petitioner,

v.

ELAINE GILLEN,

Respondent,

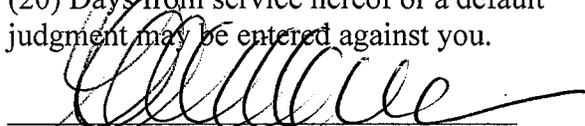
And

PENNSYLVANIA OFFICE OF OPEN  
RECORDS,

Interested Party.

**NOTICE TO PLEAD**

You are hereby notified to plead to  
the enclosed **New Matter** within Twenty  
(20) Days from service hereof or a default  
judgment may be entered against you.

  
\_\_\_\_\_  
Ronald D. Barber  
Gretchen E. Moore  
Edward A. Knafelc

: CIVIL DIVISION

: No. SA 15-000963

: **ANSWER AND NEW MATTER TO  
: PETITION FOR JUDICIAL REVIEW**

: Filed on Behalf of: Respondent  
: ELAIN GILLEN

: Counsel of Record for This Party:

: Ronald D. Barber  
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: Gretchen E. Moore  
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: STRASSBURGER McKENNA GUTNICK  
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

THE MUNICIPALITY OF MT. LEBANON,	:	CIVIL DIVISION
	:	
Petitioner,	:	No. SA 15-000963
	:	
v.	:	
	:	
ELAINE GILLEN,	:	
	:	
Respondent,	:	
	:	
And	:	
	:	
PENNSYLVANIA OFFICE OF OPEN RECORDS,	:	
	:	
Interested Party.	:	

**ANSWER AND NEW MATTER**  
**TO PETITION FOR JUDICIAL REVIEW**

Elaine Gillen (Respondent herein) by her undersigned counsel responds as follows to the Petition for Judicial Review of a Final Determination of the Pennsylvania Office of Open Records (Petition herein) submitted by the Municipality of Mt. Lebanon (Municipality herein):

1. Paragraph 1 is admitted in part. It is admitted that the business address of the Municipality of Mt. Lebanon is 710 Washington Road, Pittsburgh, PA 15228. To the extent Paragraph 1 states a purported conclusion of law, no response is required.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted. By way of further answer, the Final Determination issued by the Pennsylvania Office of Open Records is a writing that speaks for itself.

5. Paragraph 5 consists entirely of excerpts from Section 1302 of the Pennsylvania Right to Know Law and no response is required.

6. Paragraph 6 is admitted in part. It is admitted that the Municipality of Mt. Lebanon is located in Allegheny County. To the extent that Paragraph 6 states a purported conclusion of law, no response is required.

7. Paragraph 7 is denied in part and admitted in part. It is admitted that the emails that are the subject of the instant Right to Know Law request relate to deer management within the Municipality. With regard to the remaining allegations, after reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Petition. Said allegations are denied and strict proof is demanded.

8. Paragraph 8 is admitted. By way of further answer, the Right to Know Law request is a writing that speaks for itself.

9. Paragraph 9 references a letter invoking a thirty (30) day extension period issued by the Municipality to Respondent. That letter is a writing that speaks for itself.

10. Paragraph 10 references an email message that served as the Municipalities response to Respondent's Right to Know Law request. That email message is a writing that speaks for itself.

11. Paragraph 11 references the same email message that was referenced in Paragraph 10. That email message is a writing that speaks for itself. By way of further

answer, it is expressly denied that any of the emails requested by Respondent fall under the exceptions set forth at Section 708(b)(1) or Section 708(b)(13) of the Pennsylvania Right to Know Law. To the contrary, the emails that were requested are the types of documents that are subject to requests under the Pennsylvania Right to Know Law and there are no exceptions under the Right to Know Law allowing for their nondisclosure.

12. Paragraph 12 is denied in part and admitted in part. It is admitted that Respondent filed a timely appeal of the Municipalities' improper partial denial of her request under the Right to Know Law. It is denied that Respondent failed to address why the specific exemptions to disclosure cited by the Municipality should not apply. By way of further response, Paragraph 12 references the appeal submitted by Respondent. That appeal is a writing that speaks for itself.

13. Paragraph 13 references the Final Determination issued by the Pennsylvania Office of Open Records on November 24, 2015. The Final Determination issued by the Office of Open Records is a writing that speaks for itself.

14. Paragraph 14 states a conclusions of law to which no response is required.

15. Petitioner failed to include Paragraph 15 in the Petition. As such, no response is required.

16. Paragraph 16 states a purported conclusion of law, no response is required and it is deemed denied. By way of further response:

a. Subparagraph "a" of Paragraph 16 references the original Right to Know Law request as well as the subsequent appeal submitted by Respondent. These documents are writings that speak for themselves. Furthermore, Subparagraph "a" of Paragraph 16 states a conclusion of law to which no response

is required. In so far as a response is necessary, Respondent did not modify, explain, or expand upon her original request on appeal.

b. Subparagraph "b" of Paragraph 16 states a conclusion of law to which no response is required. In so far as a response is necessary, it is denied that Respondent failed to address the grounds stated by the Municipality for denying her request.

c. Subparagraph "c" of Paragraph 16 references numerous documents that are writings that speak for themselves. By way of further response, Subparagraph "c" of Paragraph 16 contains conclusions of law to which no response is required.

d. Subparagraph "d" of Paragraph 16 contains conclusions of law to which no response is required.

WHEREFORE, Respondent respectfully requests that the Petition submitted by the Municipality of Mt. Lebanon be denied in its entirety, with prejudice.

#### **NEW MATTER**

17. The Pennsylvania Office of Open Records correctly decided all issues in this matter and their decision should be affirmed.

18. The objective of the Pennsylvania Right to Know Law is to empower citizens by affording them access to information concerning activities of their government. *Commonwealth of Pennsylvania, Office of Open Records v. Center Township*, 95 A.3d 354 (Pa. Commw. Ct. 2014).

19. Records in possession of a local agency are presumed public unless exempt under the Right to Know Law or other law or protected by privilege, judicial order or decree. 65 P.S. § 67.305.

20. The Right to Know Law must be construed to maximize access to public records that are in an agency's possession and the exceptions to disclosure of public records must be narrowly construed. *Pennsylvania State Educ. Ass'n ex rel. Wilson v. Commonwealth of Pennsylvania, Dept. of Community and Economic Development*, 110 A.3d 1076 (Pa. Commw. Ct. 2015).

21. Furthermore, "[t]he 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 preponderance of the evidence." 65 P.S. § 67.708(a).

22. The term "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).

23. In order to invoke the exception under Section 708(b)(1)(ii) of the Right to Know Law the Municipality must show that "a record, the disclosure of which . . . would be reasonably likely to result in a substantial and demonstrable risk of physical harm or the personal security of an individual." 65 P.S. § 67.708(b)(1)(ii).

24. The Municipality has failed to provide any evidence that there have been any threats directed at individuals who are involved with the deer management program.

25. Furthermore, the Municipality has failed to provide any evidence that supports a claim that the disclosure of the requested records would be reasonably likely to result in a substantial and demonstrable risk of physical harm or the personal security of any individual.

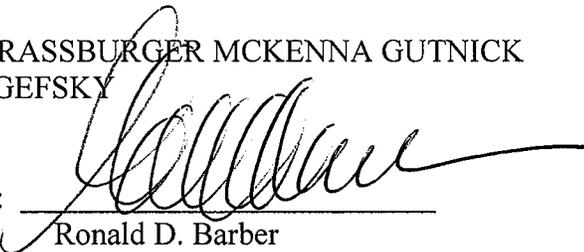
26. Also, in order to invoke the exception under Section 708(b)(13) of the Right to Know Law the Municipality must show that the disclosure of the requested information would "disclose the identity of an individual who lawfully makes a donation to an agency." 65 P.S. § 67.708(b)(13).

27. This exception is not applicable to these facts. The landowners in question here are not gifting their property to the program. The landowners are merely allowing temporary access to their property and at all times the property will remain the property of those landowners.

WHEREFORE, Respondent respectfully requests that the Petition submitted by the Municipality of Mt. Lebanon be denied in its entirety, with prejudice.

Respectfully submitted,

STRASSBURGER MCKENNA GUTNICK  
& GEFSKY

By: 

Ronald D. Barber  
Gretchen E. Moore  
Edward A. Knafelc

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*Counsel for Respondent, Elaine Gillen*

**VERIFICATION**

I, **Elaine Gillen**, hereby verify that the statements of fact contained in the foregoing **Answer and New Matter to Petition for Judicial Review** are true and correct to the best of my knowledge, information and belief.

I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 12/30/15

Elaine Gillen  
Elaine Gillen

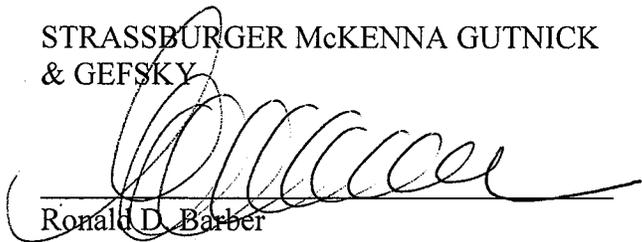
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **ANSWER AND NEW MATTER TO PETITION FOR JUDICIAL REVIEW** was served by Email and First Class Mail, U.S. Mail, postage prepaid, this 30<sup>th</sup> day of December, 2015, on the following:

Brendan P. Lucas, Esquire  
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(Counsel for Appellant  
The Municipality of Mt. Lebanon)

Jill S. Wolfe, Appeals Officer  
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(Counsel for Interested Party  
Pennsylvania Office of Open Records)

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