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# IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1020 CD 2016

(Relating to 1021 CD 2016)

THE MUNICIPALITY OF MT. LEBANON
Appellee,
v.
ELAINE GILLEN,
Appellant,
v.
PENNSYLVANIA OFFICE OF OPEN RECORDS,
Interested Party.

## BRIEF FOR APPELLEE

Appeal from Decisions Under 65 P.S. § 67.1302(a) dated May 23, 2016 of the Court of Common Pleas for Allegheny County (O'Brien, J.) at SA 16-000963 and SA 16-000236

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## COUNTERSTATEMENT OF QUESTIONS INVOLVED

1. Whether it constitutes a "donation" under 65 P.S. § 67.708(b)(13) when a landowner donates to the Municipality: (1) temporary access to their property for use in a deer management program; or (2) their time and skill as volunteer hunters in a deer management program.

*(Answered in the positive by the lower court)*

*(Suggested Answer: Yes)*

2. Whether Appellant's failure to address the "donation" exemption in its September 18, 2015 appeal to the Office of Open Records violated the requirement under 65 P.S. § 67.1101(a)(1) that an appeal "state the grounds upon which the requester asserts that the record is a public record...and shall address any grounds stated by the agency for delaying or denying the request."

*(Answered in the positive by the lower court)*

*(Suggested Answer: Yes)*

3. Whether Appellant waived her right to appeal Question No. 2 above by failing to raise the issue in her Brief.

*(Not at issue before the lower court)*

*(Suggested Answer: Yes)*

## COUNTERSTATEMENT OF THE CASE

### A. The Deer Management Program.

The documents and emails that are the subject of the instant appeals relate to deer management within the Municipality of Mt. Lebanon ("Municipality"). (R. 33a). In July 2015, the Municipality awarded a contract to White Buffalo, Inc. ("White Buffalo") for an archery program to cull the deer population. *Id.* White Buffalo was hired to screen, train and manage archers to conduct an organized bow hunt. (R. 34a). Interested private property owners contacted White Buffalo and the Municipality, offering to donate their properties for participation in the project and to volunteer their time and skill as archers in the hunt. *Id.* Officials from White Buffalo then contacted each applicant and the applicant's neighbors for any additional permissions needed to comply with Pennsylvania Game Commission hunting and safety regulations. *Id.* The 2015/2016 seasonal hunt occurred on public and private properties, and concluded prior to the lower court's issuance of the decisions appealed to this Court. (R. 44a).

### B. The Right-to-Know Requests and the Determinations by the Office of Open Records.

Appellant, Elaine Gillen ("Gillen") first filed a Right-to-Know Law ("RTKL") request with the Municipality via email on July 30, 2015 ("First Request"). (R. 6a). The First Request sought production of "[a]ll communication to and/or from municipal staff and, all communication to and/or from the

commission concerning Anthony DeNicola's archery program from June 18, 2015 to the present."[1] *Id.* In an email letter dated September 3, 2014, the Municipality partially granted and partially denied the Request, providing a total of 131 e-mails to Gillen. (R. 7a). Regarding the denied portion of the First Request, the Municipality's response stated, in pertinent part:

> Several emails were not produced that dealt with persons volunteering to donate their time or property to the program either as an archer or property owner. These were not produced under two exceptions:
>
> (1) The Act at Section 708(b)(1) provides as follows:
>
> (1) A record the disclosure of which:
>
> * * *
>
> (ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.
>
> (2) The Act at Section 708(b)(13) provides as follows:
>
> (13) Records that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

*Id.*

On September 18, 2015, Gillen timely appealed the Municipality's denial of the First Request to the Office of Open Records ("OOR"). (R. 9a). The OOR

[1] Anthony DeNicola is the Founder and President of White Buffalo.

invited both parties to submit legal argument and supplement the record. (R. 13a). The Municipality submitted legal argument with supporting affidavits. *Id.* Gillen, however, did not submit additional evidence or address why any of the specific exemptions to disclosure cited by the Municipality should not apply. (R. 9a).

On November 24, 2015, the OOR issued a Final Determination ("First Final Determination") in favor of Gillen and ordered the Municipality to provide Gillen with all of the requested emails within thirty (30) days. (R. 17a). On December 18, 2016, the Municipality filed with the lower court a Petition for Review of the First Final Determination pursuant to 65 P.S. § 67.1302. (R. 30a).

While the OOR was considering the Municipality's partial denial of the First Request, Gillen also filed a second RTKL request ("Second Request") via email on November 25, 2015. (R. 19.a). The Second Request was identical in all respects to the First Request, except that it requested documents from a later period in time, from July 31, 2015 through November 25, 2015. *Id.* By letter dated January 4, 2015, the Municipality partially granted and partially denied the Second Request, providing a total of 63 pages of emails to Gillen. (R. 44a-45a). In its partial denial of the Second Request, the Municipality cited the same exemptions of the RTKL as it did in its denial of the First Request. *Id.*

On January 6, 2016, Gillen timely appealed the Municipality's partial denial of the Second Request to the OOR. (R. 20a). The OOR invited both parties to

supplement the record, and, unlike in the appeal of the First Request, Gillen did provide argument for why the stated exemptions should not apply. On February 23, 2016, the OOR issued a Final Determination in favor of Gillen ("Second Final Determination") and ordered the Municipality to provide Gillen with all of the records from the Second Request. (R. 28a). On December 18, 2016, the Municipality filed with the lower court a Petition for Review of the Second Final Determination. (R. 41a).

### C. The Lower Court's Decisions.

The Petition for Review of the First Final Determination and Petition for Review of the Second Final Determination were subsequently consolidated and argument was held on April 11, 2016, before the Honorable W. Terrance O'Brien. (R. 55a). On May 23, 2016, the lower court entered two decisions addressing each the Petition for Review of the First Final Determination ("First Decision") and the Petition for Review of the Second Final Determination ("Second Decision"). (R. 54a, 65a).

#### 1. The Lower Court's First Decision.

The First Decision reversed the OOR's First Final Determination in its entirety. (R. 64a). Initially, the lower court noted that the OOR should have dismissed the appeal of the First Request without considering the merits. This is because the RTKL requires that an appeal:

> shall state the grounds upon which the requester asserts that the record is a public record... and shall address any grounds stated by the agency for delaying or denying the request.

*See* 65 P.S. § 67.1101(a)(1); (R. 59a).

Because Gillen "**did not even attempt to address, by reference to the applicable RTKL section or otherwise, Mt. Lebanon's reliance on the Donation exemption**," she did not properly preserve her appeal to the OOR. (R. 59a) (emphasis in original). The court went on to state that, "[a]ssuming, *arguendo*, the requester properly preserved her appeal to the OOR, I will discuss the two exemptions upon which [the Municipality] relies for denying access to the records in question." *Id.*

The lower court held that the Municipality's first grounds for denial, Section 708(b)(1)(ii) of the RTKL (hereinafter, the "Personal Security Exemption"), did not warrant withholding the requested correspondence. (R. 63a). Notwithstanding, however, the inapplicability of the Personal Security Exemption, the lower court agreed with the Municipality that Section 708(b)(13) of the RTKL (hereinafter, the "Donation Exemption"), which exempts from disclosure a record that would "identify an individual who lawfully makes a donation to an agency," applied to the records requested by Gillen and that the records were therefore protected from disclosure. (R. 64a). The lower court noted that the landowners were not only

"donating" use of their property, but also their time as volunteer archers. *Id.* The lower court explained:

> In enacting the RTKL, the legislature could have exempted records only pertaining to gifts of a certain type or size, but did not. The legislature apparently believed it was more important to encourage even small donations to an agency than to allow the public to know the identity of the donors.

*Id.* Thus, the lower court's First Decision reversed in its entirety the OOR's First Final Determination and upheld the Municipality's partial denial of the First Request.

**2. The Lower Court's Second Decision.**

The lower court simultaneously issued the Second Decision regarding the Second Request, which had requested identical records, but for a later period in time. (R. 65a). In the Second Decision, the court adopted its findings from the First Decision, and upheld the Municipality's partial denial of the Second Request.[2]

**3. Gillen Files Notices of Appeal**

On June 22, 2016, Gillen filed Notices of Appeal of the First Decision and Second Decision with this Court. (R. 2a, R. 5a).

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[2] The lower court upheld the Municipality's partial denial of the Second Request with respect to all but one email, which it found was not protected by the Donation Exemption because the sender of the email did not offer her time or use of land, but rather simply expressed support of the deer culling program. (R. 66a).

## SUMMARY OF ARGUMENT

The lower court's decisions should be upheld because it committed no errors of law and its findings were supported by substantial evidence. The lower court properly held that the Donation Exemption applied to: (1) the offers of landowners to donate temporary use of their property for the hunt; and (2) their offers of time and skill as volunteer archers.

Gillen's argument amounts to nothing more than conclusory statements that the Donation Exemption "is not applicable to these facts," that the lower court failed to place the burden on the Municipality to prove that the requested records were exempt from production, and that the lower court did not narrowly construe the Donation Exemption. *See* Brief for Appellant at pp. 10-11. Gillen is manifestly wrong with respect to each of these unsupported contentions. Indeed, Gillen fails to cite to any authority, legal or otherwise, as to why a landowner's offer of time or use of property does not constitute a "donation" under the RTKL. To the contrary, the word "donation" is not defined in the RTKL and the plain meaning of the word includes both the gifting of time and property. The lower court also expressly noted that it narrowly construed the Donation Exemption in

reaching its decision, and that the burden to establish the applicability of the exemption rested with the Municipality. (R. 57a, 64a).

Moreover, to construe the Donation Exemption any more narrowly than the OOR has already construed it would render the exemption practically meaningless. The OOR has already interpreted the exemption only to apply to "natural persons" and not to and not corporations, partnerships, associations and other entities. The OOR has also determined that the exception does not apply to "financial records." If the Donation Exemption does not apply to persons gifting the use of their property and volunteering their time, then the exemption might never be applicable, rending it meaningless.

Finally, even if this Court were to hold that the landowners' actions do not constitute "donations" within the meaning of the RTKL, the reversal of the First Final Determination should stand regardless. Because Gillen did not even attempt to address the Donation Exemption in the appeal of the First Request, the lower court correctly concluded that she did not properly preserve her appeal of the First Request to the OOR. Furthermore, Gillen has waived her ability to appeal this issue to the Court by failing to raise it in any manner in her Brief.

For these reasons, the lower court's May 23, 2016 decisions should be affirmed.

## ARGUMENT

### A. The Landowners' Offers To Donate Their Property For Use In The Deer Culling Program And To Donate Their Time And Skill As Volunteer Archers Constitute "Donations" That Are Exempt From Disclosure Under The RTKL.

Section 708(b)(13) of the RTKL sets forth the Donation Exemption, which provides an exception for the disclosure of:

> [r]ecords that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

65 P.S. § 67.708(b)(13). The emails that were withheld by the Municipality fit squarely within this exception. Disclosure of the emails would reveal persons who offered to donate their time as archers or use of their property for the deer hunt. The donations were not restricted to providing remuneration or personal tangible benefit to a named public official or employee of the Municipality. *Id.*

The RTKL does not define the term "donate," nor are there any reported OOR or appellate decisions that offer clarity as to its definition under the RTKL. However, "when the language of a statute is clear, the Commonwealth Court must read a statute's provisions in accordance with their plain meaning and common usage." *City of Philadelphia v. Fraternal Order of Police, Lodge No. 5*, 723 A.2d

747 (Pa. Commw. Ct. 1999) *citing* 1 Pa. C.S. § 1903 ("Words and phrases shall be construed according to rules of grammar and according to their common and approved usage.").

Merriam-Webster's Online Dictionary defines "donate," as: "to make a gift of; especially: to contribute to a ***public*** or charitable ***cause***." MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/donate (last visited Sept. 19, 2016) (emphasis added). Black's Law Dictionary defines "donate" as: "[t]o give (property or money) without receiving consideration for the transfer." BLACK'S LAW DICTIONARY (10th ed. 2014). Webster's Third New International Dictionary of the English Language defines "donation" as: "the action of making a gratuitous gift or free contribution esp. to a charity, humanitarian cause, or public institution or utility." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE - UNABRIDGED (3d ed. 2002). Furthermore, Roget's 21st Century Thesaurus provides that "contribute," "devote," "give," "grant," and "provide" are all synonyms for the term "donate." ROGET'S 21ST CENTURY THESAURUS (3d ed. 2013).

Under the ordinary plain usage of the word "donate," the participants in the archery program are contributing and providing the use of their land or their time to the Municipality for a particular public cause. The donation is being made on a

voluntary basis and no compensation or consideration is being received or is expected.[3]

Gillen's and OOR's position, that the donation exception does not apply because the landowners are not gifting the entire fee interest in their property to the program, but instead are simply allowing temporary access to their property and such property will, at all times, remain the property of those individuals rather than the program, is unduly restrictive and contrary to the plain meaning of the statute. There is nothing in the statute that limits the exception to one type of donation only (*i.e.*, donations of a fee interest).

Gillen and the OOR fail to recognize that it is possible to donate something less than fee title in a property. For instance, a volunteer fire department might donate use of the community fire hall for a benefit concert. In such a case, less than a fee interest in the property is conveyed, but such an act would certainly constitute a "donation." By way of further example, a landowner could temporarily donate its property to the Municipality for storage of public works

[3] In her Motion for Reconsideration filed with the lower court, Gillen argued that, because landowners who donate their property for use in the deer management program receive some tangential benefit from their donation (*e.g.*, less deer feces on their property, less damage to vegetation, and potential free deer meat), the use of their property could not constitute a donation. (R. 2a). Gillen cited to no legal authority for such a narrow interpretation of the word "donation," nor would one be logical. Those who donate money or in kind property to non-profit organizations can receive a tax deduction. A person who donates money to research of a disease may eventually receive benefit from such research. It is possible to receive some indirect benefit from a gift and still qualify it as a "donation."

materials or to a non-profit organization for use during a charity fundraiser. In either case, a "donation" exists, despite no transfer of fee title to the property.

Moreover, neither Gillen nor the OOR have addressed why the donation of ***time*** as volunteer archers in the hunting program does not constitute a "donation" under the RTKL. Merriam-Webster's Online Dictionary provides the following example, among others, of the use of the word "donate" in a sentence: "He donates some of his free time to volunteer work." MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/donate (last visited Sept. 19, 2016).

In the current case, the emails identify residents who have freely volunteered their time to the public cause of culling the deer population in the Municipality. That the deer culling program is not supported by all residents does not change the fact that these landowners were donating their time as volunteers. As the lower court aptly summarized:

> Those who volunteered their archery skills or use of their property made a contribution because Mt. Lebanon received something of value. What the volunteers offered had value because they contributed to a program the people's representatives in Mt. Lebanon deemed beneficial to its residents and those who use its roads. The OOR offered no analysis to support its conclusion that only conveyances of title to the properties involved would meet the definition of "donation" under Section 708(b)(13). In enacting the RTKL, the legislature could have exempted records only pertaining to gifts of a certain type or size, but it did not. The legislature apparently believed it was more important to encourage even small donations to an agency than to allow the

> public to know the identity of the donors. Even construing the donation exemption narrowly, as I must,[4] I nevertheless conclude that the records withheld are covered thereby.

(R. 64a). Like the OOR, Gillen has offered no reason, whatsoever, as to why a volunteer archer does not qualify as "an individual who lawfully makes a donation to an agency" under Section 708(b)(13) of the RTKL. The plain meaning of the statute includes such individuals.

For the forgoing reasons, the emails that identify those landowners who offered to donate use of their property ***and*** to donate their time and skill as volunteer archers fit squarely within the Donation Exemption. The records were therefore properly withheld by the Municipality and the lower court's decisions should be affirmed.

### B. To Construe The Donation Exemption Any More Narrowly Than It Is Currently Construed By The OOR Would Render The Exemption Practically Meaningless.

The OOR has adopted an extremely narrow interpretation of the Donation Exemption and has almost never upheld an agency denial of an RTKL request under said exemption. To hold that "donations" do not include partial or

[4] Contrary to Gillen's assertion otherwise in its Brief, the lower court clearly did not fail to "narrowly construe the exemption." Similarly, the lower court properly recognized that the burden of proof rested with the Municipality to demonstrate that a record is exempt. (R. 57a) (citing OOR's First Final Determination).

temporary conveyances of real property or the volunteering of time and skills would render the Donation Exemption practically meaningless.

The OOR has interpreted the donation exemption to only apply to "natural persons" as defined by 1 Pa.C.S. § 1991, and not corporations, partnerships, associations and other entities. *See Roxbury News v. City of Harrisburg,* OOR Dkt. AP 2012-1748 (OOR Dec. 7, 2012). The OOR has also held that the Donation Exemption does to not apply to financial records under 65 P.S. § 67.708(c). *See Prince v. City of Lancaster*, OOR Dkt. AP 2015-0638 (OOR June 12, 2015) ("The exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16), or (17)"). .

The RTKL defines a "financial record" as: Any of the following:

> (1) Any account, voucher or contract dealing with:
>
> > (i) the receipt or disbursement of funds by an agency; or
> >
> > (ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property.
>
> (2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.
>
> (3) A financial audit report. The term does not include work papers underlying an audit.

65 P.S. § 67.102.

The OOR has repeatedly refused to apply the Donation Exemption to requests for records relating to individual monetary donations to local agencies because such donations related to "accounts" or "vouchers" and thus constituted "financial records" under the RTKL. *See Prince v. City of Lancaster*, OOR Dkt. AP 2015-0638 (OOR June 12, 2015) (holding that records of receipts of donations to a legal defense fund were not exempt under the Donation Exemption because they constituted "accounts" or "vouchers"); *Pennsylvania Sch. Boards Ass'n, v. Green Woods Charter Sch.*, OOR Dkt. AP 2015-1227 (OOR Sept. 9, 2015) (holding that the Donation Exemption did not apply because a charter school failed to provide the type of information that would enable the OOR to determine if the requested records were "financial records").

In fact, the Municipality was only able to locate a single Final Determination in which the OOR has ever upheld a local agency's use of the Donation Exemption as a valid justification to withhold documents under the RTKL. *See Schackner v. Edinboro Univ.*, OOR Dkt. AP 2010-0046 (OOR Feb. 16, 2010) (holding that the disclosure of a specific dollar amount for a certain donation would identify the donor and thus fell under the "donation" exception). *Schackner* was decided before the OOR's decisions determining that individual financial contributions to agencies always constitute "financial records" under the RTKL.

Therefore, it appears that the Donation Exemption currently has no applicability unless it applies to situations similar the donations in this case (non-financial donations of time and use of property). Consequently, the residents' donation of their property and volunteer work as archers are the types of donations that must be recognized so that the Donation Exemption has meaning under the RTKL. Otherwise, the Donation Exemption might never be applicable.

Such an interpretation would be contrary to the basic principles of statutory construction, which provide that "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S. § 1921. In order to give effect to the Donation Exemption, donations like those made in the instant case should be recognized.

### C. Gillen Failed To Address The Grounds Stated By The Municipality For The Partial Denial Of The First Request And Therefore The OOR Should Have Dismissed The First Appeal Without Considering The Merits.

In her appeal of the First Request to the OOR, Gillen did not address why the specific exemptions to the RTKL cited by the Municipality should not have resulted in the denial of her First Request.

The OOR should dismiss an appeal where the appellant fails to address the grounds stated by an agency for denying a request. *See* 65 P.S. § 67.1101 ("The appeal shall state the grounds upon which the requester asserts that the record is a

public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request."); *Padgett v. Pennsylvania State Police*, 73 A.3d 644 (Pa. Commw. Ct. 2013) (holding that, when a requester fails to state the records sought under the RTKL are public, or fails to address an agency's grounds for denial, the OOR properly dismisses the appeal); *Saunders v. Pennsylvania Dep't of Corr.*, 48 A.3d 540, 542-43 (Pa. Commw. Ct. 2012) (holding that an appellant is "required by Section 1101 to state why the records did not fall under the asserted exemptions and, thus, were public records subject to access"); *Dep't of Corr. V. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (holding that a requester's appeal to the OOR "must address any grounds stated by the agency…for denying the request" and therefore the ORR "should not have proceeded, as it did, to decide Requester's appeal in its deficient form").

Gillen summarily addressed the Municipality's denial under the Personal Security Exemption, merely stating that the Municipality has "no reasonable basis for citing The Act at Section 708(b)(1) as a reason for failing to the documents…" (R. 10a). Gillen provided no further explanation as to *why* the Security Exemption was not applicable. Moreover, as the lower court noted, "[t]he appeal did not even attempt to address, by reference to the applicable RTKL section or otherwise, [the Municipality's] reliance on the Donation exemption." (R. 59a).

Consequently, Gillen's appeal concerning the First Request was not properly preserved to the OOR, and the lower court properly reversed the OOR's First Determination on that basis alone.

Furthermore, an issue is waived before this Court where it is not raised in the "Statement of Questions Involved" or addressed in the argument section of an appellant's brief.[5] Gillen has failed to raise in her Brief to this Court (whether in the Statement of Questions Involved, or otherwise) the issue of whether the lower court was correct when it held that her appeal was not properly preserved to the OOR. As a result, irrespective of this Court's determination with respect to the applicability of the Donation Exemption, this Court should affirm the lower court's reversal of the OOR's First Determination.

[5] *See In re Tax Claim Bureau of Lehigh Cty. 2012 Judicial Tax Sale*, 107 A.3d 853, 857, n.5 (Pa. Commw. Ct. 2015) ("[W]here issues are raised in the statement of questions involved, but not addressed in the argument section of the brief, courts find waiver."); *Harvilla v. Delcamp*, 555 A.2d 763, 764, n.1 (Pa. 1989) (holding that issue raised in appellant's "Statement of Questions Involved" on appeal was nevertheless waived by appellant's failure to address issue in his appellate brief); *Com. v. Unger*, 432 A.2d 146, 140, n.1 (Pa. 1980) (holding that an issue was not preserved on appeal because it was not included in appellant's "Statement of Questions Involved" in the appeal).

## CONCLUSION

For the foregoing reasons, the lower court did not commit any errors of law and its decisions were supported by substantial evidence. Accordingly, the Municipality respectfully requests that this Court affirm each of the lower court's decisions reversing the Final Determinations of the OOR.

Respectfully submitted,

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Dated: October 6, 2016

## CERTIFICATE OF SERVICE

I hereby certify that on this day two true and correct copies of the foregoing **Brief for Appellee** were served via First Class U.S. Mail, postage prepaid, on the following recipients:

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# IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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|---|---|---|
| The Municipality of Mt. Lebanon | : | 1020 CD 2016 |
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Appeal of: Elaine Gillen

## PROOF OF SERVICE

I hereby certify that this 6th day of October, 2016, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

**Service**

| | |
|---|---|
| Served: | Edward A. Knafelc |
| Service Method: | eService |
| Email: | tedknafelc@gmail.com |
| Service Date: | 10/6/2016 |
| Address: | 444 Liberty Avenue, Suite 2200<br>Four Gateway Center<br>Pittsburgh, PA 15222 |
| Phone: | 412--28-1-54233 |
| Representing: | Appellant Elaine Gillen |

| | |
|---|---|
| Served: | Edward A. Knafelc |
| Service Method: | First Class Mail |
| Service Date: | 10/6/2016 |
| Address: | Strassburger Mckenna Gutnick & Gefsky<br>444 Liberty Ave Ste 2200<br>Pittsburgh, PA 15222 |
| Phone: | 412-281-5423 |
| Representing: | Appellant Elaine Gillen |

| | |
|---|---|
| Served: | Gretchen Elizabeth Moore |
| Service Method: | eService |
| Email: | gmoore@smgglaw.com |
| Service Date: | 10/6/2016 |
| Address: | Strassburger McKenna Gutnick & Gefsky<br>444 Liberty Avenue, Suite 2200<br>Pittsburgh, PA 15222 |
| Phone: | 412--28-1-5423 |
| Representing: | Appellant Elaine Gillen |

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

### PROOF OF SERVICE

*(Continued)*

| | |
|---|---|
| Served: | Gretchen Elizabeth Moore |
| Service Method: | First Class Mail |
| Service Date: | 10/6/2016 |
| Address: | 4 Gateway Ctr Ste 2200<br>444 Liberty Ave<br>Pittsburgh, PA 15222 |
| Phone: | 412-281-5423 |
| Representing: | Appellant Elaine Gillen |

| | |
|---|---|
| Served: | Jill Smith Wolfe |
| Service Method: | First Class Mail |
| Service Date: | 10/6/2016 |
| Address: | Ofc of Open Records<br>400 North St 4th Fl<br>Harrisburg, PA 17120 |
| Phone: | 717-787-3483 |
| Representing: | Appellee Office of Open Records |

| | |
|---|---|
| Served: | Ronald D. Barber |
| Service Method: | eService |
| Email: | rbarber@smgglaw.com |
| Service Date: | 10/6/2016 |
| Address: | Strassburger McKenna ET AL<br>444 Liberty Avenue, Ste. 2200<br>Pittsburgh, PA 15222 |
| Phone: | 412--28-1-5423 |
| Representing: | Appellant Elaine Gillen |

| | |
|---|---|
| Served: | Ronald D. Barber |
| Service Method: | First Class Mail |
| Service Date: | 10/6/2016 |
| Address: | Strassburger Mckenna ET AL<br>444 Liberty Ave Ste 2200<br>Pittsburgh, PA 15222 |
| Phone: | 412-281-5423 |
| Representing: | Appellant Elaine Gillen |

## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Brendan Patrick Lucas

*(Signature of Person Serving)*

| | |
|---|---|
| Person Serving: | Lucas, Brendan Patrick |
| Attorney Registration No: | 314300 |
| Law Firm: | Buchanan Ingersoll & Rooney PC |
| Address: | 1 Oxford Ctr<br>301 Grant St 20th Fl<br>Pittsburgh, PA 152191410 |
| Representing: | Appellee The Municipality of Mt. Lebanon |

Buchanan Ingersoll & Rooney PC
Attorneys & Government Relations Professionals

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October 6, 2016

**VIA REGULAR MAIL**

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Ronald D. Barber, Esq.
Strassburger, McKenna, Gutnick & Gefsky
Four Gateway Center, Suite 2200
444 Liberty Ave
Pittsburgh, PA 15222

**Re: The Municipality of Mt. Lebanon v. Elaine Gillen et al.**
**Docket No. 1020 C.D. 2016 consolidated with**
**Docket No. 1021 C.D. 2016**Dear Mr. Fardo:

Please find enclosed two (2) stamped copies of the Brief for Appellee regarding the above-captioned matter that was e-filed on October 6, 2016.

Very truly yours,

Brendan P. Lucas

BPL/
Enclosure

cc: Gretchen E. Moore, Esq. (w/enclosure)
Edward Knafelc, Esq. (w/enclosure)
Jill S. Wolfe, Esq. (w/enclosure)