

<b>BOROUGH OF MALVERN</b> Petitioner	:	<b>IN THE COURT OF COMMON          PLEAS CHESTER COUNTY,          PENNSYLVANIA</b>
<b>Vs.</b>	:	<b>NO. 2023-03008-CS</b>
<b>Joseph Lorusso</b> Respondent	:	<b>CIVIL ACTION – STATUTORY</b>

**Response from Joseph Lorusso, the Respondent,  
 to the Petition for Review of Decision under the Right  
 To Know Law**

I, Joseph Lorusso, the Respondent is requesting the Honorable Court reject the Petitioner’s request to reverse the Final Determination from the Pennsylvania Office of Open Records issued in docket no. AP 2023-0442 for Request No. 2 and compel the Borough of Malvern to release the information Ordered.

1. On February 3, 2023 the Respondent filed a Right To Know (“RTK”) request to the Borough of Malvern for contracts that were issued by the Borough under a “No Bid” process (the “No Bid” term used in this Response is interchangeable for Borough issued contracts that did not require advertising in one newspaper as described in the below paragraph). The Right To Know filing was subsequently referred to by the Pennsylvania Office of Open Records (“OOR”) as Request No. 2. Specifically the request was as follows:

**Provide all contracts over the prior 3 year period beginning January 1, 2020 that did not require advertising in one newspaper in general circulation and executed by the Borough and signed by the Borough Manager and/or the council president. Including all email or other correspondence before and after the contract was signed with the company.  
 Provide all records related to the above described contracts as to the requirement that the Borough Manager and council reward contracts to the lowest qualified and responsible bidder.**

2. On February 23, 2023 the Borough denied the Respondent’s RTK. The Respondent filed an appeal to the Pennsylvania Office of Open Records to review the Borough’s

rejection and compel the Borough to release the requested information (OOR docket no AP 2023-0442).

3. The Borough's reasons for rejecting Request no. 2 could be summarized by arguing that the request was not specific, too broad and will create a burden for the Borough.
4. The Respondent argued that Request no. 2 was sufficiently specific as stated in the RTK notice. The request was not overly broad as it specified only a certain group of contracts, specifically it said: **"all contracts ... that did not require advertising ..."**

The request also specified a 3 year time frame because, by law, the Borough is required to keep records of "No Bid" contracts for three years.

The Borough argued that the subject matter "is not sufficiently specific..." However by its nature Contracts that are not advertised makes it impossible for a citizen to identify specific contracts. Therefore, no citizen can ever comply with the "sufficiently specific" guideline when the information is not public. The Borough, to the Respondents knowledge, does not disclose No Bid Contracts.

Further the Borough never argued that the contract request was burdensome as Ms. Loomis' sworn Attestation dated March 21, 2023 in statement no.19 stated: "In particular, for the three-year period identified in Request no. 2, the Borough has likely entered into dozens of contracts, and, associated with those contracts are likely hundreds of emails over that time frame related to the wide-variety of contracts or agreements entered into by the Borough over the three-year period" .She did not state the contract request was burdensome but potentially only the email correspondence. The OOR's Final Determination decision correctly made this important distinction.

It is interesting to note that in Mr. Yaw's Petition to the Court of Common Pleas he states on page 4 paragraph 15 that "... the Borough has likely entered into dozens, if not hundreds, of contracts..."

5. In the Final Determination Letter dated March 31, 2023 the OOR split the described information in Request no. 2 by first, rejecting the Borough's arguments and ordered the Borough to release the subject contracts and provide records that the Borough awarded these contracts to the lowest qualified bidder. In the same OOR order, however, they agreed with the Borough that "...all email or other correspondence before and after the contract was signed with the company(.)" was not sufficiently specific and the Borough did not have to release the communications.
6. The OOR stated the following on the Contract Disclosure Portion of Request no. 2.

**"In this instance, the Loomis Attestation states that the Borough "has likely entered into dozens of contracts[,]""7 but the Borough did not provide evidence showing how many of those contracts were not publicly**

**advertised, nor did the Borough provide evidence that it is unable to search for the contracts requested or that it is unable distinguish between contracts that were publicly advertised and contracts that were not. Therefore, based on the evidence presented, on balance, the Borough did not demonstrate that the portion of Request 2 seeking “all contracts over the prior [three] year period beginning January 1, 2020 that did not require advertising” is insufficiently specific pursuant to Section 703 of the RTKL. See 65 P.S. § 67.703. Accordingly, the Borough must conduct a good faith search for responsive records and provide the Requester with all responsive documents. Further, because the Borough did not raise any grounds for withholding records, any responsive records identified must be disclosed. See 65 P.S. § 67.305; 65 P.S. § 67.708(a).”**

The OOR took nearly the full time allotment and allowed additional information to be sent during their deliberations. It is clear to the Respondent that a thorough review was conducted by a neutral third party who determined the No Bid Contracts should be released to the Respondent.

7. Importantly the Court should be aware that the Borough had a major shift in policy disclosure after a December 7, 2022 RTK filing. An RTK was filed with the simple request of: ***“Any and all information pertaining to the proposed First Avenue Bike Trail Park from January 1, 2022 thru December 7, 2022”***. (See Exhibit 3). This simple request resulted in the release of hundreds of emails, related documents and contract disclosures, including the controversial Rockwell Contract and related emails. The file was so large that it was placed in a Dropbox link and broken up into 6 sub files.

For example: File 1 and 2 had 27 and 28 pages respectively.  
File 3 and 4 had 263 and 239 pages respectively.  
File 5 and 6 had 179 and 184 pages respectively.

The Borough released 920 pages of information from this one sentence RTK request. Arguably this would not have occurred if the Borough implemented their new and unreasonable standards for RTK information.

After this disclosure there was a sudden and dramatic change to the Borough’s approach to RTK requests. Nearly all RTK requests after January 13, 2023 were challenged or denied. As is the case with this subject RTK. The consistent theme from the Borough was to deny RTK requests with the same reasoning of: Not specific, too broad or too burdensome among other things.

The Court should also be aware that the January 13, 2023 disclosures revealed information that lead to more RTK requests because the information was troubling to a group of citizens; as was the case with the Respondents request for No Bid contracts.

The Borough's arguments put forth in this appeal to overturn the OOR's decision seems hallow, inconsistent with it recent policy and disingenuous.

Rationale for Respondents RTK filing:

8. As noted above, the reason the Respondent requested the data in Request No. 2 was due to the information revealed in the January 13, 2023 disclosures. In part the Borough released information on a No Bid contract with "Rockwell Associates". Rockwell was awarded a contract under questionable circumstances.

The Respondent wrote a confidential letter, sent via email, to Ms. Loomis and the Malvern Borough Council outlining a troubling pattern surrounding the Rockwell contract. The Respondent asked for a review by an Independent Third Party of the No Bid process to assure the rules as specified in the Home Rule Charter and PA. General Laws were being followed. The Borough did not respond to the Respondent.

It was subsequently learned that the Borough Solicitor, Mr. Yaw, made a reference in a public meeting that "Professional Services" contracts were exempt from requiring a public bidding process even if dollar thresholds were exceeded. That may be a point of discussion, however, Ms. Loomis and the Borough Council apparently did not agree or were unaware of Mr. Yaw's position as they went through great lengths to have the Rockwell contract qualify for No Bid status.

**Please see Exhibit 1 of Respondent's letter dated February 17, 2023 – page 1 only included.**

The Respondent reasonably concluded that there may be other No Bid contracts that followed a similar and troubling pattern as Rockwell. The PA General Law states in section 1402 Regulation of Contracts, subsection (a.1) Price Quotations. **"Written or telephonic price quotations from at least three qualified and responsible contractors must be requested for contracts in excess of the base amount of \$10,000..."**, (the Initial Rockwell Contract totaled \$12,785.00). It goes on to state that records must be kept for a period of three years. These contracts do not require general advertising. **See Exhibit 2**. Further in Section 1401 Power to Make Contracts, subsection (b) Contracts and purchases, states that **"...all contracts and purchases must be made with and from the lowest qualified and responsible bidder."** (See Exhibit 2). In the absence of any response from the Borough to the Respondent's February 17, 2023 letter it seemed appropriate to request additional information of No Bid contracts.

9. The Respondent believes it is every citizen's right to ask for information related to public spending. The Right to Know Law provides access for the public to review

how government operates and spends public funds. The Borough's own Home Rule Charter goes to great lengths to encourage Citizen's participation including a section entitled "Citizen's Empowerment". The Charter was written in 2008 and one of its stated goals was to encourage "Citizen Participation and civic involvement". An Interesting historical note is that Mr. Yaw's law firm helped the Borough write the new Home Rule Charter in 2008.

This Court should reject the Borough's appeal and in so doing send a message to all PA Government's that reasonable request for information should be made readily available to the public.

Respectfully Submitted



Joseph Lorusso  
Respondent  
May 25, 2023

**Exhibit 1 (page one only):**

Mr. Joseph A. Lorusso  
59 Ruthland Avenue  
Malvern, PA 19355

February 17, 2023

Malvern Borough Council  
1 E. First Avenue  
Malvern, PA 19355

To: Malvern Borough Council and Borough Manager

RE: Financial and Contractual Questionable Conduct

A growing group of Borough residents have been reviewing the recent Malvern Borough emails and contracts that have become public information via the Right-to-Know (RTK) process. It has become apparent from reading the disclosures that there are many alarming communications and actions taken by Malvern Borough Council (MBC) and the Borough Manager. This document will focus on one event that is troublesome and requires attention. Other issues will be disclosed in due course.

The main issue in question is the process that led to an executed contract with Rockwell Associates on January 4, 2023. The following is a series of events that took place prior to the hiring of Rockwell Associates.

This report should be read with the understanding of a few key dates. A Citizen's Ordinance, which adhered to the Home Rule Charter (HRC) process, was certified by the Borough Manager and communicated to the MBC on **November 9<sup>th</sup>, 2022**. MBC voted to reject the Citizen's Ordinance on **January 3<sup>rd</sup>, 2023**. Following the HRC process, the Ordinance will appear as a question on the **May 2023** ballot for Borough residents to vote to pass or to reject.

Rather than being prudent with taxpayer funds and suspending fiscal activities associated with the proposed Dirt Bike Trail until Malvern Borough residents vote, MBC pursued a campaign to "use the children" as a refreshed campaign slogan (disclosed in emails). MBC hastily hired firms to counter the Save Malvern's Habitat Committee Ordinance.

Some questionable actions taken by the MBC included hiring consultants, engaging an engineer, paid a dirt bike design company and funded this campaign with public funds. Using a prudent person's standard, these actions are inconsistent with the guidelines and spirit of the

HRC and the general laws of Pennsylvania. As a taxpaying citizen of Malvern Borough, it is concerning and perhaps worth an arbiter's opinion regarding the ethics, legality, and lack of fiscal prudence that has been exhibited by MBC during this tenure.

## **EXHIBIT 2**

### **Pennsylvania General Laws Title 8 Boroughs and Incorporated Towns:**

#### 1402. Regulations of contracts.

##### (a.1) Price quotations.-

Written or telephonic price quotations from at least three qualified and responsible contractors must be requested for contracts in excess of the base amount of \$10,000, subject to adjustment under subsection (a.2), and less than the amount requiring advertisement and competitive bidding, or, in lieu of price quotations, a memorandum must be kept on file showing that fewer than three qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of least the date of the quotation, the name of the contractor and the contractor's representative, the construction, reconstruction, repair, maintenance or work that was the subject of the quotation and the price. Written price quotations, written records of telephonic price quotations and memoranda must be retained for a period of three years. Written price quotations as used throughout this section include electronic mail.

#### § 1401. Power to make contracts.

##### 1401 (b) Contracts and purchases.-

Except as otherwise specifically provided in this title, all contracts and purchases must be made with and from the lowest qualified and responsible bidder. In awarding contracts and making purchases council has the right to take into consideration such factors as the availability, cost and quality of service and may establish prequalification standards for contracts and purchases. A prequalification standard must be reasonably designed to assist council in determining the ability of a bidder to successfully complete a contract or purchase.

**Exhibit 3: (used with permission)**

**From:** Tiffany Loomis <[tloomis@malvern.org](mailto:tloomis@malvern.org)>  
**Sent:** Friday, January 13, 2023 5:19 PM  
**To:** Christopher Buckley <[chris.buckley@blackdiamondwm.com](mailto:chris.buckley@blackdiamondwm.com)>  
**Cc:** Corinne Badman <[cbadman@malvern.org](mailto:cbadman@malvern.org)>  
**Subject:** Re: Malvern Borough Right-to-Know Request(s) Response

Good Afternoon Chris,

This email is in response to your Right-to-Know request(s) dated December 7, 2022. The request was for the following records:

*“Any and all information pertaining to the proposed First Avenue Bike Trail Park from January 1, 2022 thru December 7, 2022.”*

Please click on the following DropBox link to access the information requested:  
<https://www.dropbox.com/scl/fo/pkcxgeqn61f39a6kniwqf/h?dl=0&rlkey=4de76mmtk4uw67d6llemymgpn>

The minutes and presentations requested are located on the Borough Website at the following link:  
<http://www.malvern.org/>

Pages that have been redacted are marked as such. The basis for redaction in all instances is attorney-client privilege and the criminal investigation exception, 65 P.S. sec. 708(b)(16).

You have the right to appeal this determination. If you so choose to appeal this determination, you must file an appeal with the Pennsylvania Open Records Office within fifteen (15) business days of its mailing date, pursuant to Section 1101 of the Right-to-Know Law. Please be advised that this correspondence will serve to close this record with our office, as permitted by law.

If you have questions regarding this determination please do not hesitate to contact me.

Thank you,

**TIFFANY M. LOOMIS**

**BOROUGH MANAGER & ZONING OFFICER**

[✉tloomis@malvern.org](mailto:tloomis@malvern.org)

☎PH: (610) 644-2602

DIRECT: (484) 899-2220



1 East First Ave. | Suite 3

Malvern, PA 19355

## CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the letter to the Honorable Bret M. Binder upon the following by Mail or Email as specified below.

Sent via First Class Mail:

The Honorable Bret M. Binder  
Chester County Court of Common Pleas  
Justice Center, Courtroom 12  
201 West Market Street  
West Chester, PA 19380-0989

Sent via Email:

Scott E. Yaw, Esq.  
LENTZ, CANTOR & MASSEY, LTD.  
460 E. King Road  
Malvern, PA 19355  
[seyaw@lentzlaw.com](mailto:seyaw@lentzlaw.com)

Sent via Email:

Faith Henry, Administrative Officer  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 1701-2234  
[fahenry@pa.gov](mailto:fahenry@pa.gov)



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Joseph A. Lorusso  
59 Ruthland Ave  
Malvern, PA 19355  
[Lorusso@sfa-investors.com](mailto:Lorusso@sfa-investors.com)

May 24, 2023