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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

UNIONTOWN NEWSPAPERS, INC., d/b/a)
THE HERALD STANDARD; and)
CHRISTINE HAINES,)

Petitioners,)

v.)

PENNSYLVANIA DEPARTMENT OF)
CORRECTIONS,)

Respondent.)

No.: 66 M.D. 2015

**MOTION FOR
SUMMARY JUDGMENT**

Filed on Behalf of the Petitioners,
Uniontown Newspapers, Inc., d/b/a The
Herald Standard; and Christine Haines

Counsel of Record for these Parties:

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Office of Open Records Docket No.: AP 2014-1695

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PETITIONERS' MOTION FOR SUMMARY JUDGMENT

AND NOW come Petitioners, Uniontown Newspapers, Inc., d/b/a The Herald Standard, and Christine Haines (collectively, "Petitioners"), by and through their undersigned counsel, Saul Ewing LLP, and hereby submit their Motion for Summary Judgment:

1. Petitioners, a local Pennsylvania newspaper and one of its reporters, served a request for public documents on an issue of vital public interest under the Pennsylvania Right to Know Law ("RTKL") on Respondent, the Pennsylvania Department of Corrections (the "DOC"). Petitioners' RTKL request sought information regarding serious health ailments suffered by inmates at one of the DOC's facilities, the State Correctional Institution at Fayette ("SCI-Fayette").

2. SCI-Fayette is unique in its location compared to other DOC facilities due to its close proximity to a coal ash dump, which is a known source of dangerous pollutants, and has been consistently documented as an area with water service containing toxins (including total trihalomethanes (TTHM)) outside of levels specified as safe for consumption and exposure by the Pennsylvania Department of Environmental Protection.

3. "[T]he objective of the RTKL 'is to empower citizens by affording them access to information concerning the activities of their government.'" Barnett v. Pa. Dep't of Pub. Welfare, 71 A.3d 399, 403 (Pa. Commw. Ct. 2013) (quoting Levy v. Senate of Pa., 65 A.3d 361, 381 (Pa.

2013)). Therefore, “courts should liberally construe the RTKL to effectuate its purpose of promoting ‘access to official government information in order to prohibit secrets, scrutinize actions of public officials, and make public officials accountable for their actions.’” *Id.* The RTKL’s objectives and meaning, however, were intentionally thwarted by the DOC in this case.

4. In response to Petitioners’ RTKL request, the DOC first denied the request *in toto*, relying upon boilerplate RTKL defenses. Throughout the course of the RTKL process, the DOC has avoided full disclosure at every turn, even lasting throughout this litigation.

5. Petitioners appealed the DOC’s boilerplate refusal to produce information in response to the RTKL request to the Pennsylvania Office of Open Records (“OOR”). The OOR determined that the DOC failed to establish *any* defense to disclosure, and ordered the DOC to produce *all* responsive documents within thirty (30) days.

6. The DOC, however, merely and in untimely fashion, produced information piecemeal, and never fully responded to Petitioners’ request (which concerned a matter of public concern with constitutional undertones regarding the health and safety of the DOC’s charges).

7. During discovery, the DOC’s improper conduct and purposeful inaction was further highlighted. The DOC admitted that it *never* performed *any* search for records responsive to Petitioners’ RTKL request. Instead, the DOC simply produced documents generated from a self-serving and incomplete DOC internal investigation into a separate report originally exposing toxic environmental concerns at SCI-Fayette published by an independent activist agency. Petitioners’ RTKL request, however, was openly ignored and avoided by the DOC.

8. Moreover, the DOC admitted that documents responsive to Petitioners’ request exist, but were simply not searched for from the outset, and also never ultimately produced.

9. Therefore, the DOC purposefully violated its basic duties under the RTKL, willfully ignored the OOR's decision, and otherwise acted in bad faith to deny Petitioners (and the public at large) access to public records on issues of vital public and constitutional concern.

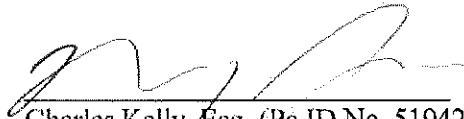
10. Petitioners are entitled to all available relief under the RTKL, including production of all relevant information from the DOC, shifting of attorneys' fees under the RTKL, 65 P.S. §67.1304(a)-(b), and civil penalties against the DOC under the RTKL. 65 P.S. §67.1305.

11. For the reasons set forth above, together with those stated more fully in Petitioners' Brief in Support of Summary Judgment, Petitioners are entitled to at least the following relief:

- a. The DOC should be immediately ordered to produce the documents and information that Petitioners are clearly entitled to and responsive to their RTKL request, including, but not limited to, the documents and information identified in Section IV(A) of Petitioners' Brief in Support of Summary Judgment, and more fully specified in Exhibit 16 to Petitioners' Brief;
- b. The DOC should be compelled to perform a good faith search for other responsive documents, as required by the RTKL;
- c. The DOC should be required to reimburse Petitioners for the legal fees and costs incurred in the prosecution of this action pursuant to 65 P.S. §67.1304(a);
- d. The DOC should also be subject to further sanctions under the RTKL, including civil penalties and all other remedies under 65 P.S. §67.1305; and
- e. Any further relief that this Court deems appropriate under the circumstances.

WHEREFORE, Petitioners, The Herald Standard and Christine Haines, respectfully request that this Honorable Court grant their Motion for Summary Judgment; grant the full scope of relief requested in Petitioners' Petition for Review, including production of responsive documents, shifting attorneys' fees, related sanctions, and all available relief under the RTKL; and provide any further such relief that this Court deems appropriate under the circumstances.

Respectfully submitted,



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Petitioners,)
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CORRECTIONS,)
)
Respondent.)

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 20____, upon consideration of Petitioners' Motion for Summary Judgment and Brief in Support thereof, it is hereby ORDERED, ADJUDGED, and DECREED that said Motion is GRANTED, as follows:

1. Respondent shall search for and produce all of the documents and other information responsive to Petitioners' Right to Know Law request, including, but not limited to, the documents and information identified in Section IV(A) and Exhibit 16 of Petitioners' Brief in Support of Summary Judgment, within fourteen (14) days of the date of this Order of Court;

2. If subsequent to the production ordered by paragraph 1 of this Order of Court Petitioners believe that they still do not have a full and candid production from Respondent, Petitioners may file an appropriate motion with this Court notifying the Court of the same;

3. Respondent shall reimburse Petitioners for the legal fees and costs incurred in the prosecution of this action pursuant to 65 P.S. §67.1304(a). Petitioners shall file a Motion for Attorneys' Fees within thirty (30) days of this Order of Court stating the amount of such fees to be shifted. Respondent shall respond to Petitioners' Motion within fourteen (14) days, and Petitioners may file a Reply within seven (7) days thereafter. The Court will thereafter rule on Petitioners' Motion for Attorneys' Fees and/or scheduled oral argument as necessary; and

4. Respondent shall be further sanctioned under the Right to Know Law in the form of civil penalties under 65 P.S. §67.1305 in the amount of \$_____.

BY THE COURT:

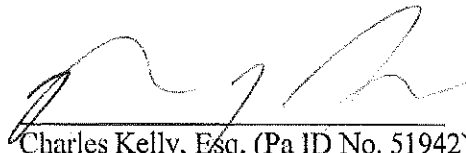
_____ J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion for Summary Judgment filed on behalf of Petitioners, The Herald Standard and Christine Haines, was served upon the following parties via United States Mail on this 8th day of July, 2016:

Commonwealth of Pennsylvania, Office of Open Records
Attn: Kathleen A. Higgins, Esq.
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Maria G. Macus, Assistant Counsel
Pennsylvania Department of Corrections
Office of Chief Counsel
1920 Technology Parkway
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*(Counsel for Respondent, Pennsylvania
Department of Corrections)*



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*Counsel for Petitioners, The Herald
Standard and Christine Haines*

July 8, 2016

VIA FEDERAL EXPRESS

Pennsylvania Commonwealth Court
ATTN: Chief Clerk's Office
Michael F. Krimmel, Chief Clerk
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 2100
P.O. Box 69185
Harrisburg, PA 17106

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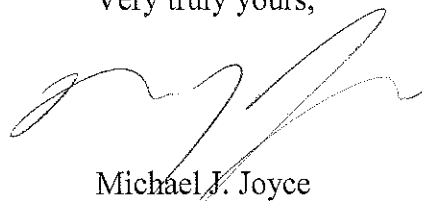
Re: Uniontown Newspapers, Inc., d/b/a The Herald Standard; and Christine Haines v. Pennsylvania Department of Corrections (66 M.D. 2015)

Dear Chief Clerk Krimmel:

Enclosed, please find a paper copy of Petitioners' Motion for Summary Judgment and Brief in Support, which were electronically filed on July 8, 2016.

Please feel free to contact me if you have any questions, or require additional information.

Very truly yours,



Michael J. Joyce

Enclosures

cc: Kathleen A. Higgins, Esq. (Office of Open Records) *(via U.S. Mail) (w/ enc.)*
Maria G. Macus (Department of Corrections) *(via U.S. Mail) (w/ enc.)*