

July 15, 2015

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

RECEIVED

JUL 20 2015

OFFICE OF OPEN RECORDS

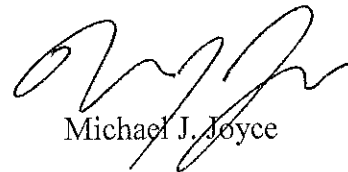
Re: Uniontown Newspapers, Inc., d/b/a The Herald Standard; and Christine Haines v. Pennsylvania Department of Corrections (66 M.D. 2015)

Dear Chief Clerk Krimmel:

Enclosed, please find paper copies of Petitioners' Answer/Reply to Respondent's New Matter to Petition for Review, which were electronically filed on July 13, 2015.

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.)*

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

**PETITIONERS' REPLY TO
RESPONDENT'S NEW MATTER TO
PETITION FOR REVIEW**

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

Counsel of Record for this Party:

Charles Kelly, Esq.
Pa ID No. 51942
ckelly@saul.com

Michael J. Joyce, Esq.
Pa ID No. 311303
mjoyce@saul.com

SAUL EWING LLP
30th Floor, One PPG Place
Pittsburgh, PA 15222

Telephone: (412) 209-2539
Facsimile: (412) 209-2585

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

UNIONTOWN NEWSPAPERS, INC., d/b/a) No.: 66 M.D. 2015
THE HERALD STANDARD; and)
CHRISTINE HAINES,)
)
Petitioners,)
v.)
)
PENNSYLVANIA DEPARTMENT OF)
CORRECTIONS,)
)
Respondent.)

**PETITIONERS' REPLY TO RESPONDENT'S
NEW MATTER TO PETITION FOR REVIEW**

AND NOW come the 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 Reply to Respondent's New Matter to Petition for Review:

60. Petitioners' original open records request to the Respondent, Pennsylvania Department of Corrections ("DOC" or "Respondent") under the Pennsylvania Right to Know Law ("RTKL") is a document which speaks for itself, and is incorporated herein by reference. Following reasonable investigation, Petitioners lack sufficient knowledge or information to determine when the DOC actually received Petitioners' request. All remaining averments of this Paragraph are denied.

61. Petitioners' RTKL request is a document which speaks for itself, and is incorporated herein by reference. This Paragraph is denied to the extent that it conflicts in any respect with Petitioners' RTKL request.

62. The Abolitionist Law Center/Human Rights Coalition Report (the "Report") is a document which speaks for itself, and is incorporated herein by reference. This Paragraph is denied to the extent that it conflicts in any respect with the Report.

63. Following reasonable investigation, Petitioners lack sufficient knowledge or information to attest to the truth or falsity of any internal investigation initiated by the DOC or any other governmental entity allegedly as a result of the Report.

64. The DOC's original response to Petitioners' RTKL request is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the written response.

65. The DOC's final response to Petitioners' RTKL request is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the written final response.

66. Petitioners' RTKL appeal to the Office of Open Records ("OOR") is a document which speaks for itself, and is incorporated herein by reference. This Paragraph is denied to the extent that it conflicts in any respect with the appeal documents.

67. The DOC's response to Petitioners' RTKL appeal to the OOR is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the response.

68. The DOC's response to Petitioners' RTKL appeal to the OOR is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the response.

69. The DOC's response to Petitioners' RTKL appeal to the OOR is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the response.

70. The DOC's response to Petitioners' RTKL appeal to the OOR is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the response. Additionally, following reasonable investigation, Petitioners lack sufficient knowledge or

information to attest to the truth or falsity of the DOC's alleged unexpressed intentions behind its appeal documents and the declarations of its agents.

71. The OOR's Final Determination is a document which speaks for itself, and is incorporated herein by reference. This Paragraph is denied to the extent that it conflicts in any respect with the OOR Final Determination. Additionally, it is admitted that, pursuant to the OOR Final Determination, the DOC was ordered to comply with Petitioners' RTKL request. The DOC, however, as stated in Petitioners' Petition for Review filed with this Court and Petitioners' other filings, has failed to comply with Petitioners' request or the OOR Final Determination in an intentional, willful and bad faith manner.

72. The subject e-mail is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail. It is denied, however, that the DOC has disclosed all information responsive to Petitioners' RTKL request.

73. The subject records are documents which speak for themselves. This Paragraph is denied to the extent that it conflicts in any respect with the writing. It is denied, however, that the DOC has disclosed all information responsive to Petitioners' RTKL request.

74. Following reasonable investigation, Petitioners lack sufficient knowledge or information to attest to the truth or falsity of any internal investigation allegedly initiated by the DOC, or any documents or information purportedly produced as a result of the same.

75. Admitted.

76. Admitted.

77. Admitted

78. Admitted.

79. Admitted.

80. Admitted.

81. Admitted.

82. Admitted.

83. Admitted.

84. Admitted.

85. The subject e-mail is a document which speaks for itself, and is incorporated herein by reference. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

86. The subject e-mail is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

87. The subject e-mail (and attachment) is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

88. The subject e-mail (and attachment) is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

89. The subject e-mail is a document which speaks for itself, and is incorporated herein by reference. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

90. The subject e-mail is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

91. The subject records are documents which speak for themselves. This Paragraph is denied to the extent that it conflicts in any respect with the records.

92. The subject e-mail is a document which speaks for itself, and is incorporated herein by reference. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

93. The subject e-mail is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

94. The subject e-mail is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail. Additionally, it is denied that

Petitioners' RTKL request would require the DOC to "create a new record." This assertion is further a conclusion of law to which no response is required.

95. The subject e-mail (and attachment) is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail. Additionally, following reasonable investigation, Petitioners cannot determine whether the DOC provided a list of, and/or information regarding, all relevant patients.

96. The subject e-mail is a document which speaks for itself, and is incorporated herein by reference. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

97. The subject e-mail (and attachment) is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail. Additionally, following reasonable investigation, Petitioners cannot determine whether the DOC provided a list of, and/or information regarding, all relevant patients.

98. The subject e-mail (and attachment) is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

99. Admitted.

100. Denied. The DOC's characterization of discussions between counsel, and the notion that all relevant documents were provided and/or no further documents responsive to Petitioners' RTKL request, are further and specifically denied.

101. It is admitted only that counsel for Petitioners suggested certain techniques to assist the DOC in its compliance with Petitioners' RTKL request and the OOR Final Determination, including certain search techniques used in similar industries. The remaining allegations are denied.

102. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph. Additionally, this Paragraph contains legal conclusions to which no response is required.

103. Denied as stated. By way of further response, counsel for the DOC indicated to counsel for Petitioners that he would inquire into the existence of a database with responsive information. Later, counsel for the DOC indicated that no database or electronic search capabilities were available. Petitioners lack sufficient knowledge or information, following reasonable investigation, to determine the truth or falsity of the DOC's assertions, and the same are denied.

104. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph.

105. The Petition for Review is a document which speaks for itself, and is incorporated herein by reference. This Paragraph is denied to the extent that it conflicts in any respect with the Petition for Review.

106. The "Review of Cancer Burden at the PA State Correctional Institute-Fayette" (the "Review") is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the Review.

107. The subject e-mail (and attachment) is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

108. The subject e-mail (and attachment) is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the e-mail.

109. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph. Additionally, this Paragraph contains legal conclusions to which no response is required.

110. The Review is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the Review.

111. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph. By way of further response, this

Paragraph is denied. Throughout its pleadings in this matter and previous communications with Petitioners, the DOC has admitted to the existence of further, responsive documents to Petitioners' RTKL request, but have improperly refused to search for or release the same. See, for example, Paragraph 114 of the DOC's Answer, where it admits that further, relevant information exists.

112. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph.

113. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph. By way of further response, this Paragraph is denied. Throughout its pleadings in this matter and previous communications with Petitioners, the DOC has admitted to the existence of further, responsive documents to Petitioners' RTKL request, but have improperly refused to search for or release the same. See, for example, Paragraph 114 of the DOC's Answer, where it admits that further, relevant information exists.

114. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph. By way of further response, Petitioners' RTKL request would not require the DOC to create a new record, and the DOC's alleged "undue burden" allegation of reviewing individual medical records that it admits that are in its possession is not a defense to compliance with the OOR Final Determination and/or any such defenses were waived by the DOC's failure to raise or establish the same before the OOR.

115. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph.

116. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph.

117. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph.

118. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph. Additionally, to the extent that the DOC currently has a standard operating procedure/records maintenance policy relative to the information at issue in this litigation, the DOC is obligated to immediately discontinue the destruction of any evidence that might be relevant to these proceedings, including the destruction of any and all medical records of current or former inmates of the DOC's Fayette, Pennsylvania facility.

119. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph. By way of further response, Petitioners' RTKL request would not require the DOC to create a new record, and the DOC's alleged "undue burden" allegation of reviewing individual medical records that it admits that are in its possession is not a defense to compliance with the OOR Final Determination and/or any such defenses were waived by the DOC's failure to raise or establish the same before the OOR.

120. The Press Release is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the Press Release.

121. The Department Policy is a document which speaks for itself. This Paragraph is denied to the extent that it conflicts in any respect with the Department Policy.

122. Following reasonable investigation, Petitioners lack sufficient information or knowledge to attest to the truth or falsity of this Paragraph.

123. Denied.

124. Denied.

125. This Paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, this Paragraph is denied. Additionally, it is further and specifically denied that impossibility of performance is a viable defense in this matter.

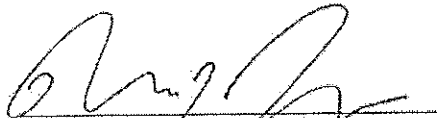
126. This Paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, this Paragraph is denied. Additionally, it is further and specifically denied that official immunity is a viable defense in this matter.

127. This Paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, this Paragraph is denied. Moreover, Petitioners' Petition for Review states a viable claim for relief.

128. This Paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, this Paragraph is denied. Additionally, Petitioners have adequately pled all claims in their Petition for Review.

WHEREFORE, the Petitioners, The Herald Standard and Christine Haines, respectfully request that this Honorable Court grant the relief requested in their Petition for Review; and provide any further such relief that this Court deems appropriate under the circumstances.

Respectfully submitted,



Charles Kelly (Pa ID No. 51942)
SAUL EWING LLP
One PPG Place, Suite 3010
Pittsburgh, PA 15222
(412) 209-2500

Michael J. Joyce (Pa ID No. 311303)
SAUL EWING LLP
One PPG Place, Suite 3010
Pittsburgh, PA 15222
(412) 209-2500

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

VERIFICATION

I, Christine Haines, state that I have read the foregoing Reply to New Matter to Petition for Review, and am authorized to verify the same on behalf of myself and the remaining Petitioners. The statements contained therein are correct to the best of my personal knowledge, information and belief. This statement and verification are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 7-13-15

By: Christine Haines

Name: Christine Haines

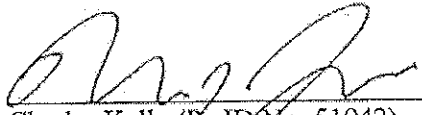
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Reply to New Matter to Petition for Review filed on behalf of the Petitioners, The Herald Standard and Christine Haines, was served upon the following parties via United States Mail on this 13th day of July, 2015:

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
Mechanicsburg, PA 17050
*(Counsel for Respondent, Pennsylvania
Department of Corrections)*

Respectfully submitted,



Charles Kelly (Pa ID No. 51942)
SAUL EWING LLP
One PPG Place, Suite 3010
Pittsburgh, PA 15222
(412) 209-2500

Michael J. Joyce (Pa ID No. 311303)
SAUL EWING LLP
One PPG Place, Suite 3010
Pittsburgh, PA 15222
(412) 209-2500

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