

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

UNIONTOWN NEWSPAPERS, INC., d/b/a/
THE HEARLD STANDARD; AND
CHRISTINE HAINES,

Petitioners,

v.

PA DEPARTMENT OF CORRECTIONS,

Respondent

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No. 66 M.D. 2015

RESPONSE TO PETITIONERS' MOTION FOR SUMMARY JUDGMENT

NOW comes Maria G. Macus, Counsel for the Pennsylvania Department of Corrections ("Department"), and files this Response to Petitioners' Motion for Judgment on the Pleadings.

1. **ADMITTED in part; DENIED in part. ADMITTED** to all assertions except the phrase "information," to the extent "information" means something other than statistical or aggregate data.

2. **ADMITTED in part; DENIED in part. This paragraph is specifically DENIED**, to the extent that the Pennsylvania Department of Environmental Protection did a one-year study gathering dust samples in the area of the Canestrале landfill and the reports came back negative. By way of further response, DEP renewed the Air Quality Operator Permit to the landfill in December

of 2015. However, to the extent Petitioner is alleging that the water at times has high readings for TTHM and that high reading is caused by the Canestrале landfill, without specific scientific proof of the allegation, the Department specifically **DENIES** the averment.

3. The quoted language contains legal conclusions and not factual statements; therefore, a response is not required. It is specifically **DENIED** that the Department intentionally thwarted the objective and meaning of the RTKL in this matter. The Department provided the records within their possession as it related to aggregate or statistical data.

4. **ADMITTED in part; DENIED in part. ADMITTED** that the Department denied the request based on exemptions under the RTKL. It is specifically **DENIED** that the Department “has avoided full disclosure at every turn, even lasting through this litigation.”

5. This Paragraph contains legal argument to which no response is required. To the extent that any further response is required, this Paragraph is specifically **DENIED**.

6. **DENIED**. The Department provided the records that existed within the Department’s possession that were responsive to the request. Following communication with Petitioner, the Department provided additional information that was discussed during the telephone communication.

7. **DENIED.** Petitioner deposed Christopher Oppman, currently the Deputy Secretary of Administration for the Department of Corrections and formerly the Director of the Bureau of Healthcare Services. During the deposition Petitioners Counsel and Mr. Oppman had the following exchange:

Q. In the last part of your declaration it says that beyond the records previously provided to Ms. Haines, The Department does not have within its custody, possession or control reports of illnesses contracted at SCI-Fayette, by type and quantity and comparison of illness rates at other state correctional institutions.

A. That's correct.

Q. How did you come to that conclusion?

A. Because based on our investigation, we knew at this point what we had and what we don't have.

Q. You knew from your investigation into the Abolitionist report?

A. Yes, what we have and what we don't have, what we have to generate. It was all tied to that report

*See Appendix at C, Deposition of Christopher Oppman, Notes of Transcript (N.T.) 106, ln 14-25, 107, ln. 1-2. Therefore, Petitioner's assertion is taken out of context and is not accurate. Accordingly, it is specifically **DENIED**. By way of further specific denial, Mr. Oppman indicated that because of the underlying investigation, the staff knew what records actually existed and what records were created in responding to the investigation. The Department specifically **DENIES** the assertion that the Department's investigation was self-serving and incomplete. It is further*

specifically **DENIED** that Petitioner's request was openly ignored and avoided by the DOC.

8. **ADMITTED in part; DENIED in part. ADMITTED** that individual medical records exist for each and every inmate that is currently in the custody of the Department, and those inmates that were formerly incarcerated with the Department for ten years following their maximum sentence date. **ADMITTED** that it is possible after reviewing all paper medical records that one *could* glean what inmates contracted cancer or respiratory ailments at SCI Fayette. However, it is possible that information would not exist within an inmate's medical file that would explain when an inmate contracted cancer, a respiratory ailment, or any other disease. *See* Appendix at C, N.T. 39-43. **ADMITTED** that the Department did not search every inmate's medical record at SCI Fayette currently or any inmate that was ever at SCI Fayette since 2003 to 2014. It is specifically **DENIED** that responsive documents were not produced. The Department provided data that compared SCI Fayette with other state correctional institutions. Also, once the Department of Health's (DOH) report was provided to the Department, it was subsequently released to the public and Petitioner. The DOH report showed the number of inmates who were diagnosed with cancer while at SCI Fayette from 2003 to 2012.

9. This Paragraph contains legal conclusions to which no response is

required. To the extent that any further response is required, this Paragraph is specifically **DENIED**.

10. This Paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, this Paragraph is specifically **DENIED**.

11. This Paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, this Paragraph is specifically **DENIED**.

Respectfully submitted,

Office of General Counsel

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Dated: August 8, 2016

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THE HERALD STANDARD; AND
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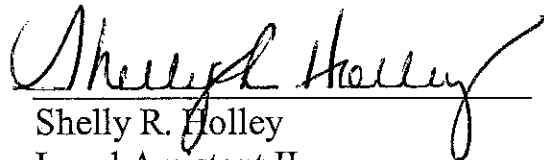
CERTIFICATE OF SERVICE

I hereby certify that I deposited in the U.S. Mail a true and correct copy of the foregoing Response to Petitioners' Motion for Summary Judgment to be served upon the following person(s) in the manner indicated below:

Service by first-class mail
addressed as follows:

Charles Kelly, Esq.
Saul Ewing
One PPG Place, Suite 3010
Pittsburgh, PA 15222

Kathleen A. Higgins, Esq.
Office of Open Records
Commonwealth Keystone Building
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Harrisburg, PA 17120-0225



Shelly R. Holley
Legal Assistant II
Pennsylvania Department of Corrections
Office of Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050

Dated: August 8, 2016



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August 8, 2016

Michael F. Krimmel, Esquire
Deputy Prothonotary and Chief Clerk
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, PA 17106-9185

Re: *Uniontown Newspapers, Inc. et al. v. Pa. DOC*
No. 66 MD 2015

Dear Mr. Krimmel:

Please find enclosed for filing in the above-captioned matter: an original and three copies of Respondent's Response to Petitioners Motion for Summary Judgment, and an original and three copies of Respondent's Response to Petitioners' Brief in Support of Summary Judgment. I have enclosed copies of each document to be time-stamped and returned to me by way of the messenger.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads 'Maria G. Macus'.

Maria G. Macus
Assistant Counsel

Enclosures

cc: Charles Kelly, Saul Ewing LLP, One PPG Place, Suite 3010, Pittsburgh, PA 15222, (w/enclosures)
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