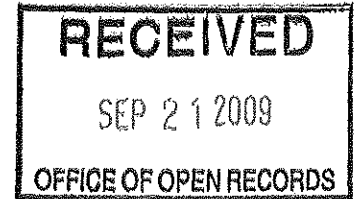


R. SAMUEL McMICHAEL
610-932-4330
E-MAIL - rsm@mhsllawllc.com



September 16, 2009

Terry Mutchler, Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120-0225

RE: Request for Advisory Opinion-Home Addresses

Dear Executive Director Mutchler:

I represent the Elk Township, Chester County Board of Supervisors. I am enclosing a copy of the Request for physical addresses of resident who have a pool permit that was issued in the last two months, and our response.

As you can see, the requestor asked the Township to provide the home addresses for physical address of residents who have a pool permit that was issued in the township in the last two months. Our response indicated that legal review is required, and the Township will provide the response within thirty days. No litigation is pending.

Your Advisory Opinion Regarding Home Addresses of Public Employees, covers the "addresses of public school employees and ...other public employees", citing the temporary injunction issued by the Commonwealth Court in The Pennsylvania State Education Association et al. v. Commonwealth of Pennsylvania, 396 M.D. 2009.

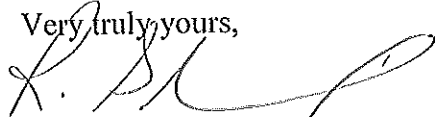
On August 25, 2009, the Court issued an Order prohibiting the disclosure of home addresses of Employees' home addresses. Although the Order does not discuss the applicability to other addresses, the Opinion recognized other similar expectations of privacy. They referred to *Hartman v. Department of Conservation and Natural Resources*, 892 A. 2d 897, 905 (Pa.Cmlwth. 2006) in which this expectation related to registered snowmobile owners.

Our inquiry now requests your opinion as to whether or not this "expectation of privacy" extends to those individuals who apply for pool permits. This request is based upon the actual pending request for information.

While we understand there is no deadline for a response from your Office, we are faced with a response deadline. Please email a response to me, as Township Solicitor, at rsm47@epix.net and rsm@mhsllawllc.com.

Thank you for your assistance.

Very truly yours,



R Samuel McMichael

RSM:mac

Enclosures

cc: Elk Township Board of Supervisors

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED

9/11/09

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON
(Circle one.)

NAME OF REQUESTOR: Paul Stein III

STREET ADDRESS: 4729 Tollgate Road

CITY/STATE/COUNTY: New Hope PA
(Required)

Fax 267-293-0243

TELEPHONE: email- elegantfencebyPS @ AOL.COM
(Optional)

RECORDS REQUESTED: If it is easier to email the response, please provide as much specific detail as possible so the Township can identify the information. (Attach a separate sheet if necessary)
Physical Address of Residents who have a pool permit that was issued in your township in the last 2 months. Please Fax, at your convenience. If you have any questions or need anything please email me. Thank you in advance

DO YOU WANT COPIES? YES or NO
(Circle one.)

DO YOU WANT TO INSPECT THE RECORDS? (NO)
(Circle one.)

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO in advance
(Circle one.)

RIGHT TO KNOW OFFICER: Terri Kukoda

DATE RECEIVED BY THE TOWNSHIP: 9/14/09

TOWNSHIP FIVE (5)-DAY RESPONSE DUE: 9/21/09

**The Township may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in the Right-To-Know Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)

ELK TOWNSHIP BOARD OF SUPERVISORS
P.O. BOX 153
LEWISVILLE, PA 19351

TELEPHONE: 610-255-0634
09-048

FAX: 610-255-0492

September 17, 2009

Paul C. Stein III
4729 Tollgate Road
New Hope, PA 18938


Dear Mr. Stein,

Elk Township is in receipt of your Standard Right-to-Know Request Form pursuant to the Pennsylvania Right-to-Know law. The Township is reviewing the request but will not be able to provide access within five (5) business days as set forth in the Act for the reason(s) checked below:

- The request for access requires redaction of a record in accordance with Section 706.
- The request for access requires the retrieval of a record stored at a remote location.
- A timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations.
- A legal review is necessary to determine whether the record is a record subject to access under the Act.
- The requester has not complied with the Township's Public Record Policy regarding access to records.
- The requester refuses to pay applicable fees authorized by the Act.
- The extent or nature of the request precludes a response within the required time period.

The Township expects to respond to your request by October 21, 2009. The copy fee for the requested information will be .25 cents per page (either a single-sided copy or one side of a double-sided copy). On behalf of the Township, I thank you for your cooperation.

Respectfully,


Terri Kukoda
Open Records Officer
Elk Township
P.O. Box 153
Lewisville, PA 19351
610-255-0634



November 2, 2009

R. Samuel McMichael, Esq.
McMichael, Heiney & Sebastian, LLC
PO Box 296
208 East Locust Street
Oxford, PA 19363-0296

Re: Request for Advisory Opinion

Dear Mr. McMichael:

Thank you for writing to the Office of Open Records ("OOR") with your request for an Advisory Opinion pursuant to the Right-to-Know Law, 65 P.S. §§67.101, *et seq.* ("RTKL"). I have attached a copy of your letter for your convenience.

You asked for the OOR's opinion as to whether or not the "expectation of privacy" referred to in Judge Friedman's Opinion in *Pennsylvania State Education Association et al. v. Commonwealth of Pennsylvania*, 396 M.D. 2009, extends to those non-public employee individuals who apply for pool permits.

The OOR has decided not to grant this request for an Advisory Opinion.

You have correctly stated, the OOR extended its compliance with Judge Friedman's July 28, 2009 Order prohibiting the disclosure of home addresses of public school employees to include all public employees until the Commonwealth Court lifts the preliminary injunction. This office has not included non-public employees in this voluntary, expanded compliance with the Order. We have, however, obtained whenever possible open-ended extensions from requesters seeking such records until such time as the Pennsylvania courts resolve this issue and clarify whether home addresses are in fact protected from government disclosure by the privacy guarantees contained in the Pennsylvania Constitution.

Thank you for your inquiry. We will reflect this response on the OOR website.

Respectfully

A handwritten signature in black ink, appearing to read "Terry Mutchler", is written over the typed name and title.

Terry Mutchler
Executive Director