

Testimony of Robin Getz, Township Manager

North Cornwall Township, Lebanon County

Before the Senate State Government Committee

On Right-to-Know Reform/SB 444

May 13, 2013, 10:30AM

1. **Commercial Requests:**

- Request from “LexisNexis” directed to our solicitor wanting copies of all contracts related to our municipality’s use of Thomson-West (Westlaw), their direct competitor. This resulted in the township solicitor supplying a response at a cost to the township. The request was especially egregious in the need to specifically cite the “state freedom of information law”, including the specific citation number.
- Request from TriStar Investors for copies of all building permits both approved or in process and inquiries over a twelve month period for new, free standing telecommunication towers. It is our understanding that this is to track any potential and direct competition at our expense.
- Monthly requests for all new dwelling permits and window replacement permits for a representative of Pella.
- Requests from safety companies specializing in alarm systems for all building permits for new dwellings.
- Monthly requests for all swimming permits received from a landscaping/fence company.
- Standing orders for permit requests specifically that they be provided in the related category on a monthly basis. This should not be a township-workforce related function.
- At one point I received a request for all of our insurance policies from someone who wanted to submit a quote for consideration. This action was unsolicited by the township and resulted in our going to our companies to ensure there were no trade secrets

2. **Inmate Requests:**

- North Cornwall has dealt with multiple requests for records from an inmate who has been incarcerated for several years now. The requests have been broad in nature requesting “notes” related to hiring, termination, and discipline of police officers and also requested their applications and resumes. The initial request was denied in that the request was too broad, notes are not considered public record AND the solicitor would need to be consulted concerning the redaction of information on the officer’s application and resume. The inmate filed an appeal and won. The ORO office determined that I should have known that the reference to “notes” meant official minutes AND that the officer’s hire date should have given me dates of those minutes requested without too much difficulty. This is not the case as there have been instances where the elected body has authorized advertising and ultimate hiring three months or more prior to the hire date giving the Manager and Chief the authority, by set hiring practice, to offer a position without a further vote by the board. Again this action required several hours of staff time and several hours of our solicitor’s time, who is also well versed in this particular law. To date I have received three such requests and two resulted in appeals being filed. The most recent was for copies related to our current Chief. Copies of the “notes” related to his hire date and any/all of his “employment status changes”. Again, I was required to review seven years’ worth of minutes to pull those specific pages. This appeal was in the Township’s favor since the inmate omitted a copy of the letter requesting the 30-day extension which vacated his claim of not responding in a timely manner.

3. **Electronic Requests:**

- The Township receives multiple requests for emailed copies as a way to circumvent the related fees. Regardless of the method of providing the documents requested, there is still a cost to the township.

4. **Discovery:**

- My police chief has consulted with me many times concerning attorneys who are using the open records law to obtain information that was previously under the veil of discovery. Fortunately a recent State Police decision has given some relief, however it has not ended our required process of formally responding within the five day period. Again at a cost of time, material, and postage.

5. **Redundancy:**

- We have a resident who has asked for information that is not an open record as it is still in an investigation state and involved juveniles. On an average monthly basis she has continued to make multiple requests, sometimes for random information, always ending with the same request that she has been denied. It became so difficult, with the resident becoming belligerent and argumentative with the staff that we had to file a citation against her and go through the court system for resolution. A staff member, our Lt and I spent fifteen hours dealing with and attending hearings. It was known that she had medical issues which created this problem; however it was more than we should have been required to deal with. Regardless of her condition we are still required to fulfill her request.

6. **Fishing:**

- I dealt with a resident who did not like an elected official. That official had a long distance number for his personal cell phone. The resident requested to review all telephone bills, including cell phone bills of which he would let me know what he wanted copies of. Our bills have always been of full detail, creating a problem with private numbers, personal cell phone numbers, and informant numbers. I needed to make copies of twenty-four months of phone records, redacting those known numbers that were protected, and recopying so that the documents were still legible. I had close to 500 sheets of records (double cost for quality which we accepted as an issue we needed to resolve). He had been informed on the front side that the official and our cell phones were capable of Verizon to Verizon so there were no fees in any calls between us. He still required us to go through the exercise under the guise that he would be looking for records for his file. In the end he refused all documents because of the redaction that was necessary.
- We have residents who request random information just because they know that they can. The documents are not subject specific nor are they similar in nature. They might not have anything to do with any of the current issues at hand. They are paid for, but again they take hours to locate, dismantle, copy and re-file. They take hours of others having to carry that person's normal work load. It takes hours of multiple employees having to locate files based on subject.

7. **Costs:**

- With all who discuss this law with me, the common thread is the cost. Not totally dollars, but time which is especially true with offices that have one secretary or even a part-time secretary. The time lines pull them from their normal duties which take a toll on their normal day performance.

- The non-reimbursable expense of time of staff in fulfilling requests. We had a Wal-Mart make application. The number of records requested filled three banker boxes as it covered a three to five year period of information requested. Now triple that cost as the request for the documents was made by two separate citizen groups and an attorney all at different times requiring us to pull the records multiple times. Although \$.25 cents per page and the additional for the larger items sounds like we made enough money to cover our direct costs, please take into consideration that I had two staffers pulling invoices, three years of minute books, all financials, and all legislation approved within that time frame. Multiple project maps had to be outsourced, plus the time of staff and mileage to take documents back and forth for copying was another factor. The application resulted in over 200 hours of conditional use hearings. Every time the township provided information during those hearings, the next day we were hit with requests for everything. So we had staff attempting to prepare for ongoing hearings PLUS make copies of information for these groups.

8. **Jeopardy:**

- I think one of the other injustices to municipalities is being required to provide basically anything to anyone from an information stand point; it has unnecessarily exposed us to jeopardy for several reasons. We are now required to provide “public information” in many instances building cases and ultimately filing suit against the township for one thing or another. Even though those suits may be frivolous in nature, we are now forced to spend the money to defend. So we have now spent funds (*that can be used more beneficially in other areas*) to copy documents, and now we must extend more funds for court preparation and our solicitor and additional staff time and the time of the judges and their full staff needed to hear our case, just to be told what we already knew.

9. **Conflict:**

- Our township has adopted UCC/ICC Building Codes and Property maintenance which requires fairly detailed plans and permit applications. Knowing that these plans are now open records, we are having more and more difficulty with residents not filing for required permits as the alternative of their safety or privacy being compromised is the lesser of two evils. I cannot argue with their quandary. How can their right to privacy be disregarded by a law that was created because of the abuse by a few versus transparency shown by the many. This is creating more time and hardship with local government who are now forced to carefully police building/improvements throughout their municipalities because our residents are afraid the details of what is to be their home, their safe haven, have been compromised.

10. **Time Lines/Clarity:**

- Requests are often confusing to determine exactly what people are looking for as many of them do not know exactly what they want. I do not think it unreasonable to be able to schedule an appointment for people to actually come into the office and review the documents first hand. They can then request which page(s) they are interested in, making the process less cumbersome to our staff. In cases where people are out-of-state, there needs to be a better way to work through an understanding of exactly what people are looking for. The five-day requirement is putting too much pressure on staff to respond in many cases. Even though North Cornwall is fortunate enough to have more than one person in the office to pull records, I can tell you that during budget and vacation time we might as well be a part-time office. Having only five days, and then on top of it being required to formally respond to the applicant is a lot to require with any of our resources.

We continue to do the best that we can with less. The reform to the RTKL needs to consider true applications. We do not have multiple people to do this work. Our township has averaged 8 to 12 requests annually since the laws inception, although if there is something controversial it can become 8 to 12 per month. Although that might not sound like an unreasonable request, when copies are being placed in two and three boxes at a time, and we are making 5 and 6 trips to a Staples copy center because the requests exceed what we are capable of handling, it is not a reasonable request. When our residents end up suffering due to requests from commercial establishments using this law and our work force to enhance their bottom line, this is not a reasonable law. When you have inmates who have lost their right to vote, but can request multiple records for officers that are not directly related to their case, just because they can, that is not a reasonable law. When you force our residents to decide if it is better to have an uninspected improvement/construction to their home in which they will live in order to protect their constitutional right to privacy, that too is not a reasonable law. Perhaps if our true time were reimbursable, then the frivolous requests would stop. If we were again able to request the purpose of the request and deny it based on true merit that would stop the ridiculousness of the requests. If we were again able to deny those requests without merit we would be able to again survive the disaster of expending hours of time to meet curiosity, testing how far this law can reach, and other laborious methods of pulling information.

Perhaps if local government were again able to work for the people than all of our jobs would be easier. Reform of this law is long overdue. I would prefer to see the laws written that if a request for true transparency were denied, then that municipality would need to defend their action in court or before a review board, not make all municipalities pay the price for those few. We consistently post our meeting minutes online and yet, as the law is written, we cannot simply refer a requestor to that resource. Why? Why are we legally obligated to do that research and pull those pages specific to a less than clear request? Why are we required to argue our interpretation with what we believe was requested and argue over whether those pages are going to be paid for? Why must we constantly feel like a dog chasing our tail where this law is concerned?

I would respectfully implore each of you to consider the hardship that is being created. I would also hope that you would reconsider the mechanics of how we handle our requests and especially to consider if there is a better approach to the perceived problem overall. If there are 1,455 2nd class townships and only 10 were constantly violating the intent of this law is it truly fair to continue to hold the other 1,445 who have diligently met and exceeded their requirements under this law accountable for so few? Please offer us some relief and grant us some overdue reform.