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EDMUND GOPPELT	:	COURT OF COMMON PLEAS
1116 ANNIN ST.	:	PHILADELPHIA COUNTY
PHILADELPHIA, PA 19147	:	
215.755.2215	:	CIVIL TRIAL DIVISION
	:	
Appellant Pro Se	:	
	:	
v.	:	NO.
	:	
	:	
DEPARTMENT OF RECORDS	:	
OF THE CITY OF PHILADELPHIA	:	
ROOM 156	:	
CITY HALL	:	
PHILADELPHIA, PA 19107	:	
	:	
Appellee	:	

STATUTORY APPEAL FROM DENIAL OF RIGHT TO INSPECT & OBTAIN
DUPLICATES OF PUBLIC RECORDS AT REASONABLE COST

And now comes the Appellant and files this appeal from the denial of Appellant's right to inspect public records at no cost and to obtain duplicates of those records at reasonable cost

1. Pursuant to 65 P.S. § 66.1-66.9, the Commonwealth of Pennsylvania has adopted legislation providing for the inspection and duplication of public records, known as the Right to Know Act (The Act). Recognizing the importance of citizens being able to monitor their government, the Pennsylvania legislature strengthened the Act in June, 2002 by setting a specific deadline for officials to respond to requests. The new Act went into effect on December 26, 2002.

2. The Appellant is a taxpayer, voter and resident of the Commonwealth of Pennsylvania and the City of Philadelphia. Therefore the Appellant has the necessary standing to bring an action under the Act.

3. The Appellant operates a good government web site, Hallwatch. The Appellant's web site seeks to provide ordinary citizens with the information and tools they need to participate as equals in our City's political life. For two years, the Appellant has provided this service to the public at no cost. Ordinary citizens (Exhibit A), Local public officials (Exhibit B), newspapers (Exhibit C), good government and community groups (Exhibit D) have all praised Hallwatch as a valuable and needed service.

4. On December 26, 2002 (Exhibit E), the Appellant asked the Department to:

- a. Permit him to inspect all FY 2001 Statements of Financial Interests reports (the Ethics Reports). To discourage conflicts of interest, elected officials and high level bureaucrats are required to file Ethics Reports.
- b. Provide him with a monthly CD with the real estate transactions, also called the Recorder of Deed's Extract (the Deeds Extract).

5. On January 21, 2003 the Appellee issued its final determination denying the Appellant's request (see Exhibit Q). The Appellee's decision was made the same day it received the Appellant's exceptions, an 18 page letter with nine exhibits (Exhibit J).

6. By charging excessive fees the Appellee denies the Appellant access to public records.

7. For example, the Appellee suggests that:

- a. Its data resides only on the City's IBM mainframe computer.
- b. Downloading the data is an expensive and difficult process.
- c. Its data can only be delivered on magnetic tape, an archaic storage format.

8. The Appellee's claims are false:

- a. The Department's production system—the one that does the actual work—is a modern client server system, not the mainframe. The Department does store archival copies of its database to the mainframe, but this use is incidental and could be performed equally well by a Zip drive.
- b. Downloading data is cheap and easy, whether from the mainframe or from the Department's modern client-server system. Based on his investigation, the Appellant believes the Department's true cost to produce a CD with the requested records is \$1.74, not \$400 (see 17(a) of this Appeal).
- c. The Appellee is fully capable of providing the data requested on CD or via ftp (file transfer protocol) at minimal cost. In fact the Appellee regularly makes its data available to for-profit database brokers this way.

9. The Appellee has never disputed that the records the Appellant seeks are public records and with good reason:

- a. Philadelphia Code § 20-610(4) describes the Ethics Reports as public records.
- b. On information and belief, the Appellee has been supplying the Deeds Extract for years to two for-profit data brokers.

10. Even though the Appellee's duty to provide access to these public records was clear, on November 2, 2002 the Appellee informed the Appellant they were referring his request to the Law Dept (see Exhibit L).

11. The Appellee spent the next two months in discussions with the Law Dept. On December 27, 2002 (see Exhibit M), the day after the new Right to Know Act went into effect, the Appellee responded to the Appellant's request for the Ethics Reports for the first time, while continuing to ignore his request for the Deeds Extract.

12. The Act states that public records "shall be available for access during the regular business hours of an agency." (65 P.S. § 66.2(a)). Over the next two months, the Appellant attempted to inspect public records at the Appellee's offices and was rebuffed each time. Five times the Appellant went to the Department and asked to inspect public records (see Exhibit K). Five times the Appellee denied him access.

13. On December 27, 2002 Records Department Commissioner Joan Decker offered to allow the Appellant to inspect the Ethics Forms (Exhibit N). Decker made no mention of fees or of a Departmental "Access to Public Records" Policy that required such fees.

14. On January 2, 2003 Decker rescinded her offer to allow the Appellant to inspect public records after the Appellant requested that he be permitted to bring two associates and a laptop computer. Decker argued she needed more time to consult with the Law Dept. because the Appellant's request "changes the accommodations we need to provide." (Exhibit N)

15. On January 5, 2003 the Appellant responded that the accommodation requested of the Department—to provide two additional chairs and access to an electric outlet—were small and that the Appellee had already spent two months in consultations with its lawyers (Exhibit H).

16. On January 7, 2003 Commissioner Decker again offered access to the records (Exhibit O), but only if the Appellant paid various fees. Decker informed the Appellant:

- a. She would provide the Recorder of Deeds Extract data for \$400 on five reels of magnetic tape, an archaic storage format. Decker justified her \$400 fee as follows: "this fee is the standard fee for downloading computer information from the City's mainframe and is based on resource usage. The fee was previously established."
- b. He would be charged \$16.67 per hour for an employee to watch while he inspected public records.

17. The Appellee's fees are excessive, unreasonable, and discriminatory:

- a. The Department of Records is fully capable of delivering the Deeds Extract on CD at a cost of less than \$10.

Based on his investigation, the Appellant estimates it would cost the Department \$1.74 to produce a CD, not \$400 as claimed. The Appellant estimated the Department's costs by following the same steps on his home computer as the Department of Records would have to follow on their computers.

Of the \$1.74, \$1.60 represents three minutes of staff time and \$0.14 is the cost of a blank CD (See Exhibit J, Letter to Commissioner Decker about fees and in particular Exhibit E-4 within Exhibit J detailing the Appellant's investigation into costs).

The Appellant suggested on January 12, 2003 that he and the Appellant's computer staff meet to come up with a fair price (Exhibit I). His offer was ignored.

On January 21, 2003, the Appellant sent the Appellee an 18 page analysis of their fees with nine exhibits requesting that the Appellee put aside their decision to charge excessive fees (Exhibit J). They did not.

Rather, on the same day, the Appellee informed the Appellant they would not reconsider their fee, but were willing to provide the data on media other than the archaic storage format they initially offered provided he paid their excessive fee (Exhibit Q).

Nor is the Appellee's fee of \$400 their usual fee. On information and belief, the Appellee regularly supplies data brokers MacNeel Eisan Associates and First American Real Estate Solutions with the Extract for a fee of \$275.

- b. Charging the public simply to look at public records is unnecessary, a departure from the Appellee's past practice and poor public policy.

The Department has not charged the public an hourly fee in the past. In his April, 2002 column, Tom Ferrick reports that the Department allows ambulance chasers to review accident reports for free (See Exhibit J, Tom Ferrick column and in particular Exhibit E-1 within Exhibit J).

It is also poor public policy as it discourages members of the public from using public records. In recognition of this public policy interest, other agencies such as the Philadelphia, Pennsylvania and Federal Courts and the National Archives do not charge citizens to look at public records.

In its letter of December 27, 2002, the Appellee offered the Appellant access to the Ethics Reports. Although the Appellee claims that their "Access to Public Policy"—which authorizes such charges—went into effect on December 26, 2002, they failed to mention their new Policy when they wrote the Appellant on December 27, 2002 (Exhibit M).

18. The Appellant's request meets the legal standard for public records under the Act.

WHEREFORE, pursuant to the Act, the Appellant requests the Court to determine that the Department of Record's denial was not just and proper and to enter an Order requiring the Department to supply the Appellant with a CD with the Deeds Extract for a monthly fee of \$10 and permit the Appellant to inspect the Ethics Reports at no charge. Further the Appellant prays the honorable Court to award court costs and attorney fees since the Department of Records has willfully deprived the Appellant of his right to access under the Law by charging excessive fees that far exceed its true costs.



Edmund Goppelt

I verify that the statements made in this Appeal are true and correct. I understand that false statements herein are made subject to the penalties of 18 PA C.S.A. Section 4904 relating to unsworn falsifications to authorities.



Edmund Goppelt