



On July 1, 2009, Mahl requested the following information from the Township:

All copies of all records and documents in possession of [the Township] relating to [Mahl], of 3037 Winding Road, Kintersville, Pennsylvania 18930, including but not limited to the zoning file contents and the records and documents concerning [Mahl] with the Township Manager, Building Inspector, and other Township officers and officials, neighbors (3), including records of electronic and telephone communications with anyone concerning [Mahl]. This request is limited to records post [1/1/06] and does not include those related to [Mahl's] subdivision applications or those related to the Mahl Zoning Appeal.

Reproduced Record at 31a-32a (R.R. \_\_\_). The Township responded by granting the request with respect to some records, such as Township minutes. However, the Township refused to provide records relating to its investigation into certain zoning violations. The Township deemed these records to be exempt from disclosure by Section 708(b)(17) of the Right-to-Know Law (Law),<sup>3</sup> which exempts the following records:

- (17) A record of an agency relating to a noncriminal investigation, including:
  - (i) Complaints submitted to an agency.
  - (ii) Investigative material, notes, correspondence and reports.
  - (iii) A record that includes the identity of a confidential source, including individuals subject to ... the Whistleblower Law.

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<sup>3</sup> Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

- (iv) A record that includes information made confidential by law.
- (v) Work papers underlying an audit.
- (vi) A record that, if disclosed, would do any of the following:
  - (A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.
  - (B) Deprive a person of the right to an impartial adjudication.
  - (C) Constitute an unwarranted invasion of privacy.
  - (D) Hinder an agency's ability to secure an administrative or civil sanction.
  - (E) Endanger the life or physical safety of an individual.

65 P.S. § 67.708(b)(17).

Mahl appealed to OOR, asserting the right to “communications and correspondence between the Township and individuals concerning [Mahl’s] conduct at his residence and his land use activities at his residence.” R.R. 32a. He stated he was entitled to these communications because he has a right “to confront hostile witnesses and persons who are affecting his ownership and use of his

residential property.” R.R. 32a-33a. The Township countered that the withheld records were investigative. The OOR determined that Mahl sought complaints and investigative records related to the complaints, which were exempt from disclosure by Section 708(b)(17) of the Law.

Mahl appealed to the trial court. The trial court conducted an *in camera* review of the records that were withheld from Mahl by the Township. It concluded that all of the documents were exempt from disclosure and adopted the OOR’s legal analysis. The trial court relied upon this Court’s holding in *Stein v. Plymouth Township*, 994 A.2d 1179 (Pa. Cmwlth. 2010), wherein it was held that a requester was not entitled to demand the name of the complainant alleging zoning violations on the requester’s property or the content of that complaint.

Mahl appeals to this Court and raises three issues for our review.<sup>4</sup> First, he contends that the trial court erred in relying on *Stein*. Second, he contends that the trial court erred by not requiring the Township to redact the requested records and then produce them. Third, he contends that the trial court improperly denied him an opportunity for oral argument.

In his brief, Mahl provides the background information to his request. He explains that the Township issued him zoning enforcement notices that asserted that he had created a public nuisance by clearing woodlands and mature trees without a permit and by parking an abandoned truck and two trailers on his property. He also received a “stop work order” for attempting to install an

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<sup>4</sup> This Court’s scope of review from a decision of a trial court in a case under the Law is limited to determining whether the findings of fact are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion. *Kaplin v. Lower Merion Township*, 19 A.3d 1209, 1213 n.6 (Pa. Cmwlth. 2011), *appeal denied*, \_\_ Pa. \_\_, 29 A.3d 798 (2011).

electrical fence without a permit. R.R. 15a. The Township ordered Mahl to remove the vehicle and trailers from his property and brought an action against him. Ultimately, a district justice entered judgment in Mahl's favor.<sup>5</sup> Mahl explains that the Township's actions prompted his Right-to-Know request.

In his first issue, Mahl claims that his request can be distinguished from *Stein*, 994 A.2d 1179. In *Stein* the township received a complaint regarding properties owned by the requester. The complainant contended that the requester's properties were being used as office space in violation of zoning regulations. In response, the township initiated an enforcement action against the requester. The requester, seeking to discover the identity of the complainant, requested the township to provide all records relating to the enforcement proceeding. The township provided him with copies of the enforcement notices, but it declined to release the identity of the complainant. In support of the denial, the township cited to Section 708(b)(17)(i) of the Law, which provides an exemption for complaints submitted to an agency. OOR and the trial court affirmed, resulting in an appeal to this Court.

Before this Court, the requester argued that the Law exempts a complaint submitted to the agency but not the name of the complainant. We rejected this argument, noting that the Law makes all information "relating to a non-criminal investigation" exempt from access, including the name of the individual that made the complaint. *Stein*, 994 A.2d at 1182 (quoting 65 P.S. §67.708(17)(i)).

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<sup>5</sup> The reason for finding in Mahl's favor is not provided.

In response, the requester asserted that the name of the complainant was not exempt because he has the right to confront the witnesses against him. We noted that any rights the requester may have in the enforcement proceeding were not before us. The only issue before us was whether the requester had a right to the information pursuant to a Right-to-Know request and we determined the Law did not provide him with such a right. We also rejected the requester's argument that he needed to know the complainant's name because the township's enforcement proceedings may have been instituted for an improper reason. We reasoned that an improper motive by a complainant did not establish an exemption from the exemption.

Mahl argues that his case is different because *Stein* involved an active investigation and by the time he requested the records, the investigation was over.<sup>6</sup> The Township counters that Mahl cites to no authority for the proposition that Section 708(b)(17) of the Law limits the exemption to *active* investigations. To the contrary, Section 708(b)(17)(vi)(A) exempts a record from disclosure that would "[r]evele the institution, progress or result of an agency investigation...."<sup>7</sup>

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<sup>6</sup> It is unclear from the record whether there was an active investigation being undertaken as to any of the other complaints raised against Mahl at the time the request was filed. However, the Township does not challenge Mahl's contention that the investigation was inactive at that time.

<sup>7</sup> It provides in full that records relating to a noncriminal investigation are exempt, including records that, if disclosed, would

[r]evele the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

65 P.S. § 67.708(b)(17)(vi)(A).

We agree with the Township that the Law does not limit the exemption to active investigations. Section 708(b)(17)(i) and (ii) exempts records relating to a noncriminal investigation, which includes complaints, investigative materials, notes, correspondence and reports. Nowhere does it state that the materials may be disclosed at the conclusion of the investigation. As also noted by the Township, the Law prohibits the disclosure of a record that would reveal that the agency has instituted an investigation and reveal the extent of its progress, with specific limited exceptions. Those exceptions permit the disclosure of fines and penalties that have been imposed. Mahl wants this Court to insert the word “active” into the statute. This Court is not permitted to “insert a word the legislature failed to supply into a statute.” *Department of Health v. Office of Open Records*, 4 A.3d 803, 812 (Pa. Cmwlth. 2010) (quoting *Girgis v. Board of Physical Therapy*, 859 A.2d 852, 854 (Pa. Cmwlth. 2004)).

In his second issue, Mahl contends that the trial court erred in relying on his own review of the Township’s records and denying his request in total. Mahl argues that the trial court should have ordered redaction rather than denying access to the entire record. The Township counters that the trial court properly reviewed the documents *in camera* and that the Township has no obligation to redact an exempt document.

We agree with the Township. Mahl faults the trial court for not conducting an independent review, but it did just that by reviewing, *in camera*, the documents in question. In *Bowling v. Office of Open Records*, 990 A.2d 813, 821 (Pa. Cmwlth. 2010), *appeal granted*, \_\_Pa. \_\_, 15 A.3d 427 (2011), we held that the Law permitted *in camera* review by the reviewing court.

As to the question of redaction, Section 506(c) of the Law<sup>8</sup> permits an agency to release an otherwise exempt record under certain circumstances. *Department of Health*, 4 A.3d at 815. However, this Court has made it clear that, while Section 506(c) grants an agency the discretion to release a record, “it does not *require* an agency to do so.” *Id.* (emphasis in original). Thus, contrary to Mahl’s argument, the Township was not required to redact information from the exempt documents and in that way avoid the exemption.

Mahl’s final allegation of error is that the trial court improperly dismissed his appeal without oral argument. He claims he has a constitutional right to be heard. The Township responds that the Law does not require the trial court to conduct a hearing or provide oral argument.

We addressed this issue in *Sherry v. Radnor Township School District*, 20 A.3d 515 (Pa. Cmwlth. 2011). Section 504 of the Local Agency Law, 2 Pa. C.S. §504, gives aggrieved persons the right to “notice of a hearing and an opportunity to be heard.” However, Section 1309 of the Law actually renders those provisions of the Local Agency Law inapplicable to Right-to-Know

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<sup>8</sup> It provides as follows:

An agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this chapter, if all of the following apply:

- (1) Disclosure of the record is not prohibited under any of the following:
  - (i) Federal or State law or regulation.
  - (ii) Judicial order or decree.
- (2) The record is not protected by a privilege.
- (3) The agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

65 P.S. § 67.506(c).



proceedings.<sup>9</sup> We further explained that the right to due process does not apply “because the right to information provided by the [Law] does not involve a property right; rather, it is a privilege granted by the General Assembly.” *Sherry*, 20 A.3d at 519. Therefore, we reject Mahl’s claim that he had a right to oral argument.

For the above-stated reasons, we affirm trial court.

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MARY HANNAH LEAVITT, Judge

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<sup>9</sup> Section 1309 of the Law provides that “[t]he provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this act unless specifically adopted by regulation or policy.”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Stephen E. Mahl from the :  
Decision dated October 16, 2009, :  
of the Pennsylvania Office of Open :  
Records, in Stephen E. Mahl :  
: :  
v. : No. 853 C.D. 2011  
: :  
Springfield Township Docket No. :  
AP2009-0634 :  
: :  
Appeal of: Stephen E. Mahl :

**ORDER**

AND NOW, this 11<sup>th</sup> day of January, 2012, the order of the Court of  
Common Pleas of Bucks County dated December 30, 2010, in the above-captioned  
matter is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge