



HARTMAN SHURR
 1100 BERKSHIRE BLVD., SUITE 301
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RECEIVED
 MAR 30 2010
 OFFICE OF OPEN RECORDS

FACSIMILE TRANSMITTAL SHEET

TO:	Terry Mutchler, Executive Director	FROM:	Christopher J. Hartman, Esq.
COMPANY:	Office of Open Records	DATE:	3/30/2010
FAX NUMBER:	717-425-5343	TOTAL NO. OF PAGES INCLUDING COVER:	7
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	Borough of Boyertown/General
RE:	Clayton Leister, Docket No. AP 2010-0129	YOUR REFERENCE NUMBER:	

URGENT PLEASE COMMENT PLEASE REPLY ORIGINAL WILL FOLLOW

IMPORTANT NOTICE

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NOTES/COMMENTS:

HARTMAN|SHURR

Christopher J. Hartman, Esquire
Direct Extension: x3012
email: chartman@HartmanShurr.com

March 30, 2010

VIA FAX # 717-425-5343 AND FIRST CLASS MAIL

Terry Mutchler, Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120

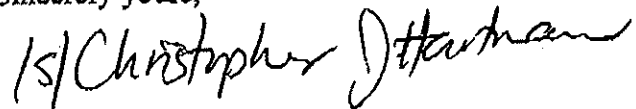
Re: Docket # AP 2010-0129

Dear Ms. Mutchler:

Please consider the attached Petition for Reconsideration of the Final Determination issued on March 15, 2010 in the above captioned matter. Pursuant to a phone conversation earlier today with Cindy from your office, we were informed that submission via fax is acceptable for filing such Petition.

Please do not hesitate to contact me should you require additional information about this matter.

Sincerely yours,



Christopher J. Hartman

BWE:se
Enclosures

cc: Nathanael J. Byerly, Appeals Officer, nbyerly@state.pa.us
Office of Open Records, openrecords@state.pa.us
Clayton Leister (w/ enclosures)
Patricia Spaide, Open Records Officer and Borough Manager (w/ enclosures)

INNOVATIVE ATTORNEYS. TRADITIONAL VALUES.

HARTMAN SHURR
 BY: Christopher J. Hartman
 IDENTIFICATION NO. 50432
 Bethany W. Emkey
 IDENTIFICATION NO. 206470
 1100 BERKSHIRE BOULEVARD, SUITE 301
 P.O. BOX 5828
 WYOMISSING, PA 19610
 Telephone: (610) 779-0772
 Facsimile: (610) 779-7473
 E-mail: chartman@hartmanshurr.com

ATTORNEYS FOR PETITIONER,
 BOYERTOWN BOROUGH

PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF	:	
	:	
CLAYTON LEISTER,	:	
Complainant	:	
	:	Docket No. AP 2010-0129
v.	:	
	:	
BOYERTOWN BOROUGH,	:	
Respondent	:	

BOROUGH OF BOYERTOWN PETITION FOR RECONSIDERATION

AND NOW comes BOYERTOWN BOROUGH, Petitioner, by its attorneys, Hartman Shurr, and petitions the Office of Open Records to reconsider its Final Determination in the above referenced docket issued on March 15, 2010 ("Final Determination"), representing in support thereof the following:

1. Pursuant to Pennsylvania's General Rules of Administrative Practice and Procedure, 1 Pa. Code Section 35.241, Petitioner alleges that an error occurred in the adjudication of the Final Determination.
2. The Final Determination is based solely on a determination that the Borough of Boyertown failed to support its burden of proof with an Affidavit of the

Borough Manager lacking the specific language indicating that it was made under the penalties of perjury.

3. Petitioner urges that the Affidavit is valid since it was "duly sworn according to law". This language is sufficient to impose the penalties of perjury for false statements.


4. The Right To Know Law does not contain a specific requirement that appeals to the Office of Open Records be supported by an affidavit sworn under the penalty of perjury set forth in 18 Pa.C.S. § 4904.

5. The correspondence from the Office of Open Records, dated February 18, 2010, directs the Borough to provide "an Affidavit be made under the penalty of perjury with knowledge [of the facts]. See our website for sample affidavit forms." As stated above, the Affidavit of Patricia Spaide was duly sworn according to law. Also significantly, the Office of Open Records website lacks a sample affidavit form identified for appeal submissions.

6. Despite Petitioner's position that the original Affidavit of Patricia Spaide was sufficient and subject to the penalties of perjury, Petitioner hereby submits a revised affidavit sworn under the penalty of perjury as set forth in 18 Pa.C.S. § 4904, notarized and dated March 30, 2010. The content of the affidavit is unchanged.

WHEREFORE, Petitioner respectfully requests the Office of Open Records to grant this Petition for Reconsideration, vacate the March 15, 2010 Final Determination, and issue a Final Determination in this matter on the merits.

HARTMAN SHURR,

By: 
Christopher J. Hartman, Esq.
I.D. #50432
Bethany W. Emkey, Esq.
I.D. #206470
1100 Berkshire Boulevard, Suite 301
P.O. Box 5828
Wyomissing, PA 19610
(610)779-0772
Attorneys for Boyertown Borough, Berks County

Dated: March 30, 2010

OFFICE OF OPEN RECORDS
Docket AP # 2010-0129

AFFIDAVIT OF PATRICIA A. SPAIDE

I, **Patricia A. Spaide**, being duly sworn according to law, states under the penalty of perjury as more fully set forth in 18 Pa.C.S. § 4904, that I am the Borough Manager for the Borough of Boyertown, Berks County, Pennsylvania, Appellant herein, and as such state the following:

1. The Budget Memo is the responsive document to the Right-To-Know request of Mr. Clayton Leister dated January 8, 2010.

2. The Budget Memo was prepared by Borough Staff for Borough Council and the Mayor to assist in the preparation of the 2010 budget. It contains budget and policy recommendations to assist in the passage of the 2010 budget.

3. The Budget Memo was provided to Borough Council members and the Mayor prior to beginning their review of the 2010 budget. It was not distributed at a Borough Council meeting, but was referenced in dialogue during discussions of the 2010 budget at public meetings.

DATED: March 30th, 2010

By:

Patricia A. Spaide

Patricia A. Spaide

Sworn to and subscribed before me this 30th day of March 2010.

S. M. Ehrlich

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
SUSAN M. EHRLICH, NOTARY PUBLIC
SPRING TOWNSHIP, BERKS COUNTY
MY COMMISSION EXPIRES SEPT. 30, 2011

PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF	:	
	:	
CLAYTON LEISTER,	:	
Complainant	:	
	:	Docket No. AP 2010-0129
v.	:	
	:	
BOYERTOWN BOROUGH,	:	
Respondent	:	

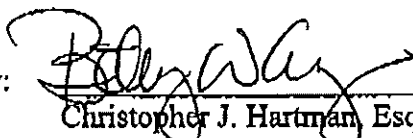
CERTIFICATE OF SERVICE

The undersigned certifies that the Petition for Reconsideration of the Final Determination was served on March 30, 2010, upon the following parties by First Class Mail:

Clayton Leister
116-118 N. Washington Street
Boyertown, PA 19512

I verify that the facts set forth herein are true and correct to the best of my knowledge, information and belief, and that this verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

HARTMAN SHURR,

By: 

Christopher J. Hartman, Esq.
I.D. #50432
Bethany W. Emkey, Esq.
I.D. #206470
1100 Berkshire Boulevard, Suite 301
P.O. Box 5828
Wyomissing, PA 19610
(610)779-0772
Attorneys for Boyertown Borough, Berks County



April 5, 2010

Christopher Hartman
Hartman Shurr
1100 Berkshire Blvd, Suite 301
P.O. Box 5828
Wyomissing, PA 19610

RE: Petition for Reconsideration dated March 30 / OOR Dkt. AP 2010-0129

Dear Mr. Hartman:

We are in receipt of your Petition for Reconsideration dated March 30 in connection with the Office of Open Records Final Determination in *Leister v. Borough of Boyertown*, OOR Dkt. AP 2010-0129. We hereby deny your Petition.

Respectfully,

A handwritten signature in black ink, appearing to read "Terry Mutchler". The signature is written in a cursive, flowing style.

Terry Mutchler
Executive Director

cc: Clayton Leister
Patricia Spaide, Open Records Officer, Boyertown Borough