

STATE OF MICHIGAN

IN THE 19TH CIRCUIT COURT FOR THE COUNTY OF BENZIE

KIRK JONES,

Plaintiff,

v

File No. 20-11404-CZ

HOMESTEAD TOWNSHIP,

HON. DAVID A. THOMPSON

Defendants.

/

VIDEO CONFERENCE VIDEO DEPOSITION OF KAREN MALLON

Taken by the Plaintiff on the 5th day of March, 2021, via Zoom, at 1:00 p.m.

APPEARANCES:

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1 Via Zoom Video Conference

2 Friday, March 5, 2021 - 1:01 p.m.

3 REPORTER: We are on the record via Zoom for the
4 video deposition of Karen Mallon in the matter of Kirk Jones
5 versus Homestead Township. This is a matter currently
6 pending in the 19th Circuit Court for the County of Benzie,
7 case number 20-114-da- -- -404-CZ. Today's date is March
8 5th, 2021, and the time is approximately 1:01 p.m. I am
9 Emilee Nielsen, court reporter for Network Reporting.
10 Counsel, if you would put your appearances on the record, I
11 will then swear in the witness.

12 MR. STIG-NIELSEN: Good afternoon. Frederik
13 Stig-Nielsen, Mas/Stig-Nielsen, PLLC, working with Jesse
14 Williams on behalf of Mr. Jones, the plaintiff.

15 MR. WIERDA: Brad Wierda appearing on behalf of
16 the defendant.

17 REPORTER: Okay.

18 MS. MALLON: And I guess Karen Mallon here with
19 the township, Homestead Township.

20 REPORTER: Okay. Could you raise your right hand,
21 please, Karen?

22 MS. MALLON: I'm sorry?

23 REPORTER: Could you raise your right hand,
24 please?

25 MS. MALLON: Oh. Uh-huh (affirmative).

1 REPORTER: Do you solemnly swear or affirm that
2 the testimony you're about to give will be the whole truth?

3 MS. MALLON: I do so swear.

4 REPORTER: Thank you.

5 MR. STIG-NIELSEN: May I proceed, --

6 REPORTER: Yes.

7 MR. STIG-NIELSEN: -- Ms. Court -- thank you.

8 KAREN MALLON

9 having been called by the Defendants and sworn:

10 DIRECT EXAMINATION

11 BY MR. STIG-NIELSEN:

12 Q Good afternoon, ma'am. Can you hear me?

13 A **Yes.**

14 Q Could you just state your name for the record and spell your
15 last name?

16 A **My name is Karen Mallon, M-a-l-l-o-n.**

17 Q Ms. Mallon, as you know, my name is Frederik Stig-Nielsen.
18 I'm -- I'm one of the attorneys representing Kirk Jones in
19 the pending FOIA lawsuit. This is a deposition. Have you
20 been deposed before?

21 A **No.**

22 Q Okay. I'm going to go over just a couple basic principles
23 that hopefully will help us both as we work through my
24 questions. Is that all right with you?

25 A **Yes.**

1 Q All right. I have a tendency to mumble, so that's an issue
2 that I've had my whole life. If you can't understand or
3 hear what I'm saying, will you please let me know so I can
4 repeat myself?

5 **A Yes.**

6 Q I'm also prone to asking somewhat confusing questions. So
7 if you don't understand a question, will you let me know and
8 I'll rephrase it so that you can understand it?

9 **A Yes.**

10 Q And if you don't know the answer to a question, I would ask
11 that you do not guess but simply state that you do not know.
12 Does that sound all right with you?

13 **A Yes.**

14 Q And then if you need a break, just let me know and I can
15 accommodate it. I would ask, though, if you do want a break
16 that we just do it at the end of a question -- or excuse
17 me -- at the end of your answer to a -- to the prior
18 question and then prior to the next question. Is that fair?

19 **A Yes.**

20 Q Did you receive the -- the packet of potential exhibits that
21 I provided to your attorney?

22 **A Yes.**

23 Q Okay. And so you have -- it's been marked -- there's two
24 different packets. One is Exhibits A through E and the
25 other is Exhibits F through I. You have -- you have both

1 packets, ma'am?

2 **A Yes.**

3 Q Okay. Do you have any questions before we begin?

4 **A No.**

5 Q Ma'am, could you tell me how you're employed?

6 **A Can you be more specific?**

7 Q Well, are you employed?

8 **A Yes.**

9 Q Okay. Please let me know how you're employed.

10 **A I'm employed by Benzie County and I'm an -- I'm an elected**
11 **official for Homestead Township.**

12 Q Okay. And your employment with Benzie County, that's --
13 what do you do for Benzie County?

14 **A I'm the victim advocate and witness coordinator for the**
15 **prosecuting attorney's office.**

16 Q Okay. And so you're a -- you're also an elected official in
17 the Homestead Township Board, you said. So you're a
18 resident of -- of Homestead Township?

19 **A Yes.**

20 Q Okay. And how long have you lived in the township?

21 **A For eight years and nine months.**

22 Q And so I know that you said you're elected now, and it does
23 appear from the records that you were a township board
24 member in the year 2020. But could you just describe
25 briefly your history of -- as an official on the township

1 board?

2 **A** In January of 2019, after Shelly Rosa, who was a treasurer
3 at Homestead Township, died, the township board appointed me
4 to complete her role as the treasurer. So I worked until
5 that term ended. That was from January 2019 until November
6 of 2020. And then November 2020 I was elected as clerk, and
7 so I've worked as clerk since November 20th of 2020 until
8 present day.

9 **Q** You checked off a lot of my future questions, so that's
10 good. Who is the current FOIA coordinator for Homestead
11 Township?

12 **A** So the township has deemed that the clerk assumes the
13 responsibilities as a FOIA coordinator, so I am the
14 coordinator -- FOIA coordinator for the township right now
15 as the clerk.

16 **Q** Prior to being elected as clerk, did you serve in the role
17 of FOIA coordinator for Homestead Township?

18 **A** Yes.

19 **Q** And when did you take or assume that role?

20 **A** On July 1st I did -- the clerk had -- was the FOIA
21 coordinator, but because of the general election -- the
22 primary election that was happening in August, she was
23 inundated with absentee ballots and was concerned that she
24 could not complete FOIA reque- -- requests because of the
25 number of absentee ballots that she was processing, so she

1 **asked me for help. And she asked if I would assume the role**
2 **of FOIA coordinator on her behalf until the general election**
3 **was over. So that was from July 1st until November 4.**

4 Q And then once you began your new term, then you assumed that
5 role again as -- when you -- once you were clerk?

6 A **Yes.**

7 Q And the prior clerk, her name was --

8 A **Well, the prior clerk, her name is Mary Geetings.**

9 Q Okay.

10 A **So she -- yes. Her term --**

11 Q Let's talk --

12 A **Her term ended on November 20th of 2020.**

13 Q Let's talk about any training, formal or informal, that you
14 received during your tenor -- tenure as the township FOIA
15 coordinator. By "formal training" I mean seminars, MTA
16 courses, anything like that. "Informal training," I'm
17 referring to perhaps what a predecessor would have told you,
18 what, you know, a township attorney has explained to you
19 about the -- the Freedom of Information Act of Michigan.
20 Does the scope of -- of -- of this question, does that make
21 sense to you?

22 A **Yes.**

23 Q Okay. So if you understand what I mean by "formal" and
24 "informal," tell me about -- about what training you've had
25 that's -- that you would consider formal training regarding

1 being a FOIA coordinator.

2 MR. WIERDA: I'm just going to object to the
3 extent you were just asking her to talk about
4 attorney-client privileged material. I think you just
5 specifically instructed her to talk about attorney-client
6 privileged conversations.

7 MR. STIG-NIELSEN: Are you -- are you instructing
8 her not to answer the question?

9 MR. WIERDA: Not at all, no. I'm -- I'm
10 objecting. But yeah, it would in- -- be inappropriate to
11 answer something -- a conversation between -- that was
12 privileged by the attorney-client privilege. Most
13 attorneys, when they ask, you know, will specifically say,
14 you know, "Don't tell us anything -- any conversations with
15 attorneys," but it seemed like you were saying exactly the
16 opposite.

17 Q Ms. Mallon, I'm not asking for any specifics about your
18 conversations with your -- with any attorney. I'm just
19 referring to that as a category as -- as informal training,
20 perhaps where you just would have discussed something with
21 someone about the Act prior to assuming the role of FOIA
22 coordinator. But if there's some substance that you believe
23 is protected, then obviously I don't -- I'm not interested
24 in that.

25 A Okay. So just -- just so I can be clear what you're asking

1 me, are you asking me specifically as it relates to
2 Homestead Township? Is that what -- is that where we're at?
3 Before --

4 Q As it relates to --

5 A Before I assumed the role of FOIA coordinator for the
6 township? Is that -- that's my understanding what you're
7 asking me?

8 Q Yes, ma'am.

9 A Okay. So as an employee of Homestead Township I've had no
10 formal training for the pos- -- the -- the role of FOIA
11 coordinator. Informal training, I had gone to different
12 MTA -- MTA has some training -- which is the Michigan
13 Township (sic) Association. So I'd gone to their site and
14 gotten some information for the FOIA coordinator pos- --
15 role at the township.

16 Q Other than accessing MTA's website, was there anything else
17 that you would classify as -- as informal training regarding
18 the -- the Freedom of Information Act of Michigan?

19 A As it pertains to my role at Homestead Township, no.

20 Q Okay. Well, beyond your role at Homestead Township, please
21 describe any training, formal or informal, that you have
22 regarding the Michigan Freedom of Information Act.

23 A Okay. So prior to working at the prosecuting attorney's
24 office I worked for the Benzie County Sheriff's Office and
25 part of my role was to work as a FOIA coordinator for the

1 Benzie County Sheriff's Office. And I had formal training
2 through MMRMA, and I think probably in 2012, 2013, and I
3 don't remember if it was '16 or '17 that I had trainings.
4 I've gone to three different training conferences as an
5 employee of the Benzie County Sheriff's Office.

6 Q Have you yourself ever maintained a FOIA lawsuit?

7 A A FOIA lawsuit?

8 Q Against a public body.

9 A I don't know what you're -- I guess -- I guess my answer
10 would be yes, I have, but it was -- I guess I -- I always
11 thought of it as an Open Meetings Act violation. So if the
12 Open Meetings Act and the FOIA run together, then yes.

13 Q When you were in your role at the Benzie County Sheriff's
14 Office as the FOIA coordinator, did you on behalf of the
15 sheriff's office respond to any FOIA appeals or FOIA
16 lawsuits against that public body?

17 A No, I did not.

18 Q Okay. And so -- and I'm sorry if it wasn't clear, but did
19 you -- you didn't participate in any way in the sheriff's
20 office response to any such lawsuits?

21 A No.

22 Q So would it be fair to -- to say that even though your
23 additional training once you became -- or immediately prior
24 to becoming a FOIA coordinator for the Homestead Township is
25 somewhat limited, you do have fairly extensive prior

1 training due to your previous employment at the Benzie
2 County Sheriff's Office?

3 **A Well, I acknowledge that I have had training, yes, through**
4 **the sheriff's office, yes.**

5 Q And in that training you would have -- you would have
6 learned the general duties of a public body in -- in
7 responding to a -- a Freedom of Information Act request by
8 a -- by an individual in Michigan?

9 **A Yes.**

10 Q And that would include training on the applicable timelines
11 for such a response?

12 **A Yes.**

13 Q And that would include training on the applicable
14 requirements for the contents of a response?

15 **A Yes.**

16 Q And would you -- so does the township maintain any sort of
17 procedural or other guidelines with regard to the Freedom of
18 Information Act?

19 **A So what I understand that you're asking me, the township has**
20 **a handbook online that was given to all townships through**
21 **the Michigan Townships Association. It -- it's a FOIA**
22 **guideline and summary packet.**

23 Q Okay. And we'll talk more about that packet later, but I
24 just -- I guess with regards to your training, is your
25 training consistent with the instructions that are included

1 in -- in -- in said packet?

2 **A I don't know how to answer that question. Can you be more**
3 **specific what you're asking me?**

4 **Q** Yeah. Is your -- your understanding of the duties with
5 regards to time frames and the contents of -- of the public
6 body's response consistent with those that are outlined in
7 the procedures and guidelines that you've just described?

8 **A Well, I guess as it would pertain to specific and individual**
9 **FOIA requests, I -- I believe so. I -- I'm -- I'm not sure**
10 **what you're -- I -- I guess I don't know why I don't**
11 **understand what you're asking me. I mean, if there -- I**
12 **don't understand if you're asking me something specific or**
13 **if it's something real general, so I'm -- I'm not sure --**

14 **Q** Well, we'll get to the specifics. But generally your
15 training and experience with regards to the Michigan FOIA,
16 it -- is it consistent with the procedures and -- and
17 policies that you've outlined that are maintained by the
18 Homestead Township?

19 **A I believe so.**

20 **Q** Okay. Prior to taking over the responsibility of the FOIA
21 coordinator for Homestead Township in -- on July 1st of
22 2020, did you have any involvement with responding to Kirk
23 Jones' March 25th or April 23rd FOIA requests that are at
24 issue in this lawsuit?

25 **A No.**

1 Q So at no time prior to assuming the role of FOIA coordinator
2 on July 1st did you provide any assistance in any way
3 whatsoever to Mary Geetings regarding responding to these
4 two requests?

5 A I -- I -- I don't recall that I did. I -- I can tell you if
6 she asked me for -- if I had copies of e-mails or
7 correspondence. As -- as the role of treasurer I would have
8 looked through e-mails for that, but I -- I -- I don't
9 recall that I had helped her in any way respond to the FOIA
10 request.

11 Q Okay.

12 A That was during COVID, so I -- I know that Mary and I did
13 not see each other much, so to the best of my knowledge I
14 did not help her due to COVID.

15 Q So let's bring your attention to when you did get involved
16 with -- with the requests that are at issue in -- in this
17 case. So when you came into the role of acting FOIA
18 coordinator on July 1st, 2020, did you issue letters and
19 documents that were responsive to a request by Kirk Jones
20 dated June 17th?

21 A Yes.

22 Q And do you recall when you first became aware of that
23 request?

24 A To the best of my knowledge, it was on that day, on -- on
25 that first part of July.

1 Q And do you know -- obviously this would have been before
2 you -- you came into that role. Do you know whether or not
3 Mr. Jones conveyed that request to the township via e-mail
4 or via regular mail?

5 **A On July 1st my understanding was that there was an e-mail**
6 **request made to the clerk's office for a FOIA request.**

7 Q Okay. I'm going to direct your attention to Exhibit A,
8 what's been marked as Exhibit A in the packet.

9 (Counsel shares document via video)

10 Q I also -- I -- I believe I'm sharing it on the screen. I
11 don't know if you can see it.

12 **A Yeah, part of it I can see.**

13 Q Okay. Perhaps it'll -- that's why I printed them. So
14 perhaps it's -- if you want to follow along in your packet.

15 **A Uh-huh (affirmative). Sure.**

16 Q I will --

17 MR. STIG-NIELSEN: Mr. Wierda, I will represent
18 that -- and these are -- the exhibits that I'm showing on
19 the screen are the same that I forwarded to your office
20 yesterday. If there's any --

21 MR. WIERDA: I can -- I can see it as well, yup.
22 I -- you're sharing the screen and -- and I am seeing it as
23 well.

24 Q I would like you to just look at what's been marked as
25 Exhibit A. And after you've looked at it, I -- just let me

1 know when you're ready to respond to a few questions about
2 it.

3 **A Okay. I'm ready.**

4 **Q** Do you recognize the -- the document that's contained in
5 Exhibit A?

6 **A Yes.**

7 **Q** Can you describe just generally what -- what that document
8 appears to be?

9 **A It appears to be a letter from Kirk Jones to Homestead
10 Township regarding a Freedom of Information Act request.**

11 **Q** Does it appear to be an accurate representation of the June
12 17th Freedom of Information Act request that we were just
13 discussing a few moments ago?

14 **A Yes.**

15 **Q** And -- and that would be the one on which you based the
16 responses that we were also just briefly discussing a moment
17 ago?

18 **A From -- the response from the July? Is that what you're --
19 my responses from July?**

20 **Q** Yes, ma'am.

21 **A Yeah; yes.**

22 **MR. STIG-NIELSEN: I would move to admit Exhibit
23 A. Actually -- sorry.**

24 **MR. WIERDA: You -- you don't need to move -- you
25 don't need to move admission of any exhibits for me during a**

1 deposition. I mean, you -- you can mark whatever exhibits
2 you want during a deposition.

3 MR. STIG-NIELSEN: All right. Thanks, Mr. Wierda.

4 Q So looking at Exhibit A, can you -- can you tell me what --
5 what Mr. Jones was requesting in that June 17th letter?

6 A Do you want me to read it?

7 Q Just -- I guess the -- if you -- do you -- do you -- without
8 looking at this do you recall what he was requesting?

9 A Well, what I know that he was requesting is public records
10 that Homestead Township may have.

11 Q Okay. In looking at that exhibit, then, can you -- will
12 you -- do you agree that he re- -- requested four different
13 categories of items?

14 A Yeah. Appears to me that there are four separate requests
15 on this letter.

16 Q And can you tell me what action you took once you became
17 aware of this request in the first days of July 2020?

18 A So as I recall, what I did was, based on -- on what the
19 clerk had told me, that it was a response that -- that she
20 had not been able to fulfill. I sent a letter to
21 acknowledge receipt of this to Mr. Jones.

22 Q And you --

23 A And then once I sent that letter, there were materials that
24 she had gathered that she had given to me, and I began going
25 through those records and then also searching for any

1 additional records. I believe -- I believe that he had
2 asked for all communications, and so I had reached out to
3 the supervisor, the zoning administrator, past and present,
4 and the -- our joint planning commission members to see if
5 they had any e-mails or communications that would fulfill
6 that. That's what I did at first.

7 Q And do you recall -- do you know, do you recall any letters
8 you sent in response to this request?

9 A I -- I'm sorry. I couldn't understand your question.

10 Q I'm sorry. Do you recall how many letters you sent in
11 response to this request to Mr. Jones?

12 A I believe I sent one letter that acknowledged that the
13 township had the request, and I believe I sent another
14 letter saying that to the -- to the best of my knowledge
15 that the -- the request had been completed and that there
16 was maybe a -- I don't remember what it was, but there was a
17 fee involved for it.

18 Q Do you recall --

19 A And then --

20 Q -- the date of the first letter?

21 A Do I -- I'm sorry? Do I recall the first letter?

22 Q The date.

23 A Without looking at the -- the exhibits, I don't recall what
24 the date was.

25 Q All right. If I showed you that -- that first letter, do

1 you think you'd recognize it?

2 **A Yes.**

3 **Q All right. I would direct your attention to what's been**
4 marked as Exhibit B in the packet.

5 **A Okay.**

6 **Q Do you recognize that document?**

7 **A Yes.**

8 **Q Does that document -- is -- is that the -- the first letter**
9 that you sent in response to the June 17th FOIA request?

10 **A Yes, that's the first letter that I personally sent to Mr.**
11 **Jones.**

12 **Q And on the second page, that's your signature?**

13 **A Yes.**

14 **Q And does that appear to be an accurate copy of that first**
15 letter that you sent to Mr. Jones?

16 **A Yes.**

17 **Q Looking at this letter, you know --**

18 MR. STIG-NIELSEN: This is where I -- I move to
19 admit it. I know Mr. Wierda doesn't want that, but just so
20 I am clear on what I'm doing here, Mr. Wierda.

21 **Q I want to dive into that a little bit more. And can you**
22 explain to me just in general what the determination was, if
23 any, that was made at the time that you sent this letter
24 with regards to how the township was going to respond to Mr.
25 FOIA -- or Mr. Jones' first FOIA -- or excuse me -- not

1 first FOIA -- June 17th FOIA?

2 **A** So based on what I think you asked me, I believe the
3 response that was sent to Mr. Jones is that his FOIA request
4 was being actively worked on. I -- I also believe that the
5 intention was to let them know that there were public
6 records that he was seeking that might be found on the
7 website, so that if there was anything that he wanted to
8 look at immediately he could go on -- online and find those.

9 And then I wanted to let him know that there would
10 be some records that would be denied in part if they
11 included any discussions between the township attorney and
12 any township official that would fall under the category of
13 attorney-client privilege. And let's see. And the other
14 thing that I have on this letter is that the extensive
15 nature of his request was such that I felt that it was going
16 to take additional time to fulfill the request.

17 **Q** Okay. Let's go through all that then in -- piece by piece.
18 Just want to start out by asking about, you know, the
19 subject line of this letter. In there you indicate that the
20 FOIA request was dated June 17th and received by the public
21 body on -- on June 23rd. Can you explain why you wrote
22 that?

23 **A** I wrote that because that's what the clerk told me.

24 **Q** Would you agree that if it had, in fact, been received by
25 e-mail on June 17th then the -- it -- excuse me -- that it

1 had in fact been sent to the township via e-mail on June
2 17th then the following day would the legal date of receipt
3 for the township?

4 **A Well, my answer is that this was during a COVID shutdown**
5 **time, so our township office was closed. And I don't know**
6 **what Mary Geetings, as the clerk, what her office hours**
7 **were. Each -- each office of the officials are separate**
8 **offices, so I don't know what office hours that she was**
9 **keeping. So I do know that she indicated that she didn't --**
10 **she did not receive that e-mail until June 23rd.**

11 **Q She indicated to -- that to you verbally or in writing or --**

12 **A I would say verbally on July 1st is what she told me.**

13 **Q Okay. Now, this was on June 17th. And I -- you -- you sort**
14 **of jumped ahead. And I'm -- I'm going to get into that in**
15 **more detail with regards to the -- the COVID shutdown and**
16 **the -- the governor's executive orders that were in effect**
17 **during some of the applicable time periods. But to your**
18 **knowledge, was there any sort of executive order that**
19 **allowed a -- a public body additional time in responding to**
20 **a FOIA request in effect on June 17th, 2020?**

21 **A I don't -- I -- I -- I don't have any knowledge of -- of**
22 **that. I don't -- I -- on June -- on June 17th I don't have**
23 **any personal knowledge of any executive orders. I don't**
24 **recall what executive orders were in place on June 17th, to**
25 **be honest with you. I -- I don't know.**

1 Q Okay. Would you agree that if there were no executive
2 orders that granted any sort of extension or additional time
3 to a public body in which to respond to an individual's
4 Freedom of Information Act request or otherwise amending the
5 Act, then if a communication is sent on June 17th, 2020,
6 containing a Freedom of Information Act request via e-mail,
7 then the legal date of receipt would be the following day,
8 June 18th, 2020?

9 A I don't agree with that statement.

10 Q Can you please explain why?

11 A If -- if the -- if -- if the official receiving -- if the
12 official who was sent that communication was not physically
13 in the office to receive that e-mail the next day, or if
14 that e-mail would have been sent and gone into a junk mail
15 or spam mailbox, what I understand is it's when that public
16 body locates the -- the request on e-mail, whether it's in
17 an inbox, whether it's in junk mail, but the date that it is
18 discoverable by that township official is the date of
19 receipt.

20 Q Do you agree that that -- what you just stated only applies
21 if the electronic mail was delivered to a public body's junk
22 or spam mail?

23 A No. I -- I -- I believe that if the -- if the public
24 official has not opened that e-mail that next day, then --
25 then she has not received that -- that request until the day

1 **that she actually opens the e-mail.**

2 Q And you believe that why?

3 A Well, I believe that if -- I believe that because I -- I
4 believe that's what I have been told by what.

5 Q And as far as you know, that --

6 A Through the informal training.

7 Q I'm sorry. I didn't mean to cut you off. Go ahead.

8 A Uh-huh (affirmative). Through the informal training and
9 then also through formal training prior that once -- once
10 you receive it and it's opened, that's -- that's the actual
11 date that it's received.

12 Q So, then, this belief, you -- you attribute that to your
13 informal training, not to any specific citation to the
14 Freedom of Information Act?

15 A I don't -- I don't know -- I -- I don't -- I don't have any
16 citation that I could -- that I could pull up and tell you
17 that, but that's what I believe that I know from the
18 training that I've had.

19 Q Okay. If this e-mail had been sent on June 17th, 2020, and
20 the clerk, Mary Geetings, had responded to that e-mail on
21 June 17th, 2020, would -- do you agree that the date that
22 the e-mail -- or that this correspondent was received would
23 have been June 17th, 2020?

24 A I -- I believe that would be the case.

25 Q Looking at the (inaudible) portion of your letter you

1 indicate that the request has been received, logged and
2 currently attended to. Do you know which portion of the
3 FO- -- the Freedom of Information Act in Michigan instructs
4 that informing a requester that his request has been logged
5 and attended to is sufficient?

6 **A I -- I mean, I don't know what you mean by "sufficient,"**
7 **because that -- what I -- what I know of the FOIA is that**
8 **the -- that -- that the public body has to keep a log of**
9 **their FOIA requests.**

10 **Q** Do you agree that within five days of receiving a request
11 from an individual the public body has to do one of four
12 things?

13 **A Were -- were you going to say what those four things are so**
14 **I can answer that?**

15 **Q** Well, do you agree that they have to issue a letter to a
16 person that's requested information under the Freedom of
17 Information Act within five days informing them of one of
18 four things?

19 **A Well, I -- I would say that -- yes, but I -- but I'm**
20 **wondering what, you know -- is there something -- if you're**
21 **me to something specific. I'm just wondering what -- if --**
22 **if you're trying to -- I -- I don't know what you're trying**
23 **to have me answer, but, yes, I know that -- that as a -- as**
24 **a request is made, that Michigan FOIA indicates that a**
25 **response is to be made within five days.**

1 Q All right. And let's go -- we'll go over in turn each of
2 those four possible scenarios that -- that a public body can
3 then respond with. So the first is that they could grant
4 the request; is that correct?

5 **A Yes.**

6 Q And the second option is that they could issue a written
7 notice to the requesting person denying the request;
8 correct?

9 **A Right; yes.**

10 Q Okay. Then the third option is that they could grant the
11 request in part and issue a written notice to the requesting
12 person denying the request in part?

13 **A Yes.**

14 Q And then the fourth option would be issuing a notice
15 extending for not more than 10 business days the period
16 during which the public body shall respond to the request.
17 Do you agree with that?

18 **A Yes.**

19 Q So in looking at this letter that was issued on Ju- -- July
20 3rd, 2020, in response to a June 17th, 2020, request, can
21 you tell me which one of those four categories this letter
22 falls into?

23 **A Well, so trying to respond to Mr. Jones as best -- at -- on**
24 **that day, best ability that I could, I believe that it**
25 **probably kind of covered all four parts. And this was an**

1 attempt to get some information to him and give him some
2 notice, because what I believe had happened prior to what --
3 to the July -- or the June 17th letter requesting
4 information, that there were some delays because of COVID.
5 And I wanted to make sure that I helped Mrs. Geetings out
6 with the FOIA and also get notification out to Mr. Jones
7 that the township did, in fact, have the FOIA request and
8 we're working on it.

9 So this probably isn't the -- the standard letter
10 and it probably gave him more information than he was
11 looking for. I don't know. But to the best of my ability,
12 and in all fairness to Mr. Jones, tried to get him some
13 information to say that we are working on this, if he needed
14 some information then there's some information online that
15 he could look for, and if anything was communicated between
16 an attorney and the -- the township, that would not be
17 disclosable.

18 I wanted to let him know that there could be some
19 anticipated denials coming up. And -- and then I did ask --
20 let him know that -- that -- that I was asking for an
21 extension because there was so much information that he was
22 asking for. So I believe that what I did is respond to him
23 in a way to keep an open communication with him to let him
24 know that something's going. But all four parts of the
25 FOIA -- the -- the -- the FOIA Act, those -- those four

1 **responses were probably all covered in this one letter.**

2 **Q** Do you agree that this letter does not fit in the -- the
3 five-day time frame that was previously discussed with
4 regards to the response to the request?

5 **A** **What I believe about this letter is that it was -- it was a**
6 **communication regarding his request, but it did not grant**
7 **records, it did not deny records, it did no- -- did not deny**
8 **in part. It did ask for an extension based on the -- by --**
9 **based on the current date, but that's what I believe this**
10 **letter was. This letter was merely a communication to let**
11 **him know -- it was done in good faith to let him know that**
12 **the township has a letter, we were working on it or I was**
13 **working on it, and as soon as I could get the records**
14 **together they were going to happen.**

15 **Q** Do you agree that this letter fails to comport with the
16 timelines that we previously discussed with regards to a
17 response to a Freedom of Information Act request in which
18 the public body must do one of the four things that we've
19 described within five days?

20 **A** **Well, I agree that to the extent -- if this was a period of**
21 **time that we were not under lockdown, where we were not**
22 **under business closures, the township was closed, we had a**
23 **worldwide pandemic going on, that I agree because of the**
24 **COVID situation that this letter did not respond what would**
25 **have been a standard time. Had this -- this been done in**

1 July of 2019 it would have been a different letter
2 certainly, but -- but we were doing the best that we could
3 do based on the knowledge that we had about a deadly virus,
4 about COVID, about executive orders and -- and, you know,
5 the -- it was -- it was a -- an out of the ordinary type
6 letter, but it was out of ordinary time. And I certainly
7 believe that there no malice done, there was no hiding,
8 there was no intentional going against any FOIA request, but
9 the letter does not respond as FOIA would typically in a
10 non-COVID, non-executive-order-shutdown, non-pandemic time.

11 Q I asked you about executive orders that specifically apply
12 to the Freedom of Information Act and potentially amended or
13 extended certain deadlines for public bodies to respond.
14 Are you aware of any such executive orders that were in
15 place at any point in time during the first six months of
16 2020?

17 A So -- so what I -- what I remember from that period of time
18 is there were stay-at-home orders, there were shutdowns, and
19 businesses were closed. So I -- I can't speak on any FOIA
20 ones that I remember at that time, but -- but I do know that
21 if we were counting business days at the township, this --
22 this letter possibly could have fallen in line with
23 appropriate five business days, because the township was not
24 open. And the only business that was being conducted was
25 business that was essential to life, and that was our

1 Homestead fire department. In each office the supervisor
2 kept his hours, how he did. The clerk I believe kept her
3 hours, maybe minimal to one, one and a half hours a week.
4 And as the treasurer, I only started business hours because
5 the taxes had to be collected and that was beginning July
6 1st and that was why I was in the office on July 1st. But
7 other than that, the -- the -- what I remember from the
8 executive orders is that they were stay-at-home orders.

9 People were not going in to work. There was -- we
10 had no access to any mail, e-mails from home. That's what I
11 can remember from July 3rd. And that's why this letter was
12 written as a communication to at least let him know that it
13 was being worked on.

14 Q Do you agree that if -- that a township cor- -- or a
15 township FOIA coordinator who was in that role during this
16 unprecedented time of the pandemic, that part of their
17 duties would be to be apprised of any executive orders that
18 specifically affected a public body's duties under the
19 Freedom of Information Act?

20 MR. WIERDA: Just object to the extent you're
21 asking for a legal conclusion. Karen, you can answer.

22 A I guess, you know, I don't know what you asked me at the
23 very beginning. Can you just tell me what your -- your
24 first question was?

25 Q Yeah. Just ge- -- as a FOIA coordinator, do you think it

1 would be within the purview of the responsibilities of the
2 FOIA coordinator to be aware of any executive orders issued
3 by the governor during this unprecedented time that directly
4 spoke to a public body's duties under the Freedom of
5 Information Act during the pandemic?

6 **A I believe that there were communications that public**
7 **officials got regarding executive orders.**

8 Q So if I told you that there was an executive order, it's
9 called number 2020 30- -- dash-38 that was issued on April
10 5th, 2020, and rescinded on June 3rd, two-thou- -- 2020, do
11 you have any knowledge about that -- that order or what that
12 order would have done with regards to the public bodies'
13 duties under the Freedom of Information Act?

14 **A On -- on July 3rd when I assumed the -- the role of acting**
15 **FOIA coordinator, I had no personal knowledge of that.**

16 Q And again, you can't point to any specific order that issued
17 any temporary extensions of any certain FOIA deadlines
18 during the time that you assumed the role of FOIA co- --
19 coordinator in July of 2020?

20 **A In July of 2020 I -- I -- I did not have any personal**
21 **knowledge.**

22 Q I -- I'm hearing just sort of -- I -- I'm hearing just a
23 general -- this was a really unprecedented time, we were
24 doing the best that we could?

25 **A Uh-huh (affirmative).**

1 Q And is that essentially what you're saying with regards to
2 this response, the reason that it's late?

3 A Speaking only for myself and my role on July 3rd with this
4 letter, my -- my intention was -- was, I guess, specifically
5 that; was to -- to make a communication in good faith to let
6 Mr. Jones know that the FOIA request that he made was
7 received at the township and it was being worked on and --
8 yeah. I -- I --

9 Q And you agree that in a normal year, if this same response
10 had been issued to a request dated the same -- with the same
11 dates, then that re- -- that response would be tardy, for
12 lack of a better word, or noncompliance with -- with the
13 Act, the timeline?

14 A Well, yeah. Mo- -- more than likely, depending on, you
15 know, what the business days were, yeah, it cou- -- it
16 possibly could have been. I don't have a, you know,
17 calendar in front of me, but I do know that FOIA says
18 business days. So if it was received on the 23rd, the first
19 day it's worked on, if it's a business day, is the 24th.
20 Weekends don't count. Holidays don't count.

21 So very likely on a normal year where business
22 shutdowns weren't happening, a pandemic wasn't going on,
23 this -- this letter potentially probably would have been
24 late a day or two, yes -- or -- yes; yeah. It -- I --
25 I think a day actually.

1 Q Let's --

2 A But -- but I also -- but just -- just -- just so you know,
3 that if this would have been July 3rd, 2019, a letter like
4 this from me would not have gone out. This -- this -- this
5 was a -- my attempt in good faith to let Mr. Jones know in a
6 communication that this was being worked on. If it would
7 have been July 3rd, 2019, the records would have either been
8 denied or made available to him with -- with -- with
9 statements there- -- thereof.

10 Q Let's talk about the letter in Exhibit B, specifically how
11 you responded to item 4 of -- of the June 17th request.

12 A Uh-huh (affirmative).

13 Q In -- in this request -- well, based on looking at this
14 letter, do you recall what he was requesting? I mean,
15 are you -- you -- you see it, but what is your general
16 explanation of -- of the nature of that request?

17 A Request number 4?

18 Q Yes, ma'am.

19 A That he was asking for all public records, including but not
20 limited to, communications directing any attorney to take
21 action on behalf of the township regarding St. Ambrose, Kirk
22 Jones, during the December 1st, 2019, to what would have --
23 on -- on his request been June 17th, 2020.

24 Q Do you agree that this would include letters from township
25 board members to any attorneys that were responsive to that

1 request?

2 **A What I believe he's asking for is all public records**
3 **directing any attorney, so it would be any -- in my -- in my**
4 **opinion at that time it would have been to any of the**
5 **township officials; supervisor, clerk, treasurer, zoning**
6 **administrator, any planning commission, joint planning**
7 **commission, --**

8 Q Okay.

9 **A -- any ZBA, you know.**

10 Q So if we're not -- and I know that there's an ex- --
11 exception that is being claimed, and we'll discuss that in
12 more detail. But if we're just categorizing or throwing out
13 a few examples of these types of public records, if, for
14 example, there was a letter from the township supervisor to
15 an attorney directing them to take an action on behalf of
16 the township regarding St. Ambrose that was written between
17 December fir- -- 1st, 2019, and June 17th, 2020, do you
18 agree that that would be a public record responsive to this
19 request?

20 **A It would be a public record that I believe would have to be**
21 **reviewed in response for this request.**

22 Q Okay. And I'm not -- again, I'll -- I'll get to the
23 exception and -- and whether or not it needs to be
24 disclosed. But I -- I -- I -- I just want to speak
25 specifically about whether that would be a public record

1 that would be responsive to what's requested in the -- in
2 item 4.

3 **A** **And I'm -- I'm just trying to understand your questions. So**
4 **when you say "responsive," what do you mean by "responsive"?**
5 **Because I -- I -- I -- I feel that I might have a different**
6 **definition of "responsive."**

7 **Q** Thank you for bringing that up. So -- and again, I --
8 I'll -- so I'm saying just because an item -- if -- if we
9 say that an item that's responsive may still be withheld
10 from disclosure because an exception or a -- there's some
11 sort of exemption within the FOIA Act that protects that
12 item from disclosure, then I'm talking about a public
13 record, not getting into the exception, but that would be
14 responsive just generally to this request. Does that make
15 sense?

16 **A** **Well, what I -- I guess what I believe that you're asking me**
17 **is if it would be a document that the FOIA coordinator would**
18 **have asked for and received from a township official. Yes.**

19 **Q** And then with that document, then the FOIA coordinator would
20 make a decision as to whether or not to disclose that
21 document, redact a portion of the document or withhold the
22 document pursuant to some exemption; is that correct?

23 **A** **Yes.**

24 **Q** So would you also agree, then, that an e-mail during the
25 similar time frame from a township board member directing

1 any attorney to take an action regarding St. Ambrose would
2 also be a record that would come to the Homestead Township
3 FOIA coordinator and then would have to face a similar
4 determination as to whether or not it should be disclosed?

5 **A Yes.**

6 **Q** Your response here seems to indicate that there are such
7 records that are -- that are going to be withheld from
8 disclosure. As we sit here today, do you agree that there
9 are communications -- and again, I don't want to get into
10 the specifics of the communications. But do you agree that
11 there are such records that were withheld from this -- from
12 disclosure to this request?

13 MR. WIERDA: Objection; form. You can answer.

14 **A I'm just trying to -- I -- I -- I don't recall anything**
15 **specific that -- that was withheld, but I -- I would say**
16 **that if there -- if there was a communication that was from**
17 **a township official discussing a legal matter with an**
18 **attorney it would have been -- it would have -- it -- it**
19 **would not have been released. But I do- -- I don't**
20 **recall -- sitting here today I don't recall any e-mail in --**
21 **specifically.**

22 **Q** I want to clarify your answer. So are you saying that --
23 without recalling the specifics of the actual e-mail, are
24 you saying that -- that there was not a single e-mail or
25 letter that's responsive to this request at the time?

1 **A** **No, that -- I'm -- I'm not saying that. I'm saying I don't**
2 **recall.**

3 **Q** Do you agree that if there were and they were withheld,
4 those specific e-mails or letters are not described in
5 this -- in this paragraph that we're looking at here ending
6 with "discussions with township attorney that fall under
7 this category will not be disclosed through your request"?

8 **A** **I would -- I would agree to that, but I also would just**
9 **state that this -- this letter -- yeah, I'll -- I'll agree**
10 **to that.**

11 **Q** Was the township involved in any litigation with Mr. Jones
12 between December 1st, 2019, and June 17th, 2020?

13 **A** **Yes.**

14 **Q** Did the township employ attorneys to assist in that
15 litigation?

16 **A** **Yes.**

17 **Q** And what attorneys were employed by the township during that
18 time frame?

19 **A** **During that time frame Tom Grier from Running Wise & Ford,**
20 **and William Fahey and Chris Patterson from I think it's**
21 **Fahey Schwartz (sic) -- I don't know their exact title**
22 **sitting here today.**

23 **Q** When -- when did each -- so Tom Grier, he's the township
24 attorney?

25 **A** **Yes, he is.**

1 Q And Fahey Schultz, how did they -- just generally how did
2 they -- when did they get hired and how did they get hired
3 in -- in this litigation?

4 **A At the township's request we -- they are a what recommended**
5 **attorney that deals specifically with zoning ordinance**
6 **violations and other township ordinance violations. And**
7 **through different e-mail and communications from what,**
8 **general communications that MTA sends out to all townships,**
9 **their name was presented to the township.**

10 Q And so do you know approximately the -- the ti- -- the date
11 that they were hired?

12 **A I -- I don't -- I don't recall what the -- the date was, no.**

13 Q Would it be in the early spring of 2020? Does that sound
14 approximately correct?

15 **A Yeah, that's possible. I -- I just don't recall.**

16 Q Okay. Did you ever personally communicate via e-mail from
17 December 1st, 2019, to June 17th, 2020, with any of the
18 attorneys that you've just listed?

19 **A I be- -- I believe that I did, yes.**

20 Q Okay. To your knowledge did any other township board member
21 communicate via e-mail to any of the attorneys that you've
22 just listed?

23 **A I don't have any personal knowledge that they did.**

24 Q Do you agree that in response to what's requested in item 4,
25 the FOIA coordinator should have reviewed all such

1 communications and then determined whether or not they were
2 subject to disclosure?

3 **A Yes.**

4 **Q** So again, any e-mails that you would have sent to one of the
5 attorneys that you've mentioned, that would be an e-mail
6 that you as a FOIA coordinator would have to look at and
7 then determine whether or not it contained privileged
8 information and whether or not you were going to disclose it
9 pursuant to that request?

10 **A If that e-mail existed on July 3rd, yes.**

11 **Q** And again, we have at least reason to believe that -- that
12 some e-mails like that existed because you've indicated that
13 you did communicate via e-mail with these attorneys during
14 that time frame?

15 **A There -- there's a possibility that they could have existed**
16 **on July 3rd, yes.**

17 **Q** And if they did exist on Jul- -- July 3rd, then they should
18 have been described in this letter and explained
19 specifically which portion of or the entirety of them that
20 were being withheld?

21 **A I don't believe on this letter that was my intention.**
22 **Again, the -- the intention of the July 3rd was just a**
23 **communication. I believe there was another letter later on**
24 **that -- that would have -- that if any of those e-mails**
25 **existed that they -- they should have been disclosed.**

1 Q Let's -- we'll just move to that next letter because I think
2 a lot of the substance is similar, so that way we can be
3 speaking about the same thing. But I -- I want to first
4 just refer to your ex- -- your notice of extension here
5 on -- on page 2 of -- of Exhibit B. That extension cites to
6 section 5, 6 of the Freedom of Information Act. Do you know
7 what that section says?

8 **A I don't have that Act in front of me, so I don't recall.**

9 Q If I were to tell you that that exception applies to the
10 individual designated in section 6 as responsible for the
11 denial of the request who shall sign the written notice of
12 denial, do you have any reason to dispute that that's an
13 accurate cite to that specific section of the Freedom of
14 Information Act reque- -- or Freedom of Information Act?

15 **A I'm just struggling to understand your question so that I**
16 **can answer it appropriately. So can -- I don't know what**
17 **you're speaking of exactly, so maybe you can ask that again**
18 **so I can --**

19 Q I guess my question is this se- -- subsection does not apply
20 to an extension under the Freedom of Information Act
21 request. So could you explain why you included it in this
22 letter?

23 **A What -- what part are you -- on the July 15th letter? What**
24 **are -- I -- I don't -- is that what you're asking me?**

25 Q No, on -- on your extension that was issued on July 3rd on

1 the second --

2 **A I thought we --**

3 **Q -- page.**

4 **A I thought we were on Exhibit B.**

5 **Q Yes, ma'am.**

6 **A Or C, I mean.**

7 **Q Nope, still on B. I'm sorry if I -- if I was being**
8 **confusing.**

9 **A Okay. So you're asking me about the extension?**

10 **Q I'm asking you about why you cited subsection 5, 6 of the**
11 **Freedom of Information Act.**

12 **A And it -- and are you telling me that that -- that**
13 **subsection is the extension?**

14 **Q Well, you said you don't know what that subsection is, and**
15 **I'm telling you that it has nothing to do with extensions,**
16 **so I'm asking why you cited it.**

17 **A Because I -- I -- I -- my answer would be on that day I**
18 **believed that I was responding appropriately.**

19 **Q Let's move to Exhibit C. You said that you did send a**
20 **second letter to Mr. Jones regarding his June 17th FOIA?**

21 **A Yes.**

22 **Q And I think you've mentioned now that it was a July 15th**
23 **letter, so it -- would you have any reason to believe that**
24 **that wasn't the date of the letter?**

25 **A Well, I'm looking at your exhibit and it says July 15th, so**

1 **I believe that was July 15th.**

2 **Q** All right. So looking at Exhibit C, do you recognize that
3 document?

4 **A** **Yes.**

5 **Q** And generally it could be des- -- it'd be fair to describe
6 it as -- as the July 15th final response to Mr. Jones' June
7 17th FOIA request?

8 **A** **Well, I wouldn't agree that it would be the final. I mean,**
9 **if he had any -- any reason to -- to address the township**
10 **again, that there -- there was an opportunity for a final**
11 **response.**

12 **Q** Ca- -- can you explain why you're saying that?

13 **A** **Because my belief is if -- if I send a FOIA -- as a public**
14 **official if I send out a FOIA response and the requester**
15 **doesn't agree with it, if there's something denied, that**
16 **they have an opportunity to respond to the head of the**
17 **public body, if they so wish to, and ask for an appeal**
18 **and -- and ask for the records. And --**

19 **Q** Right.

20 **A** **-- it would be at the board's decision, then, to make it a**
21 **final response.**

22 **Q** Isn't it true that a -- that a person can only appeal a
23 final determination by a public body with regards to a
24 Freedom of Information Act request?

25 MR. WIERDA: I'm just going to object again to the

1 extent it calls for a legal conclusion. You can answer if
2 you can.

3 **A I -- I don't believe that I can answer that question.**

4 **Q** So based on your training and experience that you've
5 described, you don't know whether or not the Exhibit C is
6 considered a final determination by Homestead Township with
7 regards to Mr. Jones' June 17th, 2020, FOIA request?

8 **A** You're going to have to ask that question again, be- --
9 because I -- I -- I -- I feel that the way you're asking me,
10 it -- it's not making sense to me what I think you're asking
11 and how you're asking it. So maybe you could ask that again
12 so I can better understand what you're asking me.

13 **Q** You stated that you could not answer the -- the previous
14 question; correct?

15 **A** Well, your -- the previous question, I'm -- I'm -- I'm
16 saying that I don't understand it, so I don't feel that I
17 can answer it because I don't understand -- I don't
18 understand what you're asking because I feel like you're
19 asking me two things that have two different answers. So
20 I'm just wondering --

21 **Q** You're --

22 **A** But maybe I'm just not understanding how you're asking your
23 question, but I -- I'm struggling to understand some of your
24 questions, and I don't know if it's the way you're asking
25 them or -- or if -- if through this -- this -- this -- this

1 **Zoom process that something's lost in -- in -- in how you're**
2 **asking.**

3 Q All right. Thank you. I'll --

4 A **So --**

5 Q I'll back up. So you've indicated that you do not believe
6 that this July 15th, 2020, response in Exhibit C was a final
7 determination because it was still subject to an appeal; is
8 that right?

9 A **That's what I believed.**

10 Q And so my next question is so based on your training and
11 experience that you've previously described, this Exhibit C
12 is not a final determination by the Homestead Township with
13 regards to Mr. Kir- -- Mi- -- Mr. Jones' June 17th, 2020,
14 Freedom of Information Act request?

15 A **I don't believe that the July 15th, 2020, letter can be a**
16 **final determination letter.**

17 Q Can you cite to any portion of the Freedom of Information
18 Act that would support your position?

19 A **No. As we sit here today, I cannot.**

20 Q Okay. That is your signature on the second page of that
21 exhibit?

22 A **I don't see a signature on this, but it is my name.**

23 Q It's like a digital -- does it appear to be the document
24 that you sent to Mr. Jones?

25 A **It does appear -- from what I can remember, yes.**

1 **MR. STIG-NIELSEN: And I -- I'd move to ad- --**
2 **admit it, Exhibit C.**

3 Q So with regard to -- let's move back to what we were talking
4 about with regards to the determination for se- -- or item 4
5 of Mr. Jones' request. So we're looking at the bottom of
6 the first page of Exhibit C and the top of the second page.
7 Do you agree that this response categorically withholds all
8 communications containing discussions with township
9 attorneys?

10 MR. WIERDA: Objection; form.

11 **A I don't have any original response to me, so I -- I don't**
12 **believe that I can answer that question, not the way you**
13 **asked me. I don't -- I don't believe that I can.**

14 Q So with regards to item 4, as we've discussed, which is item
15 4 of Exhibit A, which has been admitted -- or which you --
16 which you acknowledge that you recognize, and which is also
17 discussed in Exhibit B of your response. So Exhibit C
18 contains the paragraph at the bottom of it that describes
19 why there are public records that are being withheld from
20 disclosure. And my question is do you agree that this
21 paragraph categorically withholds all communications
22 containing discussions with the township attorney returning
23 St. Ambrose during the requested time frame?

24 MR. WIERDA: Objection; form. You can answer.

25 **A I -- I guess without seeing an -- an actual copy of what was**

1 withheld, I -- I don't believe that -- I don't believe I can
2 answer the question. I just -- I don't have the information
3 today to answer that question.

4 Q Well, let me ask you this: Does this paragraph tell Mr.
5 Jones specifically what items are being withheld?

6 A As I read through this letter, there -- there is information
7 that -- yeah, I -- I -- it does not lay out that -- that
8 there's an e-mail that's disclo- -- or omitted or a letter.
9 There's -- there -- there are no documents that are made
10 reference to specifically.

11 Q Okay. And do you agree that, then, the only person that
12 would know whether or not any documents were withheld is you
13 because you wrote this letter?

14 A On that date, if there were letters that were presented to
15 me that -- that I felt that -- that were to be withheld,
16 then yes; then -- then that would have been -- that would
17 have been for me to know that on that -- that date, yes.

18 Q What about your own e-mails to the attorneys that we
19 discussed previously?

20 A On this date, if those e-mails still existed, it -- that's
21 possible that those could have been part of it. But I do
22 know as -- as -- depending on -- on the nature of -- of
23 e-mails or what e-mails were sent, I wasn't in the -- I -- I
24 was not in the habit as a treasurer of keeping e-mails.

25 Q So is your testimony that, then, these e-mails didn't exist

1 or that they possibly could have existed but you just can't
2 remember now?

3 **A My -- I would answer that they may have existed, but I don't**
4 **recall.**

5 Q Did you -- can you tell me all the people that you spoke to
6 regarding this response -- without talking about what you
7 talked about specifically, but regarding this June 15 -- or
8 July 15th, 2020, response, who did you speak to prior to
9 issuing it?

10 **A Who did I speak to specifically about this response?**

11 Q Yes, ma'am.

12 **A I don't -- I don't recall.**

13 Q Would you have spoken to the township supervisor?

14 **A About this letter? I don't recall.**

15 Q Would you have reached out to these individuals to obtain
16 these communications that are discussed in item 4 prior to
17 issuing this response?

18 **A Prior to issuing this response I did ask township officials**
19 **and commission members if they had any documents that fell**
20 **into this request.**

21 Q And how many did you get?

22 **A I don't recall.**

23 Q So you don't recall how many of your own e-mails were
24 responsive and you don't recall how many documents you
25 received that were responsive to this item? Is that what

1 I'm hearing?

2 **A Yeah. I don't recall.**

3 Q There were at least some documents that were provided to you
4 or that you discovered that were responsive to this item
5 that were then withheld because of an exemption?

6 **A I don't know if that's a question or a statement.**

7 Q It's a question.

8 **A Okay. So could you ask that again?**

9 Q So what I'm hearing you're saying is that you reached out to
10 the township board members and that you yourself had
11 communicated via e-mail with your attorneys, so there were
12 documents that were provided to you either by other board
13 members, or that were in your possession because you had
14 been the author of those e-mails, that were not disclosed
15 pursuant to the request under item 4; is that true?

16 MR. WIERDA: Objection; form and foundation.

17 **A Said -- I -- I be- -- I believe you're making a statement
18 and asking me to agree to your statement. So I'm just
19 asking if you could ask a quest- --**

20 Q I am making a statement and asking you to agree to the
21 statement. Do you agree?

22 **A I agree that you're making a statement and asking me to
23 agree to your statement.**

24 Q Ms. Mallon, --

25 **A Yes.**

1 Q -- you withheld documents in response to item 4 from your
2 response to Mr. Jones?

3 MR. WIERDA: Objection; form and foundation again.

4 Q Ma'am, your -- your attorney has objected as to the form of
5 the question but he has not instructed you not to answer the
6 question.

7 A I -- I'm -- I'm going to say again I -- I -- I believe
8 you're making a statement to me and not asking me a
9 question.

10 Q Tell me which records you withheld from disclosure to item 4
11 as requested by Mr. Jones.

12 A I don't recall.

13 Q Did you withhold records in response to item 4?

14 A What I -- what I believe happened was that there were
15 records that may have contained information that were not
16 disclosable and those records may have been non-disclosable
17 records.

18 Q So did you withhold records in response to item 4?

19 A I may have.

20 Q And you agree that this paragraph doe- -- or does this
21 paragraph inform Mr. Jones as to each of the records that
22 are withhold -- withheld in response to his request under
23 item 4?

24 A Under item 4, if specific township records were -- would
25 have been or were withheld, I don't see that -- in this

1 **letter identifies specifically each letter or document**
2 **that -- that may have been withheld; that I don't recall**
3 **what those may have been.**

4 Q I just want to jump back up on -- it's sort of on the same
5 subject. But regarding the responses to 1 through 3 at the
6 top of your -- of page 1 of the June 15th, 2020, response,
7 the first sentence indicates that the public records have
8 been redacted according to law. Can you explain what that
9 means in the context of requests 1 through 3?

10 A Well, what I'm reading is that it says,

11 **"As the current acting FOIA coordinator for**
12 **Homestead Township I hereby certify that your records**
13 **for pu- -- your -- your request for public records that**
14 **may have been held by Homestead Township has been**
15 **searched for, reviewed, redacted according to law, and**
16 **copied in the records you seek."**

17 So there was a potential that public records were searched,
18 reviewed, redacted according to law, and then copied and
19 made available as listed in 1, 2 and 3.

20 Q Well, I'm not sure if I understand your meaning about this
21 because your prior letter in Exhibit B states that the
22 records that may be held are being searched for and reviewed
23 and may be redacted, but this letter seems to indicate that
24 the search is concluded and the review has been conducted
25 and the redactions have been made. Do you disagree with

1 that?

2 **A Well --**

3 MR. WIERDA: I'm just going to object on form and
4 foundation grounds again. If there's a specific spot you're
5 referencing, could you just point us to it, Fred? And --
6 and I don't mean to be obstructive, but -- if that's helpful
7 in any way.

8 MR. STIG-NIELSEN: Yes.

9 Q So if we look at your response in Exhibit B, the first
10 paragraph there, it contains a similar certification by you.
11 And it indicates that -- that -- that the records may be
12 held by Homestead Township, and then that that request has
13 been received, logged and currently attended to. Am I -- am
14 I understanding that -- that that's what that statement
15 says?

16 **A It appears to me that the statement looks like it is**
17 **similar, yes.**

18 Q And then in subsection -- or I mean, in -- in Exhibit C
19 the -- the first sentence has -- has been changed slightly
20 and it appears to me to -- to say that the items have
21 actually been redacted. And I guess my question is were
22 there records that were redacted in -- in response to items
23 1, 2 and 3 as indicated by this letter?

24 **A There may have been redactions, yes.**

25 Q Do you agree that this letter -- or does this letter

1 indicate where and which redactions have been made?

2 **A No.**

3 Q So kind of similar to the questions I was asking about of
4 the items requested in -- in -- in item 4, if redactions
5 were made and information was withheld by redaction, that
6 Mr. Jones was not informed of the specifics of those
7 redactions in this letter?

8 **A That appears to be the case.**

9 Q So I want to move to Exhibit D. And you mentioned these
10 Homestead Township FOIA procedures and guidelines. You
11 indicated that they were provided by the Michigan Townships
12 Association. But I would just ask that you look at Exhibit
13 D and -- and -- and tell me if you recognize the document
14 contained in that exhibit.

15 **A I -- I do recognize it.**

16 Q And do you have any -- does this -- do they resemble or do
17 they appear to be an accurate copy of the Homestead Township
18 FOIA procedures and policies as previously described by you?

19 **A It's possible that this copy that I'm looking at is -- is a
20 copy of that record.**

21 Q Do you have any reason to believe that it's -- that it's not
22 that record?

23 **A Only that I had not looked at it and I had not compared it
24 to what's on the website and I'm not the one that made the
25 copy. So --**

1 Q Ma'am, did you -- when you responded to Mr. Jones' June 17th
2 FOIA request, did you provide him with a copy of -- of those
3 policies and guidelines?

4 A I don't recall specifically. The options are to direct a
5 requester to the -- the website for those records or -- or
6 to provide a copy. I don't recall what happened. Sitting
7 here today, I don't recall what happened on that day
8 specifically.

9 Q So looking at page 2 of Exhibit B, what does the last
10 sentence of that exhibit say (inaudible) --

11 A Of Exhibit B?

12 Q Yes, ma'am.

13 A I'm sorry. Li- -- line two of Exhibit B?

14 Q The last sentence of the exhibit.

15 A Oh, last sentence. Okay; okay. So Exhibit B says,
16 "Enclosed please find a copy of the Homestead Township" --
17 yup, I see that it says that. And then when you're
18 referencing Exhibit D, I didn't scan or provide this copy
19 myself personally, so I can only assume, not having compared
20 this with what's online or -- or records at the township,
21 that -- that it is the same.

22 Q When --

23 A It -- it appears that it is, but I -- I didn't make this
24 copy, so --

25 Q Well, would it help you if you looked through it just to --

1 to satisfy you that it is an accurate copy of -- of -- of
2 the --

3 **A Well --**

4 **Q --** procedures and guidelines that you as the FOIA
5 coordinator follow?

6 **A Not -- not necessarily, because I don't know this verbatim**
7 **and I don't have access to the website to compare**
8 **everything. So I can only assume that whoever scanned this**
9 **and provided this copy did so in -- in complete -- so I**
10 **don't know. But I -- I can't go -- I can't compare it to**
11 **anything. I don't have any access to anything to compare it**
12 **to, so -- it appears -- it appears to be similar to and --**
13 **and I can only assume that it is, but I didn't -- I didn't**
14 **make the copy for this exhibit, so --**

15 **Q Well, what -- you -- you helped your -- or you responded on**
16 **behalf of the township to the Interrogatories that were**
17 **served on you in this ca- -- that were served on the**
18 **township in this case?**

19 **A Yes.**

20 **Q And you provided the answers to your attorney who then**
21 **provided them to -- to us?**

22 **A I provided him with some answers, yes.**

23 **Q And you agree that your answers re- -- or did your answers**
24 **reference the township's procedures and -- and -- and**
25 **guidelines?**

1 **A** I don't have those with me, the Int- -- Interrogatories, but
2 to the best of my knowledge and what I can recall today, I
3 believe so.

4 **Q** And do you recall whether you provided a copy of those
5 procedures and guidelines to your attorney when you're -- to
6 help with the -- responding to those Interrogatories?

7 **A** Sitting here today I -- I don't recall if I gave him a copy
8 of these. I -- I don't. I don't recall that. I may have,
9 but I don't recall.

10 **Q** Okay. If I direct your attention to what's been marked as
11 Exhibit H --

12 MR. WIERDA: Karen, our discovery responses were
13 the second to the last exhibit, if that's helpful at all.

14 THE WITNESS: Okay.

15 MR. WIERDA: Was there a spe- --

16 THE WITNESS: Okay.

17 MR. WIERDA: -- -cific one you want to direct her
18 to, Frederik?

19 MR. STIG-NIELSEN: Yeah.

20 **Q** Just -- will you just look through -- there -- there's four
21 pages there. Do you recognize that document?

22 **A** Yes.

23 **Q** And on page 4, is that your signature?

24 **A** Yes.

25 **Q** And it's dated the 19th of January, 2021?

1 **A Yes.**

2 Q And when we're talking about the Interrogatories, this is
3 the document that we're speaking of -- or the -- I mean --
4 sorry -- your Answers to the Interrogatories?

5 **A So these are the an- -- the -- the answers that I agreed to,**
6 **yes.**

7 Q And do you agree that -- does that appear to be an accurate
8 representation of -- of the answers that you provided then?

9 **A I agree that these are the -- the answers that I agreed to.**

10 Q And do you -- looking at Exhibit 1 and Exhibit 2 -- or -- I
11 mean question 1 and question 2, what is the answer
12 referencing with regards to those two questions?

13 **A It appears that -- that you're asking for all written and**
14 **unwritten policies.**

15 Q And what is -- what was the answer that you provided?

16 **A The answer that was provided to you, for 1, Homestead**
17 **Township FOIA procedures and guidelines, and Homestead**
18 **Township public summary of township FOIA procedures and**
19 **guidelines, attached hereto Exhibit A and B.**

20 Q And so if I were to tell you that the exhibit contained in
21 Exhibit -- or that the document contained in Exhibit D is
22 what was provided in response to Interrogatories, is it just
23 because -- that you don't trust me that you won't agree
24 that -- that those are actually the -- the township's
25 procedures and guidelines or -- I'm just trying to

1 understand why --

2 **A** No, I -- I'm -- what -- what you -- what you asked me has
3 everything to do with -- I'm not the person that made this
4 Exhibit D and you're asking me to say specifically that this
5 is exactly what it says it is. And -- and I -- I suppose
6 that had I made it, I could answer that with 100 percent
7 certainty, but because I didn't make that, and not being
8 able to compare the two, I, you know -- that -- that's how
9 I'm answering. It has nothing to do with trust.

10 It -- it has everything to do with the fact that I
11 did not make this copy and all I can do is assume that it is
12 the copy. It doesn't disclose on Exhibit D that it's from
13 your Interrogatories, so there's --

14 **Q** Ma'am --

15 **A** -- nothing on that disclosing that. So -- so that's --
16 that's where I'm at on that.

17 **Q** So the --

18 **A** I didn't make the copy.

19 **Q** So again, does it appear to be the procedures and guidelines
20 that -- that the township maintains?

21 **A** Yeah. I believe that's what I had said previously, that it
22 appears that it is.

23 **Q** And with regards to Mr. Jones' June 17th request with
24 regards to your two responses, I mean, those are also just
25 copies of -- of those responses; right?

1 **A Correct.**

2 Q And so you agree that those appeared to be accurate copies
3 of -- of those documents?

4 **A They appear to be, yes.**

5 Q So in a similar vein, having just provided this information
6 to your attorney back at the end of January, and now looking
7 at it again, I guess leaving aside a -- a healthy dose of
8 skepticism, is there any reason why they would not be the 10
9 pages of procedures and guidelines that are maintained by
10 the township with regards to its duties under the Freedom of
11 Information Act?

12 MR. WIERDA: I -- I'm just going to object on form
13 and foundation. It seems like maybe we're getting hung up
14 here and -- and Frederik, I -- I think -- are you saying you
15 took the exhibit we gave you and you've reattached it here
16 as Exhibit E? And -- and if that's the case, you know, can
17 we go ahead and -- and just move on with whatever the
18 substantive questions are about it?

19 MR. STIG-NIELSEN: I'm trying, Brad, but it is --
20 it's -- it's the same -- I mean, it is what it -- it appears
21 to be. I -- I -- I don't know why --

22 MR. WIERDA: So that --

23 MR. STIG-NIELSEN: -- it's --

24 MR. WIERDA: So make that representation. So I
25 think, Karen, what he's saying is that he's taking the

1 exhibit that we gave him in discovery responses and he's
2 attached it here as Exhibit E. And so we'll take your word
3 for that, Frederik. And -- and can we move on, then, to ask
4 substantive questions about it if we have it?

5 MR. STIG-NIELSEN: And -- and just -- I would just
6 also note that it's also the -- the -- the same document
7 that was also provided in response to Mr. Jones' FOIA
8 request as -- as already mentioned by Ms. Mallon with -- at
9 the end of Exhibit B. So I'll just move on. I guess I
10 hadn't anticipated this being such an issue.

11 Q Do you recall what documents you -- you did ultimately
12 provide to Mr. Jones in response to his request?

13 A I don't recall.

14 Q Okay. So as we sit here today, you can't substantiate the
15 fact that -- that any of the documents -- or let me ask
16 this: Your -- your letter Exhibit C seems to indicate that
17 there were documents that were available?

18 A Yes.

19 Q And did some of those documents contain redactions?

20 A From what I recall, some of those documents did, yes.

21 Q And that would be consistent with what you answered in your
22 Interrogatories that -- that some of the -- the items were
23 redacted?

24 A Yes. It seems that that would be yes. Uh-huh
25 (affirmative).

1 Q Can you tell me why those redactions were made?

2 A What I can tell you is that the copies that were provided
3 that had redactions were copies from previous requests that
4 Mr. Jones had made on similar materials. And at the time,
5 Mary Geetings was the clerk and she had those documents
6 redacted because she believed it was attorney-client
7 privilege. She also believed, because we had an ongoing
8 lawsuit that was in the 85th District Court, that
9 potentially those were documents that had something to do
10 with that, and on July -- the -- that July time frame I
11 agreed with her and that's why those would have been
12 redacted.

13 Q I heard you mentioning that you -- it was because there
14 was -- the documents were potentially responsive in the --
15 the -- dealing with the ongoing litigation; is that -- did I
16 hear you correctly?

17 A Yes.

18 Q And does your letter in Exhibit C indicate that that's the
19 reason for the redactions?

20 A No, it does not.

21 Q And does your letter in Exhibit C indicate that -- that
22 those are, in fact, the type of redactions that are made?

23 A I have to refer to that to see.

24 Q Yes, ma'am.

25 A As -- as far as -- as far as redactions, I don't see that

1 **that says -- no.**

2 Q Do you know why there would have been redactions to only
3 some of the -- sorry. When we're talking about the
4 redactions, we're -- we're talking about redactions that are
5 made to attorney invoices?

6 A **Uh-huh; yes.**

7 Q And do you have any reason why there would have been
8 redactions to some attorney invoices that pertain to Mr.
9 Jones and the township's ongoing litigation, and while other
10 attorney invoices referencing the same conduct wouldn't be
11 redacted?

12 A **The only thing I can answer to that would be that it's**
13 **potential that -- human error or -- or oversight, just**
14 **not -- not catching it.**

15 Q So --

16 A **Nothing malicious was done. If it -- if something was done**
17 **on one page and not on the other, it would have been**
18 **strictly because it was -- not -- not maliciously, just on**
19 **oversight is all I can think of. There was no -- no**
20 **malicious intent to not disclose something. It was all done**
21 **based on the information and knowledge that Mary had or I**
22 **had. Neither one of us claims to be a FOIA expert. It's**
23 **something that comes up very rarely, so human error is**
24 **certainly a factor, but no malicious intent.**

25 Q And just so I can clarify, are you saying that there was no

1 malicious intent in the initial redactions that were made or
2 the fact that half of the recor- --

3 **A** I'm saying -- I'm -- I'm -- I'm saying in -- in the entire
4 process of responding to this FOIA request or any FOIA
5 request there's no malicious intent to withhold any public
6 record from any individual, any requester. And if something
7 was redacted, it was done with the belief that -- that it
8 was appropriate.

9 **Q** Do you agree that -- well, let me ask you this: Does
10 malicious intent -- does that actually -- does that
11 factor -- factor into whether or not a document is
12 wrongfully withheld? I mean, does -- does the reason --
13 does that really matter?

14 **A** Well, I -- I don't know how else to explain what -- what --
15 what I think or believe, so the -- the best thing I think is
16 that -- that if the -- if a public body doesn't disclose
17 something that it should disclose, it's either done in
18 error -- but often that public body is accused -- and I'm
19 not stee- -- speaking specifically on Homestead Township,
20 but I've seen things in the newspaper that it's done so with
21 some type of intent to -- to not be transparent, which I
22 identify as a wrongdoing, a malicious intent.

23 MR. WIERDA: I'm just going to object to --

24 **A** And -- and nothing --

25 MR. WIERDA: -- the line of question, too, to the

1 extent it called for a legal conclusion.

2 Q So I guess, Ms. Mallon, I'm trying to understand -- I
3 understand what you're saying, but I'm trying to understand
4 what you're explaining to me in the context of your response
5 to Mr. Jones with regard to these attorney-client
6 communications.

7 A **The only thing I can tell you, Fred, is that I -- I'm trying**
8 **to answer your question as to why some were -- some -- some**
9 **things were redacted and some things weren't. And -- and**
10 **the only thing I can tell you is that it -- it's potentially**
11 **human error.**

12 Q So as we sit here today, having gone over, you know,
13 these -- the -- the two letters and -- and really ultimately
14 the July 15th, 2020, response to Mr. Jones' June 17th FOIA
15 request, do you agree that there were -- do you agree that
16 that -- that that response on July 15th does not fully
17 comply with your township's duties under the Freedom of
18 Information Act?

19 A **The only way that I can respond to that is that I believe on**
20 **July 15th when -- when that letter was written, that to the**
21 **best of my ability I responded appropriately.**

22 Q In the -- what2:40:28

23 A **If you're pointing out to me that I didn't respond**
24 **appropriately based on FOIA, I understand and agree that**
25 **that's your belief.**

1 Q So us having gone over the -- for example, the -- the
2 timeline that we discussed, you know, you -- you -- you
3 mentioned that there was a general Freedom of Informa- -- or
4 there was a general -- obviously difficulties because of the
5 pandemic. But without being able to point to any executive
6 order, you agree that it -- that that response -- or does
7 that response fall within the normal timelines of a -- of
8 a -- of a requirement on a -- -- on a public body responding
9 to a FOIA request?

10 **A Well, I believe I had said that had this been July 2019,**
11 **that -- that I believe that this -- this would have probably**
12 **fallen outside of the five-day ti- -- response on that first**
13 **one by two days. And during the pandemic, it was a**
14 **different situation and -- and all I know is that we did the**
15 **best that we could do and tried to keep communication going.**
16 **So that -- that's what I know today.**

17 Q And with regards to the redactions that we talked about, was
18 that also an error to not include the specifics about which
19 documents were redacted and -- and the reason for those
20 redactions in the July 15th, 2020, response?

21 **A What I believe I know today about FOIA and how I responded**
22 **to this July 15th, I would agree that each record should**
23 **have probably been disclosed on that. That's what I think I**
24 **know today.**

25 Q And -- and just so we're clear, where -- when you say that,

1 you -- you're talking about the -- with regards to the
2 redactions that were made in response to item 1 as well as
3 the -- the documents that were withheld under the exception
4 pursuant to item 4?

5 **A I'm sorry, Fred. When you ask questions like that, I -- I**
6 **lose what the -- the question is. So --**

7 **Q**And I'm sorry. I'll -- I'll -- let's -- let's -- we'll --
8 we'll -- we'll stop that inquiry. Let's start with the
9 redactions that were made on the -- on the attorney invoices
10 in response to item number 1. Do you know to what I'm
11 referencing?

12 **A I understand; yes.**

13 **Q**With re- -- with regard to those redactions, it sounds like
14 what you're saying is you agree that -- or that -- that that
15 was an error, looking back on it now, that, you know -- that
16 it should have been itemized, what redactions were made, and
17 then the excep- -- and the reason why those redactions were
18 made within the July 15th response?

19 **A Yes, I would agree to that.**

20 **Q**And then moving to item 4 with regards to the public records
21 that, while responsive, may have been precluded by the
22 attorney-client privilege, do you -- I'm -- it sounded like
23 you were saying that -- that -- that -- that you thought
24 that -- that looking back on it that they should have been
25 itemized. But, I guess, do you think that you -- that that

1 was an error as well?

2 **A Well, I -- I -- I believe on -- on 4, if -- if records were**
3 **denied that the -- I -- I believe in -- in -- in what you**
4 **have told me of the FOIA today that any -- any record that**
5 **was in the township's possession on that day, that would**
6 **have been considered a potential public record. If it was**
7 **not disclosed, it should have been listed.**

8 **Q It looks like we may actually end on time. I'll -- just**
9 **want to ask a --**

10 MR. STIG-NIELSEN: Well, I guess, Mr. Wierda, I'll
11 try to -- as many -- obviously as many questions that you
12 have as well, but I may end on time.

13 **Q Ms. Mallon, you mentioned that -- that -- we've talked about**
14 **the executive orders. We've talked about the pandemic.**
15 **Obviously all of us have gone through something we could**
16 **never really imagine in the past year. But I want to go**
17 **back to something you mentioned, which was the township was**
18 **essentially totally shut down for a period of time. Could**
19 **you tell me what that period of time was in 2020?**

20 **A Well, the only thing -- what I -- what I can tell you is**
21 **that the -- the township, up until February 15, 2020 -- so**
22 **from somewhere around March 24th or so- -- thereabout, the**
23 **supervisor, who is a public official in and of itself**
24 **separate from what my responsibilities at the time were at**
25 **the township, had made a decision to close the township**

1 hall, the facilities, to the public. Those facilities were
2 opened up again I believe April -- or I'm sorry -- Saturday,
3 maybe that was the 20th or the 21st of February. That was
4 the first time it was open to the public other than, I
5 think, the firemen, if they had anything I don't know about.
6 But each -- each office of the township is a separate
7 entity. So I can't speak to what the supervisor did.

8 I do- -- I can't speak to the clerk. But I can
9 tell you as the treasurer I was in the office in March only
10 to complete tax collections and then check on mail. And also
11 we came in together, the clerk and I, to disburse checks
12 that had to go out to -- whether invoices or fire pay or
13 other official pay that had to be done. That was done in
14 person, because we had to sign checks together. All
15 meetings have been done remotely.

16 I started working again on July 1st because tax
17 collection began again, and so the office of the treasurer
18 was opened to collect taxes. But I -- I don't recall what
19 the supervisor did. We are not -- we -- we are one
20 township, but each -- each office is independent of the
21 other as far as office hours are concerned and work
22 conducted.

23 Q You mentioned that it was only the activities that were
24 necessary to sustain life that were -- that were being
25 conducted during a period of time. What was -- what was the

1 time frame of -- of that spec- -- I -- I -- I understand
2 that the office has been closed and stuff. I'm just talking
3 about specific township business being conducted. And I'll
4 give you a time frame perhaps to narrow it down. Between
5 March 25th and Mar- -- and May 30th, 2020, what business was
6 being conducted by the township to your knowledge?

7 **A To my knowledge, as a township the fire department of course**
8 **was open. And then the business that the township did, we**
9 **had our monthly regular board meetings that were held**
10 **remotely. And each office conducted business as they saw**
11 **was essential business for the township. And the essential**
12 **business for the treasurer, which is the only business that**
13 **I can speak of, was tax collection. I do know the clerk**
14 **wou- -- had -- oh, I don't believe that she had any type of**
15 **elections in that time frame. So I -- I can't speak to what**
16 **the clerk's office did.**

17 **Q With regard --**

18 **A I -- I can only speak to the treasurer's as far as township**
19 **business.**

20 **Q So is your testimony that you don't have any personal**
21 **knowledge of any other business that was conducted by, for**
22 **example, the -- the township supervisor or the zoning**
23 **administrator during the time period of March 25th and May**
24 **30th of 2020?**

25 **A Is there something specific you're asking me of, Fred?**

1 Q Do you have any knowledge of any activities conducted by
2 those two individuals in that time period?

3 **A And -- and -- I -- and I'm just curious. How does that**
4 **relate to this FOIA request?**

5 Q Ma'am, do you have any knowledge with regards to any
6 activities that were being conducted by the supervisor or
7 the zoning administrator during the time period that you've
8 described or that we've been talking about from March 25th
9 to May 30th, 2020?

10 **A Without -- without knowing a specific date, I do know that**
11 **the supervisor and the zoning administrator did work**
12 **together.**

13 Q And do you know -- well, you know that they worked together.
14 What -- what -- what kind of activities did they conduct in
15 that time frame?

16 **A So I -- I -- I know specifically what you're trying to ask**
17 **me, so it would be more helpful if you just ask me.**

18 Q What -- what activities do you have knowledge of them
19 conducting during the time frame that we've just discussed?

20 **A I believe they did -- probably signed off on some land use.**
21 **They did inspections -- construction inspections. They may**
22 **have done junk violation.**

23 Q And do you know about whether those -- and -- and tho- --
24 that activity, that -- that was between March 25th and May
25 30th of 2020 to your knowledge?

1 A I -- I don't recall specific dates. The -- the supervisor
2 is an entity separate than the treasurer, so I don't know
3 specifically what they may have done, but I -- I know that
4 they did some work together.

5 Q And -- and did any of that work to your knowledge have
6 anything to do with St. Ambrose and Mr. Jones?

7 A Yes, it did.

8 Q And could you describe that a little bit more, please?

9 A Yes. There was a complaint made by a resident that Mr.
10 Jones was building without a site plan or permits. And
11 based on that complaint that came in to the township, the
12 zoning administrator and the supervisor went out for a site
13 inspection based on a land use application that he made.
14 They took measurements of the building that he was building
15 and found it to be in violation of the application that he
16 made. They issued a stop work order on Mr. Jones. And
17 there were threats made to the supervisor and to our zoning
18 administrator for such site visits, so I know that happened.
19 I do know the -- the stop work order was issued and I do
20 know that Mr. Jones continued to work despite the stop work
21 order.

22 Q And -- and all that activity by the township officials that
23 you've just described, that was conducted between the dates
24 of March 25th and May 30th, 2020?

25 A I -- I can only assume so, because there was a shutdown, and

1 I recall that the shutdown -- it happened during a shutdown.
2 But I -- I had no part in that. I don't know whose decision
3 it was made to go out there. I can only tell you that I
4 heard about it in passing from a report, I believe, that the
5 zoning administrator made to the township board. I don't
6 recall when, though.

7 Q And the reason I'm asking these questions, my -- my concern
8 is that it, you know -- the -- the township on one hand is
9 saying that the reason that -- that the -- the FOIA
10 responses were deficient was because of the executive orders
11 and because of the government shutdown and the pandemic, but
12 then I'm hearing about these other activities. And I guess
13 in, you know -- from what you understand, I guess, with that
14 in mind, do you -- are you troubled by -- by that dichotomy?

15 A I -- I'm not troubled by that because, as I told you before,
16 the supervisor has certain duties and his office is
17 independent of the clerk and is -- and the clerk's office is
18 independent of the treasurer. So the supervisor can
19 determine what office hours he wanted to keep and that's up
20 to the supervisor. It has nothing to do with the clerk or
21 the treasurer. So I'm not troubled by that.

22 Q You're not -- so it doesn't bother you that -- that the
23 reason that you couldn't respond timely to Mr. Jones' FOIA
24 request was because of the pandemic, but at the same time
25 the township supervisor was able to go and investigate a

1 land use permit?

2 MR. WIERDA: I'm just going to object that it's
3 been asked and answered I -- I think multiple times at this
4 point in time, you know. You can -- you can answer the
5 question again. I -- I also don't see the relevance to this
6 case, but feel free.

7 **A The only thing that I can say is that -- that I'm not**
8 **troubled by what -- what the supervisor does in a position**
9 **that he's elected to that's independent of the clerk and the**
10 **treasurer.**

11 Q In your opinion, in your understanding of what was meant by
12 these necessary activities to support life, did the
13 supervisor's activities with regard to a land use permit,
14 they fall into that category of what was permitted during
15 the stop wor- -- the -- the stay- --

16 **A I --**

17 Q -- -at-home order or stop-work order or -- sorry -- excuse
18 me -- the -- the shutdown that you've described?

19 **A Fred, --**

20 MR. WIERDA: Objection; calls --

21 **A -- I --**

22 MR. WIERDA: -- calls -- hold on just a minute,
23 Karen.

24 THE WITNESS: Okay.

25 MR. WIERDA: Objection; just calls for a legal

1 conclusion and form and foundation. You can answer.

2 **A Fred, I ca- -- I -- I'm not going to answer on any**
3 **activities that a supervisor decided to do or not do.**
4 **That -- that's not my -- that's not my role, that's not my**
5 **position.**

6 Q But ma'am, I -- I'm just asking because you've mentioned
7 that the reason for the scope of your duties being limited
8 during this time frame was because of the governor's
9 executive orders and because of the pandemic. So I'm just
10 trying to understand what the township's, you know, position
11 was at that time with regard to this, quote, unquote,
12 "activities necessary to sustain life."

13 **A The -- the --**

14 MR. WIERDA: There's no --

15 **A The --**

16 MR. WIERDA: There's no question pending, Karen;
17 nothing to respond to.

18 THE WITNESS: Okay.

19 Q Well, I -- I -- I'm -- I'm sorry. I'm asking about --
20 that's what I'm asking about. And I -- I would just -- I'm
21 asking you to explain why some of these activities could go
22 on in that time frame while others could not.

23 MR. WIERDA: Again I'm going to object on
24 foundation grounds. She's also already said multiple times
25 that the supervisor is a statutory position who has

1 statutory duties that -- that -- that she's not familiar
2 with and doesn't know. So again, the objection would be
3 foundation.

4 Q And Ms. Mallon, you were the -- you -- as you've testified,
5 you were the person that was responsible for the --
6 designated to respond on behalf of the township to the
7 Interrogatories that were submitted by my client; correct?

8 A I -- I guess the -- the way that I would answer it is that
9 those -- those were presented to me and I responded. They
10 were presented to me by our attorney and I responded to
11 them.

12 Q And will you refer back to that Exhibit H, please?

13 A Okay.

14 Q Ms. Mallon, we lost your video.

15 A I know. My battery's running low.

16 Q All right. I'll try to be quick here. So with regards to
17 your responses to questions 3 and 4 of the document -- in
18 the original Interrogatories, are you or are you not relying
19 on the governor's executive order and the -- the
20 stay-at-home restrictions on that as a defense to the -- the
21 allegations that were made with -- in this Complaint?

22 MR. WIERDA: Objection; --

23 A So --

24 MR. WIERDA: -- form and foundation. You can
25 answer.

1 **A** As this pertains specifically to this FOIA request, which
2 this does, I don't see anything in here that this asked for
3 anything about a supervisor's role or activities for the --
4 as it pertains to the FOIA request. What -- what I do know
5 on that date, the -- the -- the clerk's office and the
6 treasurer's office came together only once a month to sign
7 checks.

8 **Q** So just so I'm clear, on behalf of the -- the township,
9 though, are you, you know -- you -- you responded on behalf
10 of the township. So is the -- are you -- are you claiming
11 that the executive order is a reason for the delay in
12 responding? That -- that's the way I read this. Am I
13 reading it correctly?

14 **A** I -- I don't know what you're trying to ask of me, Fred.
15 I -- I really don't. This --

16 **Q** Look --

17 **A** This was -- this was responded to on a FOIA request
18 specifically. So at that time anything that -- that was
19 done specifically for a FOIA request, it involved the
20 clerk's office, which is independent of the supervisor's
21 office, or my position in -- in July was independent of what
22 the supervisor was doing based on what he felt was essential
23 business.

24 **Q** So independent of what the supervisor was doing, in this
25 instance with regards to the questions about the FOIA and

1 the delay that we've discussed and the delay that's laid out
2 in questions 3 and 4 of the Interrogatories, you are -- are
3 you maintaining that -- that the executive order and the
4 pandemic was the reason for the delay?

5 **A As it pertains specifically to the clerk and -- and my role**
6 **as acting FOIA coordinator, it had something to do -- the --**
7 **the -- the executive orders, the pandemic, the -- the deadly**
8 **virus that was going around, the fact that essential**
9 **business was being done once -- once a month, that yes,**
10 **it -- it -- it created a delay in response to a FOIA**
11 **request; all FOIA requests, if any came in.**

12 **Q Do you know how many other FOIA requests came in during**
13 **the -- that time frame?**

14 **A I -- I don't have any knowledge today of that, no.**

15 **Q Do you know how many you responded to in July of 2020?**

16 **A I believe this was the only FOIA request that I responded to**
17 **in July of 2020, but I don't -- I don't know of any other**
18 **off the top of my head.**

19 **Q And there was no -- I guess are you saying that with**
20 **regard -- with -- with regards to the -- the activities**
21 **during the pandemic, are you saying that there was no**
22 **cohesive sort of agreement between the entirety of the board**
23 **as to what was deemed essential and what was not deemed**
24 **essential?**

25 **A I'm not saying that at all.**

1 Q I'm just trying to understand your response with regards to
2 the -- what the township supervisor does is what he does,
3 and what I do is what I do. So that appears to sound
4 like -- that there wasn't really a cohesive understanding of
5 what was essential at -- at -- at that time as -- made by
6 the collective board as a whole.

7 MR. WIERDA: There's -- there's no question,
8 Karen. Just wait for a question.

9 Q Is that true?

10 A So I feel like I have to respond this way, Fred: The
11 supervisor, the clerk and the treasurer are three entities
12 within the township. Each has statutory duties that are
13 independent of each other. They're laid out by law. They
14 don't intermix as far as what they do within their contained
15 office. As a board, the township comes together once a
16 month and has a -- a regular board meeting. It's the first
17 Monday of every month at 6:00 p.m.

18 It has been done remotely since April 2020. And
19 what I do know as the board, the township had decided to
20 shut down the township. The -- the hall itself that's
21 located on Honor Highway, that was closed to the public. It
22 was only opened for tax collection that I know of. I
23 believe the clerk conducted business if there were funerals
24 because she's responsible for our cemeteries. So that
25 happened. But other than that, after the -- the monthly

1 meetings, the clerk and the treasurer came together to sign
2 checks for invoices, payroll. And that's what I -- that's
3 what I recall we did collectively as the township board.
4 The -- it was also mandated that if -- if you came into the
5 hall, you had your mask, maintain social distance. But I
6 can't -- I can't tell the supervisor what to do. That's --
7 that's not -- not my responsibility.

8 I have no authority in doing so. So if there's a
9 question on that part of it, it's probably best asked to
10 the -- the supervisor. I -- I can't -- I can't respond to
11 the activities that he de- -- deemed were essential.

12 MR. STIG-NIELSEN: Thank you, Ms. Mallon. I don't
13 have any further questions.

14 MR. WIERDA: I do not have any questions for you.
15 Thanks very much, Karen.

16 THE WITNESS: All right. Thank you.

17 MR. STIG-NIELSEN: Have a nice day.

18 REPORTER: Okay.

19 MR. WIERDA: Fred, we'll -- we'll take a little
20 bit of a break, see if we can get Mary all set. And I think
21 when you come back it'll probably be just Jordan on this
22 end.

23 MR. STIG-NIELSEN: All right. Sounds good. Good
24 luck with your game.

25 MR. WIERDA: Hey, I appreciate it. You have a

1 good weekend.

2 MR. STIG-NIELSEN: Thank you.

3 MR. WIERDA: All right.

4 REPORTER: We are going off the record at the
5 conclusion of the video deposition of Karen Mallon. The
6 time is 3:04 p.m.

7 (Deposition concluded at 3:04 p.m.)

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