

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 MARY GEETINGS

Taken by the Plaintiff on the 5th day of March, 2021, via Zoom, at 3:00 p.m.

APPEARANCES:

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Via Zoom Video Conference

Friday, March 5, 2021 - 3:13 p.m.

REPORTER: We are on the record via Zoom for the video deposition of Mary Geetings in the matter of Kirk Jones versus Homestead Township. This is a matter currently pending in the 19th Circuit Court for the County of Benzie, case number 20-11404-CZ. Today's date is March 5th, 2021, and the time is approximately 3:14 p.m. I am Emilee Nielsen, court reporter for Network Reporting. Counsel, if you would agree -- or I'm sorry -- if you would put your appearances on the record, I will then swear in the witness.

MR. STIG-NIELSEN: Frederik Stig-Nielsen on behalf of Mr. Jones, the plaintiff.

MR. ASCIONE: Jordan Ascione on behalf of Homestead Township.

REPORTER: Ms. Geeting (sic), can you raise your right hand for me, please?

MS. GEETINGS: Sure.

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

MS. GEETINGS: Yes.

REPORTER: Thank you.

MARY GEETINGS

having been called by the Defendants and sworn:

1

DIRECT EXAMINATION

2 BY MR. STIG-NIELSEN:

3 Q All right. Goo- -- good afternoon, Ms. Geetings.

4 A Yes; uh-huh.

5 Q Could you state your full name and spell your last name for
6 the record?

7 A Mary Lois Geetings, G-e-e-t-i-n-g-s.

8 Q And as I mentioned, my name is Frederik Stig-Nielsen. I --
9 I'm one of the attorneys for Kirk Jones in this FOIA
10 lawsuit. I just have a couple of sort of basic principles
11 that I want to go over just so we're on the same page as we
12 move into my questions. Have you ever been deposed before?

13 A No.

14 Q All right. I have a tendency to mumble and if I mumble,
15 please let me know that I'm doing so so I can make myself
16 more clear and you can understand what I'm saying. Does --
17 does that sound good?

18 A Sounds good.

19 Q And then I also make sometimes very confusing and
20 complicated questions that I don't myself understand. So if
21 I do that, just let me know and I'll try to fix it so that
22 we're on the same page.

23 A Okay.

24 Q And if you don't know the answers to any of my questions, I
25 would ask that you simply state that you don't know instead

1 of guessing unless --

2 **A Okay.**

3 Q -- I specifically ask you to guess.

4 **A Okay.**

5 Q And then if you need a break, just let me know. We'll --
6 and we can make that happen. I just ask that a break
7 happens only after you give your question -- or -- I messed
8 this up the first time -- an- -- give your answer to the
9 prior question and not between a question and an answer.

10 **A Gotcha.**

11 Q Did you receive the packet that I prepared for today's
12 deposition from your attorney?

13 **A Yes; yes.**

14 Q And you have a copy of that in front of you?

15 **A I do.**

16 Q And that would be Exhibits A through J?

17 **A Yup.**

18 Q And do you have any questions before we begin?

19 **A I don't think so.**

20 Q All right. Ms. Geetings, are you currently employed?

21 **A Yes.**

22 Q How are you employed?

23 **A I am employed at Sara Lee Frozen Bakery. I order the**
24 **packaging.**

25 Q And are you a resident of Homestead Township?

1 **A I am.**

2 **Q How long have you lived in Homestead Township?**

3 **A It'll be 29 years in April.**

4 **Q I know that you served on the Homestead Township board in**
5 **the year 2020, but could you just give me a brief history of**
6 **your tenure on that board?**

7 **A I started back in Jan- -- February of 2000. And I served as**
8 **the clerk up until this last election when I didn't run**
9 **again. So I was done November 20th of --**

10 **Q So if I'm understanding you correctly, you were the clerk**
11 **for 20 years?**

12 **A I was.**

13 **Q It's amazing. I did not know that. Okay. And you just**
14 **decided not to seek reelection then at -- at some point?**

15 **A Correct.**

16 **Q And that was quite a year to go out on, I suppose.**

17 **A Right.**

18 **Q While you were a member of the township board, did you ever**
19 **serve as the FOIA coordinator?**

20 **A Yes.**

21 **Q And when did you take over that position?**

22 **A When I became -- on board as clerk.**

23 **Q Okay. So if I'm understanding you correctly, you were the**
24 **FOIA coordinator from -- I guess with one exception, but**
25 **from -- from February of 2020 -- or 2000 to November of**

1 2020?

2 **A Correct.**

3 Q With the exception of when another person took over your --
4 your duties for period of time?

5 **A Correct.**

6 Q And could you just describe that point in time of -- when
7 someone else took over your duties?

8 **A That was during the August primary. It was getting pretty
9 crazy, so she stepped in. And I asked her if she would
10 assist helping me out.**

11 Q And -- and who was that?

12 **A Karen Mallon.**

13 Q And do you know the -- the exact dates from when she took
14 over to when you took back over?

15 **A Not exact dates, no. It was -- not exact dates.**

16 Q I want to talk about the -- the training that you've had
17 with regards to being a FOIA coordinator. And I -- I
18 want -- and when I say "training," I mean all formal and
19 informal, like -- informal being something that a, you
20 know -- potential other board member or friend explains to
21 you versus formal, being MTA courses and other such type of
22 training. Do you -- if -- if you unders- -- do you
23 understand what I mean by that time -- or by that scope of
24 that question?

25 **A I believe so, yes.**

1 Q So can you explain all the training that you've had
2 regarding the Freedom of Information Act in Michigan?

3 **A Pretty much printing off copies from the website and reading**
4 **it. But there was no formal training.**

5 Q Okay. So if I'm understanding you correctly, when you say
6 "there was no formal training" you never attended a course
7 or anything like that where somebody explained to you how
8 the -- the Act worked?

9 **A Correct.**

10 Q And when you say "printing off" information, what were the
11 sources of that information?

12 **A It was probably MTA website, if I remember; Michigan**
13 **Township (sic) Association.**

14 Q Thank you. And -- and the answer to that question about
15 your training, that is both prior to rec- -- to taking
16 your -- your position in 2000 and through the entire
17 duration of you holding that position?

18 **A There was no training prior to me taking that position. It**
19 **was only during the time that I was clerk.**

20 Q Now, I know that -- that you had a little bit of uncertainty
21 about the specifics of the dates that you were in -- that in
22 2- -- in 2020 that you were the FOIA coordinator. But if --
23 if I referred to Mr. Jones' March 25th and April 23rd FOIA
24 requests, were you the FOIA coordinator during the --
25 during -- when those requests were submitted?

1 **A Yes.**

2 **Q** And then I believe there was a third request in mid-June.
3 Other than sending -- or -- or -- I mean, I guess did you
4 respond to that third request?

5 **A I did not.**

6 **Q** Okay. So -- so for the purposes of today that your actual
7 ac- -- actions with regards to Mr. Jones in this lawsuit,
8 they would be limited to the March 25th and April 23rd, --

9 **A Correct.**

10 **Q** -- FOIA requests?

11 **A Yeah; yes. I -- I'm -- in thinking back on June, I may have**
12 **responded that we received it, but I don't -- I did not**
13 **follow through with that. Karen took over at that point for**
14 **me.**

15 **Q** Okay. So you --

16 **A** So I remember -- I think I did follow through with him that
17 it had been received.

18 **A** Just generally as we sit here today, when you were the FOIA
19 coordinator what did you -- how did you understand your
20 duties upon receiving a request from -- from an individual
21 for information?

22 **A** That I was to respond within five business days; that I had
23 to provide information that they were asking, if I had it in
24 my hand. If I needed to ask for an extension, that I had to
25 do so in writing, and I could ask for a ten-day extension.

1 **And that I was to provide to him any information -- or**
2 **she -- or whoever, information that they were asking for as**
3 **long as I had it in my possession.**

4 Q And you mentioned that you had a duty -- or that you --
5 you -- you had to respond within five days. Do you recall
6 what the requirements were for that initial response that
7 would be sent?

8 A **So are you referring to a particular one? I mean, I had a**
9 **lot of FOIA requests. I -- I guess I'm not sure of what**
10 **you're asking (inaudible).**

11 Q Yes, ma'am. Thank you for -- for asking for clarification.
12 I am not referring to a specific one. I'm just referring to
13 sort of your general duties as the FOIA coordinator. You
14 described having to -- that one of the duties was to respond
15 within five days, and I'm wondering if you can tell me as we
16 sit here today what that response required within five days
17 necessarily needed to include to satisfy the requirements of
18 the Freedom of Information Act.

19 A **It needed to include that I had received it, that it would**
20 **be reviewed, and that I would process the information and**
21 **then get it back to them (inaudible).**

22 Q Do you know -- so that being your understanding of it, can
23 you cite to the portion of the Freedom of Information Act
24 that sets forth those requirements?

25 A **I pulled out the Freedom of Information Act quite often just**

1 **as a resource. So no, I can't cite it off the top of my**
2 **head. I'd have to pull it out and review it, is what --**
3 **normally what I did.**

4 Q Okay. If I were to -- to tell you that within that five
5 days the -- the -- the Freedom of Information Act requires
6 you to send a written correspondence that does one of four
7 things, --

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

9 Q -- does that jar your memory?

10 **A Yeah; yeah.**

11 Q And I'm going to -- I just want to go over those four things
12 and then see if we're -- if we're talking about the same --
13 the same four requirements.

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

15 Q So is one of those four options that you would let the
16 person know that you were granting the request?

17 **A Granting, yes.**

18 Q And then the second of those four options would be that you
19 would le- -- issue a written response denying the request?

20 **A If that was the case, yes.**

21 Q And then third option would be that you would issue a
22 written response telling the individual that you grant the
23 request in part and then that you were also giving a notice
24 that you were denying the request in part?

25 **A If that was the case, yes.**

1 Q And then the last option for that first letter that you send
2 within the five days is issuing a notice extending for not
3 more than ten business days, the period during which the
4 public body would respond?

5 **A Correct.**

6 Q And does that all sound correct?

7 **A Yes; yup.**

8 Q Do you recall whether or not the Freedom of Information Act
9 allows the public body to issue more than one extension?

10 **A It does -- it does not on -- on this -- on a certain FOIA**
11 **request. I think it's just one extension, if I remember**
12 **correctly.**

13 Q And then with regards to the -- the requirements for issuing
14 a notice of extension, are you familiar with -- with the
15 requirements of what a notice needs to contain to satisfy
16 the Act?

17 **A I believe it -- yes, I believe that you have to send notice**
18 **of the FOIA literature that the township has, the reason for**
19 **the extension -- trying to think of them right now.**

20 Q What about whether or not you need to give a date as to when
21 the -- the person will -- you can extend up for -- up to ten
22 days, but do you know whether or not you're supposed to give
23 a specific date as to when the production will occur?

24 **A I do not.**

25 Q All right. Well, let's move into the -- the more specifics.

1 That was sort of obviously very general. So during the time
2 that was applicable when you were acting as -- as the FOIA
3 coordinator, how many Freedom of Information Act's requests
4 did you receive from Kirk Jones between March 25th and May
5 30th of 2020?

6 **A I believe there was three of them and one nonverbal**
7 **request -- not a -- a nonformal request, I should say. I**
8 **believe there was three of them.**

9 **Q All right. Did you receive --**

10 **A When did (inaudible) March through --**

11 **Q March through May 30th.**

12 **A Oh. I believe there was three.**

13 **Q Did you receive a FOIA request on March 25th, 2020, from**
14 **Kirk Jones?**

15 **A Yes.**

16 **Q Would you, in your packet -- well, actually do you re- -- do**
17 **you recall whether you received that request via e-mail or**
18 **via USPS mail?**

19 **A I believe it was e-mail.**

20 **Q If I showed you that request do you think you'd recognize**
21 **it?**

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

23 **Q All right. Well, I would like to -- I'm going to just share**
24 **my screen here, if I can do this right.**

25 (Counsel shares document via video)

1 Q All right. Are -- I know you have the packet in front of
2 you, but I also have a habit of scrolling on this nervously,
3 so I'm sorry if I start bouncing around. Just let me know
4 if that's distracting. I'm going to move -- look at Exhibit
5 A of the packet.

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

7 Q And I would just ask that you look at the document that is
8 contained in there, and then just let me know when you're
9 ready to talk about it.

10 **A Yes, I have it. Go ahead.**

11 Q Okay. Do you recognize that document?

12 **A I do. Uh-huh (affirmative).**

13 Q And without getting into the specifics of what it says,
14 could you just generally describe what it -- what it appears
15 to be?

16 **A It is a FOIA request from Kirk Jones for legal fees, dated
17 March 25th.**

18 Q And --

19 **A January 1st through March 25th, legal fees.**

20 Q And that does appear to be the same FOIA request that we
21 were just talking about a moment ago that was sent to you
22 on -- on that date?

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

24 Q And on the -- at the top of that, there's some e-mails -- or
25 some e-mail addresses. And do you recognize those e-mail

1 addresses?

2 **A I didn't recognize -- I don't recognize yours, but I do**
3 **recognize Kirk's and myself's, yes.**

4 **Q** Okay. And the third one, it's -- it's the -- is -- the
5 third one that says Jesse Williams, that's the one you're --

6 **A Yup.**

7 **Q** -- referring to as mine?

8 **A Right.**

9 **Q** So when you received this request, could you describe what
10 action you took?

11 **A I responded to him, and there's an e-mail attached here,**
12 **that I had received it. And I don't know if you can go to**
13 **the next one.**

14 **Q** Yeah. Okay. Do you -- so you're -- when you're referring
15 to the attachment, you're referring to the next exhibit?

16 **A Yes.**

17 **Q** All right. So let's -- we'll move to Exhibit B then.

18 (Counsel shares document via video)

19 **Q** Exhibit B you have in front of you. I have it on the
20 screen. Just tell me -- it sounds like you do recognize
21 that document as well?

22 **A I do, yes.**

23 **Q** And is that the response that you're referring to that you
24 sent to Kirk?

25 **A It was. And it was through e-mail. It wasn't through US**

1 **Post Office. But yes, this is the e-mail that I responded**
2 **back to Kirk with.**

3 Q And -- and that's your e-mail address and then "To: Kirk
4 Jones" and then there's a third cc to Jesse Williams?

5 A **I didn't cc you on it. It was just sent to Kirk.**

6 Q Okay. And what is the date of that e-mail?

7 A **It is March 26th.**

8 Q And -- and that appears to reflect the entirety of that
9 initial response that you sent to Kirk?

10 A **That is it.**

11 Q Now, look -- let's look a little closer at the -- the
12 content of that response. In the context of the parameters
13 that we discussed about the guidelines for a public body
14 when responding to a -- a FOIA request, could you just
15 describe how you view this document?

16 A **It did not follow the guidelines and it did not follow the**
17 **guidelines 'cause this is when COVID had hit and we were**
18 **closing up the doors based on the governor's orders.**

19 Q Based on those guidelines that we discussed -- and when
20 we're talking about the guidelines, we're talking about
21 that -- that initial five-day response; is that -- am I
22 understanding you correctly?

23 A **Correct.**

24 Q That -- your first sentence in this says, "As Homestead
25 Township's FOIA coordinator, this e-mail is to inform you

1 that your FOIA request has been logged." Even if it wasn't
2 for the pandemic, do you think that that statement in and of
3 itself satisfies the requirements of the Freedom of
4 Information Act?

5 **A That first -- it re- -- it resolves some of it, I recognize**
6 **that it was received, but that's all that it does.**

7 Q So -- so we -- we can agree that -- that -- that this
8 document -- or I'm -- ask do you agree that this document,
9 it doesn't satisfy any of those first three prongs that
10 we -- that we discussed; granting, denying, or granting in
11 part and denying in part?

12 **A I'll agree.**

13 Q And then perhaps the more difficult question is whether or
14 not the -- this document falls under the -- the fourth
15 prong, which is an exception. And I -- I guess I would ask
16 your opinion as to whether or not you believe that the time
17 that -- or extension. I said "exception" -- at the time
18 that you issued this, that this was in compliance with
19 the -- the requirements for issuing a notice of extension.

20 **A I would say no.**

21 Q And you did not believe that at the time and you also don't
22 believe it now, or you just don't believe it now?

23 **A It was issued because of the governor's orders. It was --**
24 **it was presented this way because of the executive orders**
25 **that came out. If it had not been for the executive orders,**

1 **it would not have been issued this way. So --**

2 **Q** Did --

3 **A** **-- it does not meet the requirements; correct.**

4 **Q** Did you speak to anyone about this FOIA request prior to
5 issuing this e-mail?

6 **A** **No.**

7 **Q** And I should have said "about this FOIA request," but --

8 **A** **No.**

9 **Q** Okay. And your -- this e-mail in Exhibit B refers to
10 Executive Order 2020-21.

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

12 **Q** To your knowledge was that the first of the -- of the
13 so-called stay-at-home orders that was issued?

14 **A** **I believe it was.**

15 **Q** And to your knowledge, does that order speak specifically to
16 a public body's duties under the Freedom of Information Act?

17 **A** **I don't know.**

18 **Q** How did you learn about this executive order?

19 **A** **I believe this came through MTA.**

20 **Q** And when you say it came through MTA, could you describe how
21 that occurred?

22 **A** **When you're -- when you're a township clerk, they'll often
23 send notices of things like this. There were so many**

24 **notices through MTA that were -- were dealt to the clerks.**

25 **Q** When you say "so many notices," do you mean in general or

1 specifically are you referring to during the -- the -- the
2 pandemic?

3 **A More so during the pandemic.**

4 Q Okay. Do you know -- or did you respond in a similar
5 fashion to any other FOIA requests in March or April of
6 2020?

7 **A I had one other request.**

8 Q And did you respond in the same way?

9 **A I did.**

10 Q Now, were you ever made aware by MTA of any other executive
11 orders that specifically pertained to the township's duties
12 under the Freedom of Information Act during the pandemic?

13 **A There were a lot of things that were issued. Do I remember**
14 **particularly? There could have been, but I don't remember,**
15 **no.**

16 Q So executive order number 2020-38 titled "Temporary
17 Extensions of Certain FOIA Deadlines to Facilitate COVID-19
18 Emergency Response Efforts" dated April 5th, 2020, does that
19 ring a bell?

20 **A No.**

21 Q And so if you're not aware of that particular order, if I'm
22 understanding you correctly, there were no other orders that
23 you can recall that specifically pertain to the Homestead
24 Township's duties under the FOIA during the pandemic?

25 **A No.**

1 Q Do you have knowledge of any law or order or court decision
2 that in any way amended the township's duties to respond to
3 Freedom of Information Act requests during March and April
4 of 2020?

5 **A I do not.**

6 Q In this e-mail you used the word -- I think it's a
7 autocorrect, but it say- -- it says "banned," but it -- you
8 said "ban" to describe the timeline in which the FOIA
9 request will be completed. And can you just explain what
10 you meant by that sentence?

11 **A It should be "ban," b-a-n, not "banned." And, yeah, once
12 she had lifted the executive order, then I would grant his
13 FOIA request.**

14 Q And at that point in time did you have any knowledge as to
15 when that order would be lifted?

16 **A I did not.**

17 Q So you -- would it be fair to characterize that last
18 sentence -- the time frame given in that last sentence as
19 indeterminate?

20 **A Yes.**

21 Q And this may sound silly, but I have to just ask so I can
22 cross my T's here. In looking at this exhibit, does it
23 state that the township is extending for not more than ten
24 business days the period by which the township would
25 respond?

1 **A** Does it state that? I'm sorry.

2 **Q** Yeah.

3 **A** (Inaudible)

4 **Q** Yes. Doe- -- does it --

5 **A** It does not.

6 **Q** -- state --

7 **A** It does not.

8 **Q** And in looking at that, do you disagree -- or in -- having
9 said that it -- that -- that it has an indeterminate time,
10 do you agree that -- that it -- it fails to state the date
11 specifically by which the response will be complied with?

12 **A** I agree.

13 **Q** And I said "response," but I meant "request."

14 **A** "Request." I agree.

15 **Q** During March and April of 2020, did you have communications
16 with anyone at MT- -- MTA about how to deal with FOIA
17 requests during the pandemic?

18 **A** I did not.

19 **Q** So other than just the -- the -- the updates that you were
20 getting, there was no one providing any sort of guidance or
21 any help during that time?

22 **A** No.

23 **Q** Did you communicate with any other township board members,
24 including Karen Mallon, about what you should do about
25 the -- the response that -- or do about FOIA requests during

1 March and April of 2020?

2 **A I did not.**

3 Q So this request that we looked at in Exhibit A from Kirk,
4 that was for all records for legal fees from January 1,
5 2018, to March 25th, 2020. How does the township receive
6 its -- its invoices or bills from attorneys?

7 **A Through mail. They're all through mail; yes.**

8 Q No -- there are none -- none of them are commu- -- or sent
9 to you via e-mail?

10 **A No.**

11 Q And where are those invoices or bills kept?

12 **A Until they're paid they're in a paid folder. Once they're**
13 **paid, then they're filed with a copy of the check that went**
14 **out to them.**

15 Q During the pandemic can you just -- specifically March
16 and -- I guess end of March and throughout April and May of
17 2020 can you describe your routine or work week as clerk?

18 **A Well, I worked a full job in Traverse City, so I never got**
19 **done there until late. And it was basically listening to**
20 **phone messages, paying the bills, keeping the lights and the**
21 **phone and the heat on.**

22 Q And when you say "never got there," you're talking about the
23 township hall?

24 **A Correct; yup.**

25 Q And I understand you said that you worked full time, but

1 do -- do you know how many days a week you were going to the
2 township hall approximately?

3 **A During that time frame? Probably two days a week. I would**
4 **go in on Tuesdays and then Thursdays is when I would try to**
5 **go again.**

6 Q So if I'm just -- just as a -- I know I told you -- I asked
7 you not to guess, but as an estimate between March -- the
8 end of March and the end of May 2020, would it be fair to
9 approximate that you went to the township hall on somewhere
10 between 16 and 20 occasions?

11 **A Between March and -- what was the --**

12 Q The -- the end of March and the end of May of 2020.

13 **A That would be a good estimate, yeah.**

14 Q And during that -- when you did that, then you would -- one
15 of the things you would do would be to attend to invoices
16 and bills and -- and such?

17 **A Correct.**

18 Q Is there an electronic record of checks that are paid by the
19 township?

20 **A Is -- yeah.**

21 Q And how is that maintained?

22 **A We -- the -- we have a QuickBooks program. I'm -- maybe I'm**
23 **not understanding your question.**

24 Q I think actually you are. And I'll clarify a little bit so
25 that it can make sense. Is there -- the electronic record

1 that's maintained in -- via QuickBooks, is that only
2 maintained at the township or do you -- can you access that
3 remotely?

4 **A It's only at the township.**

5 Q So the treasurer would have to actually go to the township
6 hall to deal with those items?

7 **A Checks had to be signed by both the clerk and the treasurer,**
8 **so both had to be in attendance at some point to pay the**
9 **bills.**

10 Q Can you give me an idea of how you, during these 20 times
11 that -- roughly 20 times that we -- that we are talking
12 about, how did you coordinate -- well, let me back up. I'm
13 sorry. Who was the treasurer during March and April of --
14 March, April and May of 2020?

15 **A Karen Mallon.**

16 Q Okay. So with Ms. Mallon, how did you coordinate signing
17 the checks during those months?

18 **A As we always did, because we didn't work same hours. So I**
19 **would fill out the check, lay them on her desk. Once she**
20 **signed them she'd put them on -- back on my desk and then I**
21 **would put them out -- copy them and put them out in the**
22 **mail.**

23 Q Now, with regards to invoices, and specifically I'm talking
24 about, I guess, the invoices from -- from attorneys that are
25 referenced in -- for legal fees that are referenced by Mr.

1 Jones' request in Exhibit A, what is the process for paying
2 those bills?

3 **A All the bills are only -- they're approved by the township**
4 **board. I should have stated that earlier. So they're paid**
5 **once a month. So all bills have to go in front of the eyes**
6 **of the township board and then they get processed by myself**
7 **and then signed by the treasurer.**

8 Q So you would receive the mail, you'd check it, you'd
9 basically put them -- I think you said you had a folder.
10 And then at the -- the next upcoming meeting you'd bring all
11 those and -- and they're each approved separately?

12 **A Correct.**

13 Q So on March 25th of 2020, any invoice -- or -- or -- well,
14 what day of the week -- I'm sorry. I'm getting confused
15 now. Strike that. I don't even know why people say "strike
16 that." I don't know if anyone strikes anything. On Mar- --
17 or what day of the month did the township board meet
18 generally?

19 **A It was the first Monday of every month.**

20 Q So on March 25th of 2020, any bill that had been received
21 prior to the first Monday of March, would that have been
22 paid already?

23 **A Any bill received prior to March?**

24 Q Well, I guess my question's where -- this request was
25 received at the end of the month.

1 **A Correct.**

2 Q And I'm trying to ascertain what records would have been
3 already -- or what bills would have already been paid at the
4 time that that request was -- was filed. So --

5 **A The --**

6 Q -- obviously what was received in the interim of the first
7 week of March and March 25th, those invoices would be yet
8 unpaid; right?

9 **A Correct.**

10 Q And then anything that was received prior to the first of --
11 Monday of -- of March, that would have been most likely
12 paid?

13 **A Correct; correct.**

14 Q All right. Other than issuing this letter on March 26th,
15 prior to April 22nd of 2020 did you take any other action to
16 respond to Kirk Jones' March 25th FOIA request?

17 **A I did not. I don't believe so, --**

18 Q I'm going to turn your attention to Exhibit C and I would
19 just ask that you look at that.

20 **A -- no.**

21 Q And do you recognize the -- what -- the document that's
22 marked as Exhibit C?

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

24 Q And without getting into the details of what's in it, can
25 you just generally describe what it -- what it appears to

1 be?

2 **A Well, he responded. He said that on March 15th -- which it**
3 **wasn't March 15th, it was the 25th -- that he had**
4 **resubmitted a FOIA request. And he led me to believe that I**
5 **hadn't responded to him. So my response was to him that I**
6 **did respond, I attached my response and I reattached the**
7 **executive order.**

8 **Q And the dates of these two communications, do you know what**
9 **those are?**

10 **A He responded to me April -- or he asked me on April 22nd,**
11 **then I responded back on April 23rd.**

12 **Q And -- and these, they're -- these are e-mails we're talking**
13 **about?**

14 **A These are e-mails, yeah.**

15 **Q And that's -- the only two e-mail addresses that are on**
16 **these pages are yours and Mr. Jones'?**

17 **A Correct.**

18 **Q All right. And -- well, I guess let me ask you this: When**
19 **you -- in looking back at -- at this correspondence, at the**
20 **time you -- did you understand -- how did you understand**
21 **what Mr. Jones was saying? Not that he sent another**
22 **request, but how did you understand what he was try- -- or**
23 **perceive what he was trying to say about that he hadn't been**
24 **responded to on his first request?**

25 **A Exactly that, that he hadn't been responded.**

1 Q And what is your understanding of the word -- in the context
2 of these -- this e-mail exchange of the word "respond"?

3 **A That he did not receive the FOIA request -- or the**
4 **information that he requested from the FOIA request on March**
5 **25th.**

6 Q So when you said in your e-mail that you did respond -- I
7 guess it gets confusing because this word "res-" --
8 "respond" can mean so many different things. But -- but
9 your response to -- to Mr. Jones on April 23rd saying, "I
10 did respond to your request on March 26th," that's
11 not indic- -- what I'm hearing you say is that it's not
12 indicating that you satisfied your requirements under FOIA
13 but that you just responded via e-mail?

14 **A Correct.**

15 Q And you also agree that -- or you -- at this point in time
16 do you still believe that -- that -- that your response was
17 insufficient pursuant to the Freedom of Information Act?

18 **A I responded the way I did because of the COVID and the**
19 **pandemic and the executive order. That's the only reason I**
20 **responded the way I did to his request.**

21 Q And I think you said it with regards to the -- the first
22 request, you know. I -- I understand the reason. But --
23 but you still -- at -- at this point in time, on April 23rd,
24 when you -- when you look at it knowing what you know about
25 the FOIA, do you believe that -- that you -- as the FOIA

1 coordinator, as the Act is written, that you had complied
2 with the Act?

3 **A I didn't -- okay. I did not comply to the Act under FOIA**
4 **guidelines.**

5 Q And at the time that you respon- -- that you wrote this
6 e-mail on April 23rd, you had not been made aware by MTA or
7 anybody else about any executive orders that specifically
8 applied to the -- the Freedom of Information Act?

9 **A If there was information in my e-mail, I did not read that.**

10 Q Let's look at -- well, your co- -- yeah. The second
11 sentence of your e-mail here of April 23rd, you -- you
12 indicated, "Activities other than paying the bills have been
13 suspended. The office is closed." Can you explain what you
14 meant by that statement?

15 **A I was answering his question in -- in his e-mail, "Has**
16 **anyone in the Homestead Township board been active in any**
17 **fashion with township business?" So I was responding back**
18 **to his question.**

19 Q And at the ti- --

20 **A And I was speaking for myself and only myself.**

21 Q Do -- do you agree that -- that this -- or does -- this
22 e-mail from you, does it indicate that you're speaking only
23 for yourself or does it -- does it seem to give the
24 impression that all activities on the part of the township
25 have been suspended?

1 **A Other -- the fact that I said "paying the bills," I was**
2 **speaking for myself.**

3 **Q Do you have any personal knowledge of any other township**
4 **board member or official conducting any other township**
5 **business in April of 2020?**

6 **A Well, I know the treasurer was in 'cause she had to sign the**
7 **checks. I know John was in; he's the supervisor; because I**
8 **had seen him there. He, too, was checking e-mails and phone**
9 **calls.**

10 **Q Were -- how did the township determine who was going to do**
11 **what during the -- the shutdown?**

12 **A We didn't. Each person was to maintain their own -- we**
13 **didn't sit down to discuss it.**

14 **Q So there was no discussion, like, "All right. The -- the**
15 **governor issued this order. Only, you know, services**
16 **essential to the -- sustai- -- sustaining life are allowed.**
17 **What do we want to keep doing and what do we want to**
18 **discontinue during this crazy time"? There wasn't a**
19 **discussion like that?**

20 **A We each took upon ourselves to do what we needed to do in**
21 **the office with the very limited time of being in there.**

22 **Q And each person determined what it was that they, to use**
23 **your words, needed to do?**

24 **A Correct; yeah. I didn't sit with John and -- yeah.**

25 **Q And I guess do you have any information -- during your time**

1 as clerk did you ever come to learn of any activities that
2 were conducted by the supervisor, John Hancock, or any other
3 township official with regards to Kirk Jones and St. Ambrose
4 Cellars during the period of April and May of 2020?

5 **A Yes, I do.**

6 **Q** And what -- what was that?

7 **A I believe he -- John went -- John being the supervisor --**
8 **went with the zoning administrator out to fulfill complaints**
9 **out at St. Ambrose, Kirk Jones' facility.**

10 **Q** Now, when you -- when you yourself suspended activities
11 other than paying the bills, can you just explain to me how,
12 you know -- I understand that you were citing the executive
13 order and the stay-at-home order. But can you just give me
14 some insight into sort of your -- what your process was for
15 determining what you needed to do and what you could
16 discontinue for this limited period of time?

17 **A My thought process was that I'm not to be in the office.**
18 **According to her order we should all be at home, and so**
19 **therefore I was going to be in there to pay the bills, keep**
20 **the lights on, keep the heat going. And if there was -- any**
21 **emergency come up, then I would deal with that.**

22 **Q** So would it be fair to characterize what you decided to do
23 as -- as just the essentials?

24 **A Just the essentials.**

25 **Q** What is your impression, just as another board member, at

1 the time in finding out that the supervisor was responding
2 to complaints about land use permits and building permits?

3 **A What was my thought on it? What was your --**

4 **Q** Yeah, in the context of the stay-at-home order and -- and
5 sort of what we were talking about with -- with, you know,
6 only doing the essential business.

7 MR. ASCIONE: Objection as to relevance. You can
8 answer, though.

9 **A My thought was she does her job and I do my job.**

10 **Q** When you say "she," you're referring to --

11 **A The zoning administrator.**

12 **Q** Okay. Do you think that responding to a -- a -- a -- that
13 type of a complaint is an essential business of the
14 township?

15 **A Yeah.**

16 **Q** Can you explain to me why?

17 **A I believe there was an executive order that there**
18 **was (inaudible) no building or construction is going to take**
19 **place. And the complaint was that there was construction**
20 **taking place.**

21 **Q** So your understanding of the complaint was that there wa- --
22 that it was about con- -- construction taking place in
23 violation of the executive order as --

24 **A Exactly.**

25 **Q** -- opposed to construction taking place in violation of a --

1 of a special use or land permit?

2 **A Correct. Complaint under the executive order.**

3 Q Do you know why the township supervisor as well as the
4 zoning administrator would have to go to something like
5 that?

6 **A No, I don't. I don't know her position to speak on it.**

7 Q So you think that the -- the supervisor as well as the --
8 the zoning administrator would be the -- they would be
9 the -- the best people to ask about that?

10 **A Yes.**

11 Q And -- and the reason I'm asking is obviously because the
12 township is -- is -- is asserting that the reason that Mr.
13 Jones' FOIA requests were -- were not responded to was
14 because of, you know, the shutdown, and at the same time
15 there was this other activity. So I'm just trying to figure
16 out if -- if -- if really there was any at all method for
17 determining what activity was going to be deemed essential
18 and what wasn't. Am I understanding you correctly that
19 there was no such overriding policy?

20 **A There was no overriding policy.**

21 Q All right. I would like to move to what's been marked as
22 Exhibit -- well, actually in your response to Kirk, at the
23 end there you said, "I will log and update your request."

24 And -- and what were you referring to with that sentence?

25 **A If I remember correctly or if I look back at the previous, I**

1 **think he had changed the date for his legal bills. I think**
2 **he extended it out to April.**

3 Q Did he send you another Freedom of Information Act request
4 attached to this e-mail?

5 A **No, not -- no.**

6 Q If I just direct your attention to -- to the e-mail that you
7 received from Kirk, the last sentence of his e-mail --

8 A **Oh.**

9 Q -- seems to indicate that there was an attachment to this.

10 A **(No verbal response)**

11 Q Is that --

12 A **Yeah, I don't -- I -- I'd have to go back to see if there**
13 **was an attachment to it. I don't remember.**

14 Q If I were to show you an -- if -- if he did send another
15 request and I were to show it to you, do you think that
16 perhaps would jar your memory?

17 A **It very well could be.**

18 Q All right.

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

20 Q Would you please look at Exhibit D?

21 A **The only reason I didn't think this was the same attachment**
22 **because the dates aren't the same, so -- but there -- yeah.**
23 **This very well could have been the attachment.**

24 Q And when you're saying the dates aren't the same, it's that
25 Kirk's e-mail was on April 22nd and then the -- this request

1 is dated April 23rd?

2 **A But also his e-mail says January to April 23rd for legal**
3 **fees, whereas this FOIA now says January through May. It**
4 **very well could have been attached. I -- I can't say for**
5 **sure as -- if I remember. Looks like it probably was the**
6 **same one, though.**

7 **Q** And -- and do you -- in any event, you do recall that there
8 was a -- a subsequent, I guess, either amendment to the
9 previous request or in this case a -- another request in --
10 in itself?

11 **A Yes.**

12 **Q** In responding to the Complaint in this case, the township
13 has acknowledged receipt of a second request dated April
14 23rd. Do you have any reason to dispute that -- that you
15 did receive it at that time?

16 **A No; no.**

17 **Q** And then I want to -- would like to move on to Exhibit E and
18 have you just look at that, please.

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

20 **Q** Can you -- do you recognize that document?

21 **A I do.**

22 **Q** And without getting in the details of it, which we will,
23 could you just describe generally what it is?

24 **A It is the response that -- to -- I have completed his FOIA**
25 **request and I am sending him the worksheet for the expense**

1 **of it.**

2 **Q** And what is the date of that request?

3 **A** **May 30th.**

4 **Q** I said "request." I meant "response."

5 **A** **May 30th.**

6 **Q** May 30th. And does that response indicate to which of Mr.
7 Jones' requests it was responsive to?

8 **A** **Looks like I put the date of April 22nd when it should have**
9 **been April 23rd.**

10 **Q** And I think just for the purposes of -- of our discussion,
11 if -- if we say that the -- April 23rd and April 22nd are --
12 can be treated somewhat interchangeably with regard to the,
13 you know -- that if we talk about the second request, it was
14 either sent on April 22nd or April 23rd (inaudible) --

15 **A** **I think I was referring to the e-mail versus --**

16 **Q** Okay.

17 **A** **-- the actual FOIA request. The e-mail was dated the 22nd**
18 **and it also dates out to April 23rd.**

19 **Q** So --

20 **A** **And where his second FOIA is May 1st.**

21 **Q** So are you stating that you never -- that essentially --
22 that you'd never responded to the -- to the one dated April
23 23rd that was the actual attachment?

24 **A** **If I'm looking at this e-mail you could -- guess you could**
25 **say that, yeah.**

1 Q So looking at -- at the -- what's been marked as Exhibit E,
2 that's your signature there?

3 **A Yes.**

4 Q And also with Exhibit E there is a cost worksheet?

5 **A Correct.**

6 Q And you put that cost worksheet together?

7 **A I did.**

8 Q And does it accurately reflect the hours and -- and material
9 costs that -- that the township incurred in responding to
10 this request?

11 **A Yes.**

12 Q Did you make any deductions or anything else when -- when
13 calculating those numbers?

14 **A I don't remember. This was a year ago.**

15 Q Do you have any reason to -- to believe that you reduced the
16 fee that Kirk had to pay for any reason at all?

17 **A I do not.**

18 Q Okay. So just looking at the dates, whether this is
19 responsive to -- well, that you -- as you've indicated, this
20 is responsive to the April 22nd e-mail. Is your answer the
21 same as for the response given to Exhibit A, to the first
22 request, that -- that although this does not comport with
23 the FOIA, it was just -- the -- the response was the way it
24 was because of the pandemic and the shutdown?

25 **A Okay. Ask me again.**

1 Q Yeah, let me un- -- let me unpack that. I -- I -- I warned
2 you about those questions. It's -- I just get confused
3 myself. Does this response on May 30th to a request dated
4 April 22nd -- does that -- is that -- does that satisfy the
5 time requirements of the Freedom of Information Act?

6 **A April 22nd to May 30th, no. It's, I guess, more than fi- --**
7 **five days.**

8 Q And -- and if we were to just make a summation and say
9 that the -- that a -- that a public official has to respond
10 within 5 days and they can have an extension of a maximum of
11 10 days, so there's a maximum of 15 days, is this response
12 within that 15 days of -- of the request?

13 **A It should be within the 15 days.**

14 Q And -- and we can agree that this Exhibit E is -- is not --
15 it was not -- that response did not come within 15 days of
16 the April 22nd request?

17 **A April 22nd to May 30th is within 15 days. Is that what you**
18 **asked?**

19 Q Yeah, I'm -- that's exactly what I'm asking. And I'm --
20 I -- I'm sorry. I didn't hear your answer.

21 **A Yeah. It is within the 15 days.**

22 Q And I'm -- I'm counting it as more than 30 days. Why am I
23 wrong?

24 **A April 22nd?**

25 Q Yes, ma'am.

1 **A** Through May 30th? I guess I --

2 **Q** Yes.

3 **A** -- don't have a calendar in front of me. That's not more
4 than 30 days.

5 **Q** Well, how many days are there between April 2nd and May
6 30th?

7 **A** It wasn't April 2nd. It was April 22nd.

8 **Q** And I'm sorry. That's -- now I'm getting confused. Between
9 April se- -- 22nd and May 30th, how many days are there?

10 **A** I -- I don't have a calendar in front of me. I don't know.

11 **Q** Are there more than 30?

12 **A** No. Oh, May 30th. I'm sorry. I'm thinking May 3rd. I'm
13 sorry. It's been a long day already.

14 **Q** Same here. I'm getting confused with the numbers, too. So
15 I'll -- let's try it again.

16 **A** Let's back up. Yup.

17 **Q** Yeah. So from April 22nd to May 30th, you -- you agree
18 that -- that that is not within --

19 **A** I --

20 **Q** I'm sorry. Let me just make it so it's clear on the record.
21 I know we've got a delay, but -- do you agree that this May
22 30th response was not sent to Mr. Jones within 15 days of
23 his request on April 22nd?

24 **A** Yes, I agree.

25 **Q** And, in fact, it's more in excess of 30 days?

1 **A I agree.**

2 Q And then the reason I asked you about the deduction for
3 fees, were you aware that if a township fails to respond
4 with -- timely that -- that there has to be some fee
5 reduction when you're responding?

6 **A I am aware of that, yes.**

7 Q And -- and again, that didn't happen in this case?

8 **A Correct.**

9 Q Now let's move to Exhibit F, which I would just have you
10 look at and then we can discuss it briefly. That's --
11 that's actually -- the first one was -- was the response
12 indicating that the records were available and this is the
13 cost, and then this is actually the -- the response itself?

14 **A Correct.**

15 Q Is that -- that --

16 **A Both are the same because I was heading out of town. So I**
17 **left to -- put it all together and left it sitting at the**
18 **office so if he had paid the request then this could be**
19 **turned over to him.**

20 Q And I'm glad you -- you brought that up. I know there was
21 some confusion about the -- and -- and a -- and a delay on
22 his part with regards to paying it. But would you agree
23 that -- that the records in response to the May -- the April
24 22nd request, they were not available to Mr. Jones until the
25 first week of June 2020?

1 **A** They were available as of May 30th when I sent the notice
2 out to him.

3 **Q** May 30th, that -- that was a Saturday?

4 **A** Okay.

5 **Q** Do you recall that there was some communication between
6 myself and your attorney about Kirk not having received his
7 FOIA and then you -- you actually sent an e-mail indicating
8 to him that "your FOIA's been sitting on my desk since the
9 first week of June"?

10 MS. ASCIONE: Objection to compound question. You
11 can answer if you can, Mary, but prefer you rephrased.

12 **A** I just know I completed the -- before I was going out of
13 town and that was the May 30 date that it was completed.

14 **Q** Okay. Between March 25th and April -- or -- and May 30th of
15 2020, did Kirk Jones receive any documents that are
16 responsive to either one of his Freedom of Information Act
17 requests?

18 **A** No.

19 **Q** Did he ever receive any documents that are responsive to his
20 March 25th request?

21 **A** Other than the e-mails, no.

22 **Q** And when you say "the e-mails," you mean the e-mails
23 indicating that it was logged and that the executive order
24 was in effect?

25 **A** Correct.

1 Q Now I want to discuss this exhibit -- this -- this final --
2 or this letter itself here that's marked as Exhibit F. On
3 the body of that e-mail, can you tell me whether or not it
4 indicates -- or on this letter whether or not it indicates
5 that there had been redactions or any other alterations made
6 to the records that were going to be provided?

7 **A No.**

8 Q It -- it does not?

9 **A It does not.**

10 Q Were there redactions made to the records that were provided
11 ultimately?

12 **A Yes.**

13 Q Who made the redactions?

14 **A I did.**

15 Q Did you speak with anyone prior to making those redactions
16 to assist you in making the redactions?

17 **A No.**

18 Q You -- you didn't con- -- you didn't contact -- so do you
19 recall what the redactions were that you made?

20 **A I redacted any information that came from any attorney what
21 the cost or what the discussions were on the invoice.**

22 Q Can you explain your thought process in -- in doing so?

23 **A I -- it was an attorney-client and I thought that was --
24 request that should not be put out. An attorney-client
25 privilege, so I redacted it. I had operated that way before**

1 **and felt that I was operating in -- right circumstances by**
2 **doing that again.**

3 Q So on your other -- these other occasions where you've
4 operated like this, did you also just make redactions
5 without indicating that redactions had been made in your
6 response?

7 A **If it retained to an attorney-and-client privilege, yes, I**
8 **did.**

9 Q And you didn't indicate on the cover letter for the response
10 or anywhere else that the reason they were redacted was
11 because of attorney-client privilege?

12 A **I did not.**

13 Q Or any other claimed exemption under the Act?

14 A **No.**

15 Q As we sit here today, do you believe that that is an
16 appropriate way to handle redactions under the Act in
17 compliance with the Act?

18 A **We consulted our attorney after the fact and it was by their**
19 **guidance that we should not have handled it that way. So**
20 **going forward I would definitely consult someone before I**
21 **would ever do that again.**

22 Q Did you respond to other Freedom of Information Act requests
23 in the last six months of your tenure as the FOIA
24 coordinator in which you were faced with the same issue?

25 A **I don't believe so.**

1 Q If training had been offered to you as the FOIA coordinator
2 at the expense of the township would you have attended?

3 **A Should have. Yes, I would have.**

4 Q Looking back on the 20 years, would it -- do you think that
5 you would have gotten a benefit from attending to -- that --
6 that type of training?

7 **A Looking back on the past 20 years my FOIA requests were a
8 copy of minutes, the budget, a bill; nothing that had
9 referred to that kind of request.**

10 Q So I guess my -- but my -- but my question is do you think
11 you would have benefitted from going to training --

12 **A Yes; yeah.**

13 Q And do you think that -- that it would be a good policy for
14 the township moving forward to have their FOIA coordinator
15 receive such training?

16 **A Yes.**

17 Q Are you aware whether or not Karen Mallon has any formal
18 training?

19 **A I do not know.**

20 Q So let -- let's just look at Exhibit G briefly. We've
21 already to some extent discussed it, but -- I know there's
22 several pages, but -- and, you know, without -- accepting my
23 representation that these are the documents that you
24 provided to Mr. Jones in response to his April 22nd request,
25 if you look through those, do -- do they appear to be the

1 same documents with the same redactions?

2 **A Yes.**

3 Q Any reason to think that they're -- that they're altered in
4 any way from what you provided?

5 **A No.**

6 Q So we'll move on from there. You had limited involvement,
7 you stated, with Kir- -- Kirk Jones' final -- or the final
8 request that's at issue in this lawsuit on June 17th?

9 **A One more time.**

10 Q I think you indicated at the beginning of -- of this
11 deposition that you did have some limited involvement with
12 responding to Kirk Jones' June 17th request for information?

13 **A I did, yeah; yes.**

14 Q If -- if I direct you to Exhibit H, would you look at that
15 and -- and tell me if you recognize the document?

16 **A I do.**

17 Q And just generally could you describe what it is?

18 **A It's a re- -- FOIA -- FOIA request dated June 17th for four
19 different requests.**

20 Q And it appears to be the same request that we've been
21 discussing as the so-called June 17th request?

22 **A Yes.**

23 Q And I think I already asked you, and if I did, I apologize,
24 but I can't remember. Do you recall how this was conveyed
25 to you?

1 **A I -- I believe it was through e-mail. All -- so that was**
2 **usually how he corresponded with me.**

3 **Q** And if I showed you the e-mail in which he conveyed it, do
4 you think you would -- well, actually it sounds like we're
5 on the same page. But did -- did he send this to you? Do
6 you remember if -- if the -- we were talking about the
7 confusion about the payment and you had indi- -- you had
8 indicated there had been some discussion with Kirk about
9 this -- this doc- -- the other records sitting on his (sic)
10 desk. Do you know whether this was sent to you during that
11 same e-mail chain or if it was sent to you at a later date?

12 **A I don't believe it was with the same e-mail change**
13 **(pronouncing). This was at a later time.**

14 **Q** Okay. In any event, you received it. It sounds like you
15 believe it was via e-mail. What did you do once you
16 received this re- -- this June 17th request?

17 **A I believe I responded.**

18 **Q** And if we look at Exhibit I, --

19 **A Right.**

20 **Q** -- do you recognize the document marked as Exhibit I?

21 **A I do.**

22 **Q** And generally what -- can you describe what it is?

23 **A It's my response back to him that we've received his**
24 **request, that we are compiling the records and we will give**
25 **it to him.**

1 Q So I guess I want to circle back here. And we talked at the
2 beginning about this -- about the requirements and the
3 guidelines, the general applicable things for a township
4 FOIA coordinator. Can you explain to me -- and we talked
5 about the four require- -- or the four different things that
6 you could do within five days of receipt of a -- of a
7 request. Do you recall that?

8 **A Yes.**

9 Q Can you explain to me how -- or which one of those four
10 items this particular response dated June 23rd is applicable
11 to?

12 **A It's responded within five days. I don't know. I'd have --**
13 **I guess I'd have to review what the four of them are again.**

14 Q If we look at -- well, let me ask you this: Did -- did the
15 township maintain policies and guidelines for --

16 **A They're posted --**

17 Q -- (inaudible) --

18 **A -- on our website, yes.**

19 Q If I showed those to you, would you recognize those?

20 **A They're posted on the website (inaudible).**

21 Q Would you -- would you look at Exhibit J, please?

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

23 Q And just look through there and -- and let me know if you
24 think that those are the same records.

25 **A Yeah, these are the same records.**

1 Q And do they appear to be an accurate representation of
2 what's posted on the -- or what was posted on the township
3 website when you were the FOIA coordinator?

4 **A I believe these are the same. Without looking at the**
5 **website and comparing with these, I believe they are the**
6 **same.**

7 Q Okay. Let me turn your attention to section 3. It's on
8 page 3 of this document. Are you there?

9 **A Yeah. I'm sorry. Uh-huh (affirmative).**

10 Q All right. And looking at -- I'm circling here with my
11 mouse this area, "The township will respond to requests in
12 one of the following ways." If we are looking at -- there
13 is -- there is a fifth prong here. But in looking at the
14 first four, are those the first four potential options for a
15 response that we -- that we discussed at the outset of this
16 deposition?

17 **A Yes.**

18 Q And do you agree that those are the only four ways -- well,
19 I guess the -- there's five ways here. But excepting the
20 last option, are -- are those the -- the only -- the ways
21 that a -- that a township can respond to a FOIA request
22 under the Act?

23 **A Are these the only? What is -- come back with your**
24 **question. I'm sorry.**

25 Q My understanding of the Freedom of Information Act is that

1 these are the -- that the township can only do one of the
2 following: Grant the request, issue a written notice
3 denying the request, grant the request in part --

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

5 Q -- and issue a written notice denying the -- in part the
6 request, or issue a notice indicating that due to the nature
7 of the request the township needs additional 10 business
8 days for a total of no more than 15 business days. Do you
9 have any knowledge of any other options that the township
10 would have at the time of responding?

11 **A No.**

12 Q So looking back at what's been marked as -- believe it was
13 Exhibit I, can you explai- -- can you tell me which one of
14 those four things that response does?

15 **A In my response to Kirk I was just letting him know that we
16 received his response and that it would be granted.**

17 Q I want to turn your attention, I guess, to the -- the lower
18 portion of -- of that response in Exhibit I. If you look at
19 the last paragraph -- okay. I confused that. Apologize.
20 Could you just read that -- the last paragraph of your
21 response dated June 23rd, --

22 **A This notice is --**

23 Q -- 2020?

24 **A "This notice is to inform you that your request has been
25 logged. This notice is neither a denial of your request or**

1 **a granting of your request. Once the records are compiled I**
2 **will contact you with the records that are available for**
3 **disclosure."**

4 Q So looking back at Exhibit J, page 3, the four options,
5 let's go through each of them in turn. Does -- does this
6 response -- does it grant his request?

7 A **Not at this point, no.**

8 Q Does this response issue a written notice denying the
9 request?

10 A **Not -- no.**

11 Q Does it grant the request in part and issue written notice
12 denying the request in part?

13 A **No.**

14 Q Does it issue a notice indicating that due to the nature of
15 the request the township needs additional 10 business days
16 to respond for a total of no more than 15 business days?

17 A **No.**

18 Q So that being said, do you agree that -- that this -- this
19 letter issued five days after the receipt of the -- the
20 re- -- request dated June 17th, 2020, that it fails to
21 comply with the -- with the Freedom of Information Act?

22 A **Yes.**

23 Q And -- and it fails to comply because it doesn't comport
24 with any of the four reasons that I've just -- that we've
25 just gone through together?

1 **A Yes.**

2 **Q** Do you recall what happened next in the sequence of events
3 with regards to this request, the June 17th request?

4 **A I got buried with the election material and offered -- asked**
5 **Karen for her assistance (inaudible).**

6 **Q** And -- so anything that -- are you aware of what Karen did
7 with regards to this request?

8 **A I have seen the paperwork.**

9 **Q** At the time pri- -- at the time that it was occurring did
10 she keep you in the loop about what she was doing?

11 **A No. I was pretty busy. She pretty much took it over and**
12 **ran with it.**

13 **Q** Okay. Looking back to the request from Kirk on June 17th,
14 were you ever contacted by Karen Mallon asking for records
15 that were responsive to that request?

16 **A No. Karen has full access to all the records.**

17 **Q** So if I'm understanding you correctly, Karen Mallon never
18 asked you if you had any e-mails between you and any
19 township attorneys about St. Ambrose?

20 **A Oh, e-mails, yeah -- I'm sorry -- yes; yeah. Any e-mail**
21 **information, yes, was forwarded on to her.**

22 **Q** So --

23 **A But as far as compiling it, she compiled it all. But --**
24 **yup.**

25 **Q** So you in response to her request -- so can you just -- can

1 you give me an idea of how this went down? Can you explain,
2 you know, what -- how you would have been communicated to by
3 Karen and then what you would have done in response to that?

4 **A** How I would have been -- if she needed some e-mails, she
5 probably e-mailed both -- not probably. She e-mailed John
6 and I and said, "Do you have any of this information within
7 this time frame?" She had access to any of my files or
8 records. So yeah, at the most part it would have been
9 e-mail because it's the only thing that she would not have
10 had access to that I would have had to supply to her.

11 **Q** So looking back at the June 17th request -- which I believe
12 it -- it's labeled H in your packet; right? So if we go
13 back, you would have received in -- sometime in late June or
14 early July of 2020 an e-mail from Karen Mallon asking you to
15 send over any e-mails that you had that were responsive to
16 item number 4 in that request?

17 **A** I don't recollect if it was an e-mail. It probably was.
18 But I -- at this point I don't reco- -- I don't remember if
19 it was. But yes, I would have -- if it -- if she had asked
20 me for e-mails within that time frame, then yes, I would
21 have given them to her.

22 **Q** And I guess my question is did she, whether by e-mail or
23 verbally, ask you for those type of records?

24 **A** Would she have? I'm sorry. What was the beginning of the
25 question?

1 Q "Did she."

2 A "Did she"? E-mails she probably -- I'm sure she did. Any
3 other copies, she had access to all those records. So she
4 knew where they were and she --

5 Q And do -- so in -- and if she asked you any -- via e-mail,
6 which you're saying you're sure she did, then you would have
7 responded in e-mail with those records, whatever you thought
8 was responsive to her request?

9 A I -- I don't remember, but I most likely would have printed
10 them off and given them to her if they were in --

11 Q Okay.

12 A -- my e-mail, in my inbox.

13 Q How many e-mails from December 2019 through June 17th, 2020,
14 did you send to either Tom Grier or any other attorney
15 working for the township?

16 A Oh, I -- how many e-mai- -- I have no idea. I have no idea.

17 Q Is that you have no idea because there's -- like, there
18 would be quite a few?

19 A No, because there wouldn't have been, you know -- most
20 correspondence were -- to the attorneys would be the
21 supervisor. That's what I mean.

22 Q So do you think that you -- that the answer, I guess, would
23 be zero, that you didn't send any e-mails to any attorney,
24 or --

25 A I wouldn't say zero. If I was asked a question through the

1 **attorney I would have responded to e-mail, but there weren't**
2 **many.**

3 Q And without asking -- I don't want to know what, you know,
4 the substance of your communications with your attorneys
5 or -- or what they asked, but in that time frame did you
6 receive any written questions from your attorneys?

7 A **I don't remember written questions, no.**

8 Q Whether by e-mail or by letter?

9 A **No, not addressed to me; no.**

10 Q Who would have been the person primarily communicating with
11 the township attorneys during the time frame of this
12 request, between December 20- -- 2019 and June of 2020?

13 A **John Hancock did most of the requests with any of the**
14 **attorneys.**

15 Q And obviously with -- as pertains -- so one of the
16 reasons -- or the reason that you redacted the records, you
17 indicated, was -- was because it was attorney-client
18 privilege. And is it also true that it was -- that there
19 was this ongoing litigation between Kirk and the township?

20 A **I -- that wasn't my thought process. That was taking place.**
21 **It wasn't my thought process. I thought I was just doing it**
22 **properly by -- because of attorney-client privilege.**

23 Q And other than the supervisor communicating with the
24 attorneys, would any other board member or township
25 official -- do you have any personal knowledge of them

1 communicating with the -- with the attorneys about St.
2 Ambrose?

3 **A I do remember John and Karen having conversations with our**
4 **attorneys, calls, but I was not partake -- I did not partake**
5 **in them.**

6 **Q** Since this -- well, since your response on -- on June 23rd
7 doesn't seem, you know -- as we -- I guess we've agreed that
8 it doesn't comply with the Freedom of Information Act, based
9 on what you know about the timelines in the FOIA and -- and
10 the requirements of the FOIA, would you agree that -- that
11 any action subsequent to that would still -- I mean,
12 obviously that there's no way to really correct the
13 violation that already occurred?

14 **A So what is your question?**

15 **Q** I guess my question is if Karen Mallon responded to Kirk's
16 FOIA on July 15th, 2020, would you agree that that response
17 was late?

18 **A From July -- from June 17th? I -- I don't know the rea- --**
19 **without reading why Karen didn't respond up until June --**
20 **July 17th, I -- I can't answer that.**

21 **Q** And -- well, let me ask you because you -- we -- we agree
22 that -- that your June 23rd letter --

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

24 **Q** -- it -- it doesn't actually issue a notice of an extension;
25 right?

1 **A Correct. That is (inaudible).**

2 Q And the only way a township can issue a notice of extension
3 would be within that five business days of issuing a notice;
4 correct?

5 **A Correct.**

6 Q And the maximum extension that a township could -- could
7 ever issue would be a total of -- of 15 business days;
8 correct?

9 **A Correct.**

10 Q And the township can only issue one extension?

11 **A That is correct.**

12 Q So knowing --

13 **A I -- asking for an extension in my letter. I was ak- --**
14 **just acknowledging to him that we had received his FOIA**
15 **request. And then Karen took it over from there.**

16 Q But knowing that Karen -- if I told you that Karen's first
17 letter to Kirk was on July 3rd, would you agree that -- that
18 that is already 15 day- -- or that is very close to the 15
19 days past --

20 **A Very close to it, yes.**

21 Q And at that point in time the township would not be able to
22 issue another ten-day extension?

23 **A Under the laws, yes.**

24 Q Under the laws that would not be permitted?

25 **A For the same FOIA request, yup.**

1 Q All right. I'm almost through here. Did you in -- the
2 township has responded to some written questions with
3 regards to the -- this lawsuit. They were signed by Karen
4 Mallon, but some of the answers pertain to some of the work
5 that you were involved with. Was there a point in time that
6 you and Ms. Mallon talked about how the townshi- -- or how
7 she would respond to those written questions?

8 **A I'm -- don't know what written questions you're referring**
9 **to.**

10 Q Since this lawsuit has been filed has -- has Karen Mallon
11 ever contacted you to get information about what activities
12 you did or didn't do with regards to Kirk's FOIA requests on
13 March 25th and April 23rd of 2020?

14 **A Not that I remember, no.**

15 Q And even more recently in time -- so in the month of January
16 of 2021, did Karen Mallon contact you to get information
17 about the substance of this lawsuit?

18 **A No. She had all the copies I -- that I -- no, she had not.**

19 Q I guess I have -- just have one more question. And, you
20 know, other than some additional training, in -- in looking
21 over sort of some of the deficiencies that we've discussed
22 in these responses, can you think of any -- I guess
23 excluding the pandemic, can you think of any other resources
24 or information that -- that you could have benefitted from
25 that would have helped you respond more appropriately?

1 **A** Like I said in the beginning, any FOIA requests I had in the
2 past were budget, e-mail; nothing to this extent. So yes, I
3 definitely could have benefitted from more training.

4 **Q** And -- I'm sorry. I said that was my last question. It's
5 typical. I -- in looking at the -- the response that you
6 sent on June 23rd, 2020, that response doesn't indicate
7 anything about -- or does that response indicate anything
8 about the executive orders or the shutdown or anything like
9 that?

10 **A** It does not.

11 **Q** And was that response -- it looks a lot different from the
12 other responses. So was that response issued under the same
13 circumstances or -- or at that point in time --

14 **A** No. The banned had been lifted and we were back into the
15 office. Back on May 30th was when he requested -- or when
16 what granted his last request. So no, that last response
17 had nothing to do with the COVID -- or our governor's
18 restrictions.

19 **Q** So what -- I guess why -- then I guess why did you respond
20 in the manner that you did if there was no, you know,
21 governor restriction or anything else precluding you from
22 complying with the request?

23 **A** Looking back at it now, all that I can tell you is that I
24 was buried with the election because it was one heck of a
25 year. And if didn't get to it, I knew I had to respond, and

1 I responded to letting him know that we had -- that I had
2 received it and then it would be granted. Right or wrong, I
3 was buried with what I was doing. Not that that's an excuse
4 but, election wa- -- it was a hell of a year.

5 MR. STIG-NIELSEN: I think -- I think that's a
6 good note to end it on. And we can definitely agree that
7 it's been a hell of a year. So thank you. I don't have any
8 questions anymore. Thank you for your time. Maybe -- do
9 you have some questions, ma'am?

10 MR. ASCIONE: I do not have any questions.

11 REPORTER: Okay. We are going off the record at
12 the conclusion of the video deposition of Mary Geetings, and
13 the time is 4:40 p.m.

14 (Deposition concluded at 4:40 p.m.)

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<p style="text-align: center;"><u>A</u></p> <p>able 56:21 ac- 9:7 accepting 44:22 access 24:2 51:16 52:7,10 53:3 accurate 48:1 accurately 37:8 acknowledged 35:13 acknowledging 56:14 Act 8:2,8 10:18,23 10:25 11:5 12:8 12:16 17:4 18:16 19:12 20:3 28:17 29:1,2,3,8 34:3 38:5 41:16 43:13 43:16,17,22 48:22 48:25 50:21 55:8 Act's 13:3 acting 13:2 action 15:10 26:15 55:11 actions 9:7 active 29:16 activities 29:12,24 31:1,10 57:11 activity 33:15,17 actual 9:6 36:17,23 additional 49:7 50:15 57:20 address 16:3 addressed 54:9 addresses 14:25 15:1 27:15 administrator 31:8 32:11 33:4,8 affirm 3:19 affirmative 11:8,14 13:22 14:6,12 18:11 26:23 34:19 35:19 47:22 48:9 49:4 55:23 afternoon 4:3 ago 14:21 37:14 agree 3:10 17:7,8,12 21:10,12,14 28:15 29:21 38:14 39:17 39:21,24 40:1,22 48:18 50:18 55:10 55:16,21 56:17</p>	<p>59:6 agreed 55:7 ahead 14:10 ak- 56:13 allowed 30:16 allows 12:9 alterations 42:5 altered 45:3 amazing 6:13 Ambrose 31:3,9 51:19 55:2 amended 20:2 amendment 35:8 an- 5:8 answer 5:8,9 8:14 32:8 37:20 38:20 41:11 53:22 55:20 answering 29:15 answers 4:24 57:4 anybody 29:7 anymore 59:8 apologize 45:23 49:19 appear 14:20 44:25 48:1 appearances 1:14 3:11 Appearing 1:15 appears 14:14 16:8 26:25 45:20 applicable 13:2 47:3 47:10 applied 29:8 appropriate 43:16 appropriately 57:25 approved 25:3,11 approximate 23:9 approximately 3:8 23:2 April 6:3 8:23 9:8 19:5,18 20:3 21:15 22:1,16 24:13,14 26:15 27:10,10,11 28:9 28:23 29:6,11 30:5 31:4 34:2,25 35:1,2,13 36:8,9 36:11,11,14,14,18 36:22 37:20 38:4 38:6,16,17,24 39:5,7,7,9,17,23 40:23 41:14 44:24</p>	<p>57:13 area 48:11 ascertain 26:2 Ascione 1:19 3:14 3:14 32:7 41:10 59:10 asked 7:9 23:6 27:10 38:18 40:2 45:23 51:4,18 52:19 53:5,25 54:5 asking 9:23 10:2,10 10:11 33:11 38:19 51:14 52:14 54:3 56:13 asserting 33:12 assist 7:10 42:16 assistance 51:5 Association 8:13 attached 15:11 27:6 34:4 35:4 attachment 15:15 34:9,13,21,23 36:23 attend 23:15 attendance 24:8 attended 8:6 44:2 attending 44:5 attention 26:18 34:6 48:7 49:17 attorney 5:12 41:6 42:20 43:18 53:14 53:23 54:1 attorney-and-client 43:7 attorney-client 42:23,24 43:11 54:17,22 attorneys 1:19 4:9 22:6 24:24 51:19 53:20 54:4,6,11 54:14,24 55:1,4 August 7:8 autocorrect 20:7 available 40:12,24 41:1 50:2 aware 19:10,21 29:6 40:3,6 44:17 51:6</p>	<p>back 6:7 7:14 9:11 10:21 16:2 24:12 24:20 27:11,19 29:17 33:25 34:12 39:16 44:4,7 46:23 47:1 48:23 49:12 50:4 51:13 52:11,13 58:14,15 58:23 Bakery 5:23 ban 20:8,11 banned 20:7,11 58:14 based 16:18,19 55:8 basic 4:10 basically 22:19 25:9 Bay 1:20 beginning 45:10 47:2 52:24 58:1 behalf 3:12,14 believe 7:25 9:2 12:17,17 13:6,8 13:12,19 17:16,21 17:22,22 18:14,19 26:17 27:4 28:16 28:25 31:7 32:17 37:15 43:15,25 46:1,12,15,17 48:4,5 49:12 52:11 bell 19:19 benefit 44:5 benefitted 44:11 57:24 58:3 Benzie 1:2,17 3:6 Benzonia 1:17 best 33:9 bill 25:20,23 44:8 bills 22:6,11,20 23:16 24:9 25:2,3 25:5 26:3 29:12 30:1 31:11,19 34:1 bit 8:20 23:24 board 6:4,6,18,22 7:20 21:23 25:4,6 25:17 29:16 30:4 31:25 54:24 body 12:4,9 16:13 42:3 body's 18:16 bouncing 14:3</p>	<p>Box 1:17,20 break 5:5,6 brief 6:5 briefly 40:10 44:20 bring 25:10 brought 40:20 budget 44:8 58:2 building 32:2,18 buried 51:4 58:24 59:3 business 9:22 12:3 20:24 29:17 30:5 32:6,13 49:7,8 50:15,16 56:3,7 busy 51:11</p>
			<p style="text-align: center;"><u>C</u></p> <p>C 26:18,22 calculating 37:13 calendar 39:3,10 called 3:24 calls 30:9 55:4 case 3:7 11:20,25 35:9,12 40:7 cause 16:17 30:6 cc 16:4,5 Cellars 31:4 CER 1:22 certain 12:10 19:17 Certified 1:22 chain 46:11 change 46:12 changed 34:1 characterize 20:17 31:22 check 22:13 24:19 25:8 checking 30:8 checks 23:18 24:7 24:17 30:7 circle 47:1 circling 48:10 Circuit 1:2 3:6 circumstances 43:1 58:13 cite 10:23 11:1 citing 31:12 City 1:20 22:18 claimed 43:13 clarification 10:11 clarify 23:24 clear 4:16 39:20</p>	

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