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# TOWNSHIP OF MIDDLETOWN

DELAWARE COUNTY, PENNSYLVANIA

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October 22, 2021

**RE: Middletown Township's Statement Regarding Judge Dozor's Right-to-Know Decision**

On Friday, October 15, 2021, Delaware County Common Pleas Judge Barry Dozor issued a decision in a PA Right To Know (RTKL) Appeal filed by Samuel Cortes, Esq., an attorney for Glen Riddle Station Apartments, located at 275 Glen Riddle Road.

Middletown Township (the Township) is pleased that Judge Dozor recognized that the Township has demonstrated good faith in responding to the RTKL request filed by Mr. Cortes (the Request). In response to the Request, the Township previously voluntarily produced over 2,900 pages of documents. Judge Dozor found the Township produced all of the documents that it is required to produce under the RTKL, except those pertaining to its investigation of certain dangerous construction conditions in the Township.

The records that the Judge has ordered the Township to produce were originally obtained from Energy Transfer by the Township in an effort to protect the safety of all Township residents. Since the inception of the Mariner project in Middletown Township, the Township has conducted multiple non-criminal investigations at construction locations throughout the Township. After the alarming appearance of sinkholes in several areas of the Township, the Township determined that it needed to launch a non-criminal investigation regarding the origin of the sinkholes. In order to do so, it engaged the services of experts in geoscience. Those experts required sensitive and confidential data in the possession of Energy Transfer. Energy Transfer agreed to provide the data to the Township to aid in the Township's investigation, provided the confidential, highly sensitive information would not be disclosed to anyone other than the Township's experts. The Township is aware that Energy Transfer and all of the other public utilities operating within the Township are required to keep information about the location of public utilities confidential under the anti-terrorism laws enacted after the September 11, 2001 terrorist attacks.

As a result of the Township's investigation, its geoscientific experts were able to make recommendations to Energy Transfer to improve the safety of the subsurface conditions in the area of Sleighton Park and Valley Road. Energy Transfer agreed to adopt the recommendations of the Township experts for the stabilization and monitoring of the subsurface conditions in the area, and that monitoring continues to this day. Without the willingness of Energy Transfer to produce its confidential, highly sensitive information, the Township would not have been able to conduct such an investigation on its own and would have had to rely solely on Energy Transfer's geologists.

The RTKL clearly provides a process by which the Township can receive information designed to aid in a non-criminal investigation without fear that the confidential information supplied by a public utility will later be disseminated to the public. Under section 708 (b) (17) of the RTKL, such records are specifically

exempted from production. As a matter of public policy, the legislature understood the need for a Township to acquire sensitive information from public utilities and maintain the confidentiality of such information.

The Township respectfully disagrees with the Court's interpretation as to how Section 708 (b) (17) of the RTKL should be applied under the facts presented by this case. It should be noted that in all other respects, Judge Dozor agreed with and affirmed the Township's right to withhold documents on the basis of public safety and physical security information, documents relating to settlement negotiations, and documents it has already produced under previous RTKL requests made by Mr. Cortes.