

Case# 2025-08789-0 Received at Cumberland County Prothonotary on 09/05/2025 12:05 PM, Fee = \$125.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

Cumberland County

For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Commencement of Action:

☐ Complaint

☐ Writ of Summons

☒ Petition

☐ Transfer from Another Jurisdiction

☐ Declaration of Taking

Lead Plaintiff's Name:
Jonathan Bergmueller

Lead Defendant's Name:
Lower Allen Township

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Paula Knudsen Burke

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)
☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

MASS TORT
☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

PROFESSIONAL LIABILITY
☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

CONTRACT (do not include Judgments)
☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute: Discrimination
☐ Employment Dispute: Other

☐ Other:

REAL PROPERTY
☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

CIVIL APPEALS
Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☒ Statutory Appeal: Other
Right to Know Law appeal

☐ Zoning Board
☐ Other:

MISCELLANEOUS
☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

Updated 1/1/2011

By: Paula Knudsen Burke
Attorney I.D. No. 87607
PO Box 1328
Lancaster, PA 17608
pknudsen@rcfp.org
Phone No. (717) 370-6884

Attorney for Appellants

JONATHAN BERGMUELLER and
ADVANCE LOCAL MEDIA LLC
d/b/a PENNLIVE,
1900 Patriot Drive
Mechanicsburg, PA 17050

Appellants,

v.

LOWER ALLEN TOWNSHIP,
2233 Gettysburg Rd.
Camp Hill, PA 17011

Appellee.

IN THE COURT OF COMMON PLEAS
CUMBERLAND COUNTY,
PENNSYLVANIA

No. _____

Statutory Appeal: Right-to-Know Law

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by your attorney, and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the court, without further notice, for any money claimed in the Complaint, or of any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Cumberland County Bar Association's Find a Lawyer
32 South Bedford Street
Carlisle, PA 17013
Phone: 717-249-3166 EXT. 105

JONATHAN BERGMUELLER and	:	IN THE COURT OF COMMON PLEAS
ADVANCE LOCAL MEDIA LLC	:	CUMBERLAND COUNTY,
d/b/a PENNLIVE,	:	PENNSYLVANIA
1900 Patriot Drive	:	
Mechanicsburg, PA 17050	:	
	:	No. _____
Appellants,	:	
	:	Statutory Appeal: Right-to-Know Law
v.	:	
	:	
LOWER ALLEN TOWNSHIP,	:	
2233 Gettysburg Rd.	:	
Camp Hill, PA 17011	:	
	:	
Appellee.	:	

[PROPOSED] ORDER GRANTING PETITION FOR REVIEW

AND NOW, this ____ day of _____ 2025, upon consideration of Jonathan Bergmueller and PennLive's Petition for Review, and any response thereto, said Petition is GRANTED. The Final Determination issued by the Pennsylvania Office of Open Records (Docket No: AP 2025-1509) on August 8, 2025 is REVERSED. Lower Allen Township shall obtain and provide to Mr. Bergmueller and PennLive the requested documents sought in the April 24, 2025 Right-to-Know Law request submitted by Mr. Bergmueller.

J.

Distribution List:

Paula Knudsen Burke, PO Box 1328, Lancaster, PA 17608, (717) 370-6884, pknudsen@rcfp.org

Steven P. Miner, Esq., Caldwell & Kearns, P.C., 3631 N. Front Street, Harrisburg, PA 17110, (717) 934-4036, sminer@cklegal.net

JONATHAN BERGMUELLER and	:	IN THE COURT OF COMMON PLEAS
ADVANCE LOCAL MEDIA LLC	:	CUMBERLAND COUNTY,
d/b/a PENNLIVE,	:	PENNSYLVANIA
1900 Patriot Drive	:	
Mechanicsburg, PA 17050	:	
	:	No. _____
Appellants,	:	
	:	Statutory Appeal: Right-to-Know Law
v.	:	
	:	
LOWER ALLEN TOWNSHIP,	:	
2233 Gettysburg Rd.	:	
Camp Hill, PA 17011	:	
	:	
Appellee.	:	

PETITION FOR REVIEW

Appellants Jonathan Bergmueller and Advance Local Media LLC d/b/a PennLive (“PennLive”) hereby appeal from the decision of the Office of Open Records (“OOR”) issued on August 8, 2025 and indexed as OOR Dkt. AP 2025-1509. A copy of the OOR decision is attached as **Exhibit A**.

STATEMENT OF JURISDICTION

1. This Notice of Appeal is filed pursuant to Section 1302(a) of the Right-to-Know Law. 65 P.S. § 67.1302(a).

PARTIES

2. Appellant Jonathan Bergmueller is an adult individual employed as a reporter at PennLive, with a business address of 1900 Patriot Drive, Mechanicsburg, PA 17050.

3. Appellant PennLive is the largest newspaper serving the Harrisburg, Pennsylvania metropolitan area with print and digital news. It is owned by Advance Local Media LLC and

headquartered in Cumberland County. Its offices are located at 1900 Patriot Drive, Mechanicsburg, PA 17050.

4. Appellee is the Lower Allen Township, a governmental unit with a business address of 2233 Gettysburg Rd., Camp Hill, PA 17011.

5. The following person entered an appearance in the proceedings below:

Steven P. Miner, Esq.
Caldwell & Kearns, P.C.
3631 N. Front Street
Harrisburg, PA 17110
(717) 934-4036
sminer@cklegal.net

FACTUAL BACKGROUND

6. Reporter Jonathan Bergmueller and PennLive (collectively, “Requesters”) submitted a request (“Request”) on April 24, 2025 to Lower Allen Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “copies of all settlements entered into by the [T]ownship from Jan. 2020 to present.”¹ Ex. A at 1.

7. The Township obtained a thirty-day extension pursuant to 65 P.S. § 67.902(b) and eventually denied the Request on May 28, 2025, asserting: “There are no responsive records (settlement agreements) generated by the [Township]. The [Township] works with its insurance carrier to resolve certain matters. . . . In that case, these agreements are not public records as they have not been acted upon by the Board of Commissioners at a public meeting.” A copy of the Township’s response is attached as **Exhibit B**.

¹ While the Final Determination quotes “all settlements,” the wording of the original request is slightly different: “Seeking copies of all **settlement agreements** entered into by the township from Jan. 2020 to present.”

8. On May 29, 2025, Requesters appealed the Township's denial of the Request to the OOR. A true and correct copy of Requesters' appeal is attached hereto as **Exhibit C** and incorporated by reference herein.

9. Requesters' appeal to the OOR included a letter noting that "The Pennsylvania Right-to-Know Law statute defines executed settlement agreements entered into by covered agencies as public record[s], unless a court has determined them to be confidential. 65 P.S. 67.708(b)(17). The [RTKL] statute furthermore requires agencies to facilitate access to settlements in possession of its contractors such as insurance agencies. 65 P.S. 67.506(d)." A copy of Requesters' letter is attached as **Exhibit D**.

10. In an undated Memorandum to the OOR, the Township stated that it had no responsive records because "[a]ny settlement agreement was negotiated by the insurance company without involvement by the Township" and "[t]he settlement agreements were never in the possession, custody, or control of the Township." A copy of that Memorandum is attached as **Exhibit E**.

11. On August 8, 2025, the OOR issued a Final Determination that "the Township has proven that it does not have possession within its own files of any responsive settlement agreements, because any agreements entered into during the relevant timeframe would be in possession of its insurance company." Ex. A at 4. Further, because "the Township was not involved in decisions to enter settlement agreements and its approval was not needed for settlement, the requested records do not relate to the performance of a governmental function and are therefore, not accessible under Section 506(d)(1) of the RTKL." *Id.* at 7.

STANDARD AND SCOPE OF REVIEW

12. In adjudicating this matter, this Court may function as a fact finder and exercise plenary review and apply a *de novo* standard of review. *Bowling v. Office of Open Records*, 75 A.3d 453, 476 (Pa. 2013).

13. This Court may supplement the record to ensure “the broadest scope of review.” *Id.* at 477.

14. The OOR erred in determining that the Township was not required to produce the requested settlement agreements because they were not already physically in the Township’s own files.

15. Settlement agreements involving an agency are public records and must be produced by the agency, even where the agency does not have physical possession of the records, so long as the agency has custody or control of the records, including where the records are held by a third party but the agency has a legal right to obtain them. *See Trib.-Rev. Publ’g Co. v. Westmoreland Cnty. Hous. Auth.*, 833 A.2d 112, 118 (Pa. 2003); *see also* 65 P.S. § 67.506(d)(1) (“A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency for purposes of this act.”).

16. Appellants reserve the right to supplement the record before the Court by briefing the question more fully in a later phase of this litigation and, should the Court wish, by appearing before the Court at a hearing on this matter.

RELIEF SOUGHT

WHEREFORE, Jonathan Bergmueller and PennLive respectfully request that the Court reverse the Final Determination of the Office of Open Records; enter a finding that the Township

cannot circumvent the RTKL by claiming that documents created and held by insurance companies representing the Township on official business and using tax dollars are not public records; and order the release of the documents requested; as well as award Requesters their reasonable costs and attorney's fees and grant any other relief the Court deems appropriate, including penalties pursuant to 65 P.S. § 67.1305(a).

Respectfully submitted,

/s/Paula Knudsen Burke

Attorney for Appellants

Dated: September 5, 2025

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: September 5, 2025

Submitted by: /s/Paula Knudsen Burke
Paula Knudsen Burke
PA Attorney ID: 87607

CERTIFICATE OF SERVICE

I, Paula Knudsen Burke, hereby certify that on September 5, 2025, I served a true and correct copy of the foregoing, via email and United States first-class mail, addressed as below, upon the following individuals:

Steven P. Miner, Esq.
Caldwell & Kearns, P.C.
3631 N. Front Street
Harrisburg, PA 17110
(717) 934-4036
sminer@cklegal.net
Counsel for Lower Allen Township

Kathleen A. Higgins
Deputy Chief Counsel
Office of Open Records
333 Market St. 16th floor
Harrisburg, PA 17101
oor-postfd@pa.gov

Date: September 5, 2025

Submitted by: /s/Paula Knudsen Burke
Paula Knudsen Burke
PA Attorney ID: 87607

Exhibit A

FINAL DETERMINATION

[illegible]

1

On May 29, 2025, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ Specifically, the Requester argues that settlement agreements are financial documents that are subject to public disclosure under the RTKL, and that the Township should contact their insurance company to obtain the requested records. The OOR invited both parties to supplement the record and directed the Township to notify any third parties of their ability to participate in the appeal. 65 P.S. § 67.1101(c).

On June 10, 2025, the Township submitted an unsworn position statement reiterating its reasons for denial. Additionally, on June 12, 2025, the Township submitted a verification made subject to the penalties of 18 Pa.C.S. § 4904, from Rebecca Davis, the Township’s Manager and Open Records Officer, who verifies that the information contained in the Township’s June 10, 20235 position statement is true and correct. The Requester did not submit any additional argument during the course of the appeal.

LEGAL ANALYSIS

The Township is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Township is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*,

¹ The Requester granted the OOR an extension of time to issue this final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency's physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020).

An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Here, the Township's verified position statement provides that the Township conducted a search of its records and “determined that it did not have any copies of settlement agreements for the relevant period.” *See Verified Position Statement*, p. 2.² Regarding the requested settlement agreements, the Township also provides as follows:

² Under the RTKL, a statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Township has acted in bad faith or responsive records exist, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep't of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

While the Township was involved in a variety of litigation matters during the relevant timeframe, only four matters have been resolved. However, none of the matters involved an agreement between the Township and the plaintiff. Rather, the Township's insurance policy provides that the insurance company can settle litigation without the consent of the Township. This occurred on all four occasions. The Township did not take part in any settlement negotiations with any of the plaintiffs, nor were any funds paid by [the] Township directly to the plaintiffs. The Township's Board of Commissioners took no action to approve any such settlement because the insurance company settled the matters without the Township's consent. Most notably, defense counsel did not supply copies of any releases to the Township. Therefore, the settlement agreement was never in the "possession, custody or control" of the Township. 65 P.S. § 67.901. There simply is no public record created by the Township that can be provided pursuant to the [RTKL].

Id. at 2-3. Therefore, based on the evidence submitted through its verified position statement, the Township has proven that it does not have possession within its own files of any responsive settlement agreements, because any agreements entered into during the relevant timeframe would be in possession of its insurance company. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

However, the Requester argues that the requested settlement agreements are financial records of the Township and that responsive records must be obtained from its insurance company pursuant to Section 506(d) of the RTKL. 65 P.S. § 67.506(d)(1). Under the RTKL, two groups of records are accessible - those records in an agency's actual or constructive possession reached directly under Section 901 of the RTKL and records in the possession of third parties that are indirectly accessible through Section 506(d) of the RTKL. *See Pa. Dep't of Pub. Welf. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014), *aff'd*, 124 A.3d 1214 (Pa. 2015). Section 506 of the RTKL provides that:

A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency[.]

65 P.S. § 67.506(d)(1). In *Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, the Commonwealth Court explained that records “in the possession of a party with whom an agency has contracted to perform a governmental function on behalf of the agency” are presumptively public records subject to public access, “so long as the record (a) directly relates to the governmental function and (b) is not exempt under the RTKL.” 13 A.3d 1025, 1039 (Pa. Commw. Ct. 2011); *see also* 65 P.S. § 67.305(a).

In determining whether records directly relate to a third party's performance of its governmental function, the Commonwealth Court has looked to whether the records are relevant to the third party's performance of its governmental function. *See Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 615 (Pa. Commw. Ct. 2011) (finding that “independent contractor agreements with interpreters who have not actually performed translation services under the [c]ontract ... are not directly related to the [c]ontract because the interpreters have not actually performed, and may never perform, translation services under the [c]ontract”); *see also Buehl v. Office of Open Records*, 6 A.3d 27 (Pa. Commw. Ct. 2010) (records regarding the actual costs paid by a contractor that operated the Pennsylvania Department of Corrections' commissary did not directly relate to the governmental function because the contractor's only contractual obligations pertained to providing commissary services and, what the contractor paid for the items is beyond the scope of its contract). Therefore, the RTKL makes public records, in the hands of a third party who has contracted with the government to perform a governmental function, subject to disclosure.

Here, the Township argues that its insurance company does not perform a governmental function on behalf of the Township. The Township is a township of the first-class governed by the Pennsylvania First Class Township Code (“Township Code”), 53 P.S. §§ 55202, *et seq.*³ The

³ *See* Lower Allen Township Code at <http://latwp.org> (last accessed July 31, 2025).

OOR has previously found that providing insurance coverage is not a power granted to first-class townships under the Township Code and that records held by an insurance company that were not provided to or reviewed by the township did not relate to a township's performance of a governmental function. *Bell v. Collier Twp.*, OOR Dkt. AP 2019-0466, 2019 PA O.O.R.D. LEXIS 481.

In its verified position statement, the Township argues that it has “purchased insurance from its insurance company to provide a legal defense for certain litigation matters.” Verified Position Statement, p. 3. Additionally, as previously set forth, the Township was not involved in settlement discussions and negotiations, did not approve any of the relevant settlements, and did not pay funds to any plaintiff directly. *Id.* at 2-3. Rather, the “insurance company directly contracts with defense counsel to provide a legal defense for the Township” and “no communication [with the Township] is required to facilitate a settlement.” *Id.* at 4. The Township further asserts that while four matters were settled during the time period set forth in the Request, the Township is unaware of whether settlement agreements were actually entered into. *Id.*

As argued by the Requester, courts of this Commonwealth have generally held that settlement agreements involving public agencies are public records subject to disclosure. *Tribune-Review Publ'g Co. v. Westmoreland Cnty. Hous. Auth.*, 833 A.2d 112 (Pa. 2003); *Newspaper Holdings, Inc. v. New Castle Area Sch. Dist.*, 911 A.2d 644 (Pa. Commw. Ct. 2006) (each holding that settlement agreements were public records under the RTKL's predecessor legislation). Unlike in *Tribune-Review Publ'g Co.*, here the Township has established that it purchases insurance from a private insurance company rather than a government insurer. *Tribune-Review Publishing Co.*, 833 A.2d at 114. The Township has submitted evidence that the insurance company provides legal defense coverage to the Township, and that the defense counsel contracted by the insurance

company handled all settlement matters during the relevant timeframe, with the Township not being involved in the settlements. The Township has further demonstrated that no settlement agreements that may have been entered into by the insurance company were provided to the Township. As the Township was not involved in decisions to enter settlement agreements and its approval was not needed for settlement, the requested records do not relate to the performance of a governmental function and are therefore, not accessible under Section 506(d)(1) of the RTKL. *See Ciavaglia and The Bucks County Courier Times v. Bucks Cnty.*, OOR Dkt. AP 2021-0876, 2021 PA O.O.R.D. LEXIS 1317 (settlement agreements entered into by contractors that do not directly relate to the performance of a governmental function are not accessible under the RTKL). Additionally, as there has been no disbursement of public funds regarding the settlement agreements, the records cannot be considered financial records of the Township as defined by the RTKL. 65 P.S. § 67.102 (defining “financial record”); *Conroy v. Kiskiminetas Twp.*, OOR Dkt. AP 2022-2031, 2022 PA O.O.R.D. LEXIS 2470 (where the township’s insurance company handled a settlement, the settlement agreement was not a financial record of the township under the RTKL).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Township is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Cumberland County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should

not be named as a party.⁴ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 8, 2025

/s/ Kathleen A. Higgins

KATHLEEN A. HIGGINS
DEPUTY CHIEF COUNSEL

Sent via OOR portal to: Jonathan Bergmueller; Rebecca Davos, AORO; Steven P. Miner, Esq.

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Exhibit B



May 28, 2025

Jonathan Bergmueller
PennLive/The Patriot-News
1900 Patriot Drive
Mechanicsburg, PA 17055

VIA EMAIL: jbergmueller@pennlive.com
Email Delivery/Read Receipt Requested

RE: Agency's Response to Right-to-Know Law Request received on Thursday, April 24, 2025

Dear Jonathan:

On April 24, 2025 Lower Allen Township Police (the "Agency") and Agency Open Records Officer (AORO) received your **Right-to-Know Law (RTKL) Request** submitted on the Pennsylvania Office of Open Records (OOR) Standard Right-to-Know Law Request Form sent via email. The Township requested a 30-day extension in writing on May 1, 2025 due to staffing limitations and potential legal review.

This letter serves as the response to the original RTK Request requesting the following records:

"Seeking copies of all settlement agreements entered into by the township from Jan. 2020 to present."

There are no responsive records (settlement agreements) generated by the Agency. The Agency works with its insurance carrier to resolve certain matters. The insurance company, upon the advice of their legal counsel, may deem it necessary to enter into a settlement agreement. In that case, these agreements are not public records as they have not been acted upon by the Board of Commissioners at a public meeting.

Based on the above, the Agency has denied your RTKL Request. If you choose to file an appeal against the Agency's responses, you must do so within fifteen (15)-business days of the date of the Agency's response as stated in Section 1101 of the RTKL Statute.

Please be advised that this correspondence will serve to close this record with the Agency as permitted by law.

Sincerely,

/s/ Rebecca L. Davis

Rebecca L. Davis, AORO
Township Manager
Lower Allen Township
2233 Gettysburg Road
Camp Hill, PA 17011
(717) 975-7575 x 1010
right_to_know@latwp.org

cc: Nate Sterling, Administrative Secretary (via email)

Exhibit C

From: no-reply@openrecordspennsylvania.com
To: jbergmueller@pennlive.com
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Thursday, May 29, 2025 10:00:17 AM
Attachments: oor_logo_email.png

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Jonathan Bergmueller
Company:	PennLive
Address 1:	1900 Patriot Drive
Address 2:	
City:	Mechanicsburg
State:	Pennsylvania
Zip:	17050
Phone:	570-428-2649
Email:	jbergmueller@pennlive.com
Email2:	jbergmueller@pennlive.com
Agency (list):	Lower Allen Township
Agency Address 1:	2233 Gettysburg Road
Agency Address 2:	
Agency City:	Camp Hill
Agency State:	Pennsylvania

Agency Zip:	17011
Agency Phone:	717-975-7575
Agency Email:	right_to_know@latwp.org
Records at Issue in this Appeal:	"Seeking copies of all settlement agreements entered into by the township from Jan. 2020 to present."
Request Submitted to Agency Via:	e-mail
Request Date:	04/24/2025
Response Date:	05/28/2025
Deemed Denied:	No
Agency Open Records Officer:	Rebecca L. Davis
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	Yes
Attachments:	<ul style="list-style-type: none">• Jonathan Bergmueller PennLive - RTK Response Letter - 2025_05_28.pdf• BergmuellerRTKApril24.pdf• Jonathan Bergmueller PennLive - RTK Extension Letter - 2025_05_01.pdf• 20250529 Lower Allen Township OOR Appeal Letter.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records

are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

333 Market Street, 16th Floor | Harrisburg, PA 17101-2234 | 717.346.9903 | F 717.425.5343 | openrecords.pa.gov

Exhibit D

Jonathan Bergmueller
Courts Reporter, PennLive / The Patriot-News
1900 Patriot Drive
Mechanicsburg, PA 17050

To the Pennsylvania Office of Open Records,

On April 24, 2025, I emailed a request for the following documents to Lower Allen Township Manager Emily Davis and Lower Allen Township Administrative Secretary Nathaniel Sterling:

1. *Seeking copies of all settlement agreements entered into by the township from Jan. 2020 to present.*

On May 1, Lower Allen Township issued its initial response and provided notice of its 30-day extension due to staffing limitations and potential legal review. Agency issued its final response May 28, 2025, denying my request.

The Pennsylvania Right-to-Know Law statute defines executed settlement agreements entered into by covered agencies as public record, unless a court has determined them to be confidential. 65 P.S. 67.708(b)(17). The RCTL statute furthermore requires agencies to facilitate access to settlements in possession of its contractors such as insurance agencies. 65 P.S. 67.506(d).

These settlement agreements are, on their face, contracts and financial records of the township under which the insurance companies and carriers have agreed to certain terms on behalf of the township and which include financial and non-financial obligations that bind the township legally and impact township residents. All of the township's obligations made under contract are public records, including those spelled out in this settlement.

These settlement agreements were executed on behalf of, and with authority of, the township, and it will impact township residents both financially and by virtue of legal obligations spelled out in the settlement.

In addition to the plain language and remedial intent of the RTKL, Pennsylvania's appellate courts and the Office of Open Records have repeatedly recognized the public access requirements and public policy laid out above, and the township's denial in this case raises issues of bad faith and unreasonable interpretation of the law. See Trib.-Rev. Pub. Co. v. Westmoreland Cty. Hous. Auth., 574 Pa. 661, 672 (2003); Newspaper Holdings, Inc. v. New Castle Area Sch. Dist., 911 A.2d 644 (Pa. Commw. Ct. 2006) (holding settlement agreements are public records under the RTKL's predecessor legislation); see also Rao v. Erie Cnty. Council, OOR Dkt. AP 2022-2812, 2023 PA O.O.R.D. LEXIS 519.

The records in this case are inextricably connected to public policy and will impact township residents both financially and by virtue of legal obligations spelled out in the settlement. They are expressly public records and must be provided under the RTKL because the public has a right to know how the township spends public funds as well as the legal obligations the township agrees to perform on their behalf.

I respectfully appeal to the Office of Open Records to order the release of all settlement agreements Lower Allen Township has entered into since January 2020. I sincerely appreciate your time and consideration of this matter. Respectfully,

Jonathan Bergmueller

Exhibit E

IN THE OFFICE OF OPEN RECORDS

In the matter of: _____	:	
Jonathan Bergmueller and PennLive	:	
Requestors	:	Docket No.: AP 2025-1509
	:	
v.	:	
	:	
Lower Allen Township	:	
Respondent	:	
	:	

MEMORANDUM OF LOWER ALLEN TOWNSHIP

Please accept this as a Memorandum in support of the Right-to-Know Request denial filed by Lower Allen Township (the “Township”) in this matter.

REQUEST and BACKGROUND

On April 24, 2025, Jonathan Bergmueller and PennLive (the “Requestors”) filed a Right-to-Know Request with the Township as follows:

“Seeking copies of all settlement agreements entered into the township from Jan. 2020 to present”

On May 1, 2025, the Township Manager, Rebecca Davis, requested an extension of 30 days to comply with the request. On May 28, 2025, Ms. Davis filed a response in the form of the Denial of the Right-to-Know Request (“Denial Letter”) In relevant part, the Denial Letter stated:

There are no responsive records (settlement agreements) generated by the Agency. The Agency works with its insurance carrier to resolve certain matters. The insurance company, upon the advice of their legal counsel, may deem it necessary to enter into a settlement agreement. In that case, these agreements are not public records as they have not been acted upon by the Board of Commissioners at a public meeting. The reason for the denial was the fact that no records exist.

On May 29, 2025, Requestors filed an appeal of the Township’s denial.

ARGUMENT

After a diligent search by Township staff, it was determined that no such records existed in the possession, custody, or control of Lower Allen Township; therefore, the Township denied Requestors' request. Some definitional information is helpful here. The Black's Law Dictionary defines **settlement** in part as "an agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other." Black Law Dictionary (5th edition 1979). Furthermore, the Right to Know Law provides in relevant part:

Upon receipt of a written request for access to a record, an agency shall make a *good faith effort* to determine if the record requested is a public record, legislative record or financial record and whether the agency has *possession, custody or control* of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request.

65 P.S. § 67.901 (*emphasis added*)

The Township conducted a good faith effort to locate responsive documents. Following this search, the Township reasonably determined that it did not have any copies of any settlement agreements for the relevant period.

Furthermore, Requestors assert that the requested settlement agreements "were executed on behalf of, and with authority of, the township, and it will impact township residents both financially and by virtue of legal obligations spelled out in the settlement." This assertion is not accurate. While the Township was involved in a variety of litigation matters during the relevant timeframe, only four matters have been resolved. However, none of the matters involved an agreement between the Township and the plaintiff. Rather, the Township's insurance policy provides that the insurance company can settle litigation without the consent of the Township. This occurred on all four occasions. The Township did not take part in any settlement negotiations with any of the plaintiffs, nor were any funds paid by Township directly to the plaintiffs. The Township's Board of Commissioners took no action to approve any such

settlement because the insurance company settled the matters without the Township's consent. Most notably, defense counsel did not supply copies of any releases to the Township. Therefore, the settlement agreement was never in the "possession, custody or control" of the Township. 65 P.S. § 67.901 There simply is no public record created by the Township that can be provided pursuant to the Right-to-Know Law.

In reviewing the statute, the Requestors contend that Section 65 P.S. § 67.506(d) of the Right-to-Know Law is somehow implicated. In review of §506(d), it appears that this would be the case if the Township contracted with another entity to perform governmental functions. This is not the case here. Rather the Township purchased insurance from its insurance company to provide a legal defense for certain litigation matters. The insurance company is not a contractor of the Township and does not perform governmental functions.

The leading case in this area is Tribune-Review Publishing Company v. Westmoreland County Housing Authority, 883 A.2d 112 (Pa. 2003).

This is a Right-To-Know case that holds that settlement agreements even where public bodies do not expend public funds but only pay insurance premiums were held to be public records pursuant to the Right-To-Know Act.

The facts in this matter, however, are distinguishable. First, the Township is not aware whether or not there was "a settlement agreement". It is most likely a Release was signed by a plaintiff in one of the matters described above but there was no agreement since there was no action taken by the Township. In other words, there are no agreements, but rather Releases.

The other problem in this matter is that the Township is unaware of whether or not there are any nondisclosure provisions that may be violated. In other words, if a Court ruled the

matter could not be disclosed, any disclosure by the Township through this Right-to-Know Request could violate that Court order.

Additionally, at 65 P.S. § 67.708(b)(27) it appears that certain communications between the Township and its insurance company would be exempt from the Right-to-Know Law. This may be based on public policy, because the insurance company directly contracts with defense counsel to provide a legal defense for the Township. The attorneys involved in litigation would have an attorney/client privilege with the Township and its staff. However, no communication is required to facilitate a settlement. On the contrary, the insurance company instructs the appointed defense counsel to determine if and when a matter should be settled. This does not come before the Board of Commissioners or any other Township staff, including the Manager or Solicitor.

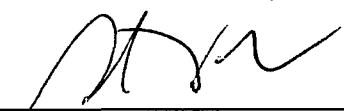
CONCLUSION

There is simply no Township record that can be disclosed. Any settlement agreement was negotiated by the insurance company without involvement by the Township. The settlement agreements were never in the possession, custody, or control of the Township. For these reasons, the Township's denial of Requestor's request was proper, and this appeal should be denied.

Respectfully submitted,
CALDWELL & KEARNS, P. C.

Date:

By:


Steven P. Miner, Esq. (I.D. No.: 38901)
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661 (Office)
sminer@cklegal.net
Solicitor for Lower Allen Township

CERTIFICATE OF SERVICE

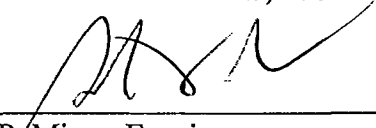
I hereby certify that on the date below a true and correct copy of the foregoing document
_____ was served upon the parties by email, or by U.S. Mail, first class, postage prepaid, to the
addresses below:

Jonathan Bergmueller
PennLive/The Patriot-News
1900 Patriot Drive
Mechanicsburg, PA 17055
VIA EMAIL: jbergmueller@pennlive.com

Respectfully submitted,

CALDWELL & KEARNS, P.C.

By: _____


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3631 N. Front Street
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(717) 934-4036
sminer@cklegal.net
(717) 232-2766 (facsimile)
Attorney for Lower Allen Township

Date: _____

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Lower Allen Township

Signature: _____

Name: Steven P. Miner, Esquire

Attorney No. (if applicable): 38901