



FINAL DETERMINATION

IN THE MATTER OF

**SAMUEL THACKER,
Requester**

v.

**CHELTENHAM TOWNSHIP,
Respondent**

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Docket No: AP 2026-3604

FACTUAL BACKGROUND

On July 27, 2026, Samuel Thacker (“Requester”) submitted a request (“Request”) to Cheltenham Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, in relevant part:

The complete text of the land grant/deed of dedication from Melrose Development, LLC to Cheltenham Township that was attached to, or referenced in, the official Board of Commissioners meeting agenda for December 17, 2025, along with all associated exhibits, maps, deeds, title reports, covenants, and any written correspondence or internal memos regarding the acceptance or conditions of this specific land grant.

On August 31, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Township denied Part 2a of the Request in part, arguing that the responsive communications are protected by the attorney-client privilege.

On August 31, 2026, the Requester appealed to the Office of Open Records (“OOR”),

challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Township to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On September 14, 2026, the Township submitted a position statement, arguing that the three records withheld are exempt pursuant to Pennsylvania Rule of Professional Conduct 1.6(a) and submitted the attestations of Lauren Walter, Esq., the Open Records Officer for the Township (“Walter Attestation”), and Edward Diasio, Esq., the solicitor for the Township (“Diasio Attestation”).

On September 15, 2026, the Requester submitted argument that the communications withheld by the Township relate to “routine, pre-agreement land development negotiations” conducted by the Township’s solicitor and counsel for the private land developer and, as such, they are not protected under Rule 1.6(a).

On September 18, 2026, the Township provided a copy of one of the emails it withheld, along with the statement of counsel for the Township, stating that the Township “determined that one of the three withheld records likely does not qualify as an exempt record on the basis of Rule 1.6 due to the nature of the communication.”²

On September 20, 2026, the Requester submitted supplemental argument that the Township has failed to meet its burden of proof and asking that the OOR conduct *in camera* review of the remaining two records withheld.

¹ The Requester granted the OOR a 30-day extension to issue a 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).”).

² The appeal is dismissed as moot as to this responsive email provided during the course of the appeal. *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records, and “the controversy has been mooted”).

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*, 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)). Although the Requester asks the OOR to conduct *in camera* review of the withheld records, the OOR declines to do so because it has the necessary information and evidence before it to adjudicate this matter.

Rule 1.6(a) provides that “[a] lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation.” Pa.R.P.C. 1.6.(a). Further, Comment 3 to Rule 1.6(a) provides, in part, that the “confidentiality rule . . . applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.” Part 2a of the Request seeks any written correspondence regarding the acceptance or conditions of a specific land grant settlement negotiations. Records of settlement negotiations of counsel on behalf of an agency are exempt from disclosure under the ethics-based rule of confidentiality under Rule 1.6(a) of the Pennsylvania Rules of Professional Conduct. *See City of Pittsburgh v. Silver*, 50 A.3d 296, 301 (Pa. Commw. Ct. 2012).

In *Silver*, the Commonwealth Court held that correspondence between the city's assistant solicitor and adverse counsel regarding efforts to negotiate a settlement of pending litigation were not subject to public access under the RTKL because the release of such records would violate Rule 1.6(a). *Id.* In *Office of Open Records v. Center Township*, the Commonwealth Court clarified that, stating:

In *Silver*, this Court declined to determine whether the OOR or the trial court erred in concluding that the settlement negotiations at issue were covered under the attorney-client privilege or the work-product doctrine. Presumably, we did so because the settlement negotiations involved discussion with third parties and did not reflect the solicitor's legal impressions and, therefore, were not protected under either privilege... Instead, this Court focused on Pa.R.P.C. 1.6 and its embodiment of the rule of confidentiality established in professional ethics. Significantly, the ethics-based rule of confidentiality provides protection to a wider scope of client information than is afforded by the attorney-client privilege and work-product doctrine in that it 'applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.' Pa.R.P.C. 1.6. Although the RTKL specifically shields from disclosure information covered under the attorney-client privilege and the work-product doctrine, *see* 65 P.S. § 67.102 (defining 'privilege'), both of which are referenced in Pa.R.P.C. 1.6, the RTKL does not have a counterpart provision embodying the ethics-based rule of confidentiality that is otherwise covered under Pa.R.P.C. 1.6. At its core, then, the issue in *Silver* concerned a clash between the RTKL, which permits disclosure of information protected by the ethics-based rule of confidentiality, and Pa.R.P.C. 1.6, which prohibits such disclosure. It is against this backdrop, and the fact that disclosure of the settlement negotiations violated the ethics-based rule of confidentiality, that this Court concluded, *sua sponte*, that our Supreme Court's authority under Article V, Section 10(c) trumped the RTKL's requirement that the documents should be disclosed and that the OOR lacked subject matter jurisdiction to order disclosure.

95 A.3d 354, 360-61 (Pa. Commw. Ct. 2014).

Here, Part 2(a) of the Request facially implicates records that are not public pursuant to the Rules of Professional Responsibility, and the Township presented evidence showing that the two remaining responsive records contain information concerning confidential settlement negotiations.

See Diasio Attestation, ¶¶ 10-17.³ Accordingly, the Township has established that communications of such settlement negotiations are not subject to access under the Rules of Professional Conduct, as set forth in *Silver*.

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, 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 to the Montgomery 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 65 P.S. § 67.1303, but 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 OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 30, 2026

/s/ Catherine R. Hecker

APPEALS OFFICER
CATHERINE R. HECKER

Sent via the OOR Portal to: Samuel Thacker
Lauren Walter
Bethany O'Neill, Esq.

³ Under the RTKL, an affidavit or statement made under 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. Off. 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, “the averments in the [attestation] should be accepted as true.” *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

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