

**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA**

LANCASTER TOWNSHIP, : CIVIL DIVISION — STATUTORY  
Petitioner, : APPEAL  
v. :  
ALEX WEIDENHOF AND THE : Case No. 21-40053  
CRANBERRY EAGLE :  
Respondents, :

**RECEIVED**

**MAR 26 2021**

**NOTICE TO PLEAD**

OFFICE OF OPEN RECORDS

**To Petitioner Lancaster Township:**

You are hereby notified to file a written response to the enclosed Answer to Petition for Review of an Office of Open Records Final Determination, New Matter, and Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.



Alex Weidenhof


**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA**

LANCASTER TOWNSHIP,	:	CIVIL DIVISION — STATUTORY
Petitioner,	:	APPEAL
v.	:	
ALEX WEIDENHOF AND THE	:	Case No. 21-40053
CRANBERRY EAGLE	:	
Respondents,	:	

**NOTICE OF *PRO SE* APPEARANCE**

I, Alex Weidenhof, hereby enter an appearance on my own behalf in this action and request that all future correspondence and orders be mailed to me at the address below or transmitted by facsimile at the number listed below:

Alex Weidenhof  
8050 Rowan Road  
Suite 504  
Cranberry Township, PA 16066  
Fax: 724-776-0211



Alex Weidenhof

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

LANCASTER TOWNSHIP,

Petitioner,

v.

ALEX WEIDENHOF AND THE  
CRANBERRY EAGLE

Respondents,

CIVIL DIVISION — STATUTORY  
APPEAL

Case No. 21-40053

RESPONDENT ALEX WEIDENHOF'S ANSWER TO PETITION FOR

REVIEW OF AN OFFICE OF OPEN RECORDS FINAL

DETERMINATION, NEW MATTER, AND COUNTERCLAIM

AND NOW, comes Respondent Alex Weidenhof ("Requester"), *pro se*, and responds to Petitioner's, Lancaster Township (the "Township"), Petition for Review of an Office of Open Records Final Determination<sup>1</sup> and asserts two new matters and a counterclaim as follows:

I. OVERVIEW

1. Denied. The allegations contained in Paragraph 1 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied.

2. Denied. Paragraph 2 is a request for relief to which no responsive pleading is required and the same is, therefore, denied.

II. THE PARTIES

3. Admitted. By way of further response, this answer is filed only on behalf of Alex Weidenhof.

4. Admitted.

<sup>1</sup> On March 12, 2021, counsel for Lancaster Township agreed to an extension for this pleading to be filed, from March 16 to March 26.

### III. JURISDICTION

5. Admitted.

### IV. STANDARD OF REVIEW

6. Admitted in part. Denied in part. Admitted only to the extent this Court may exercise *de novo* review and its scope may be plenary. The remaining averments of Paragraph 6 are denied. By way of further response, this Court may choose to apply a *de novo* standard of review. However, it may also adopt the Final Determination's rulings. There is "nothing in the RTKL that would prevent a Chapter 13 court from simply adopting the findings of fact and conclusions of law of an appeals officer when appropriate, thus, in the proper case, effectively achieving the result sought by the OOR." *Bowling v. Office of Open Records*, 75 A.3d 453, 473 (Pa. 2013).

7. Denied. Paragraph 6 above is incorporated herein by reference.

### V. HISTORY OF THE RIGHT TO KNOW REQUEST

8. Admitted.

9. Admitted.

10. Admitted. By way of further response, Ms. Senft provided an interim response on October 26, invoking a 30-day extension for Items (ii), (iv), (v), and (vi); granting item (i); and stating no responsive records existed for item (iii). That interim response is attached hereto and incorporated herein as Exhibit 1.

11. Admitted in part. Denied in part. Admitted only to the extent the appeal sought review of the Township's denials of items (ii); (iv); (v); and (vi). The remaining averments of Paragraph 11 are denied. It is specifically denied that Petitioner's Exhibit D is the appeal filed with the Office of Open Records. Exhibit D is the position statement Requester submitted when

the OOR invited both parties to supplement the record. The appeal itself is attached hereto and incorporated herein as Exhibit 2.

12. Denied. The Township's December 9 response and Ms. Senft's affidavit are documents, which speak for themselves. To the extent the averments of Paragraph 11 contradict the documents, such averments are denied. By way of further response, Footnote 2 notes the December 9 response has been altered in the Petition.

13. Admitted.

14. Admitted.

## **VI. ARGUMENT**

15. Denied. Requester is without knowledge or information sufficient to form a belief as to the truth of the averment that the appeals officer "believe [*sic*]" the Township's evidence is insufficient and the same is, therefore, denied.

16. Denied. The Final Determination is a document, which speaks for itself. To the extent the averments of Paragraph 16 contradict the Final Determination, such averments are denied.

17. Denied. The allegations contained in Paragraph 17 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied.

18. Denied. The Right to Know Law, 65 P.S. §§ 67.101 *et seq.* (the "RTKL"), is a statute, which speaks for itself. To the extent the averments of Paragraph 18 contradict the RTKL, such averments are denied.

19. Denied. The response is a document, which speaks for itself. To the extent the averments of Paragraph 19 contradict the response, such averments are denied. By way of further response, the Township stated only that it reviewed the records and applied exemptions. It did

not provide evidence that the exemptions are applicable to the records it withheld, contrary to the evidentiary requirements of the Right-to-Know Law. *See* 65 P.S. § 67.708(a)(1) (“The burden of proving that a record . . . is exempt from public access shall be on the . . . local agency receiving a request by a preponderance of the evidence”). Moreover, the Township’s evidentiary presentation here amounts solely to its attorney’s argument that the exemptions apply, citing no factual basis for such argument. *See Office of the Governor v. Davis*, 122 A.3d 1185, 1193 (Pa. Cmwlth. 2015) (“Position statements are akin to briefs or proposed findings of fact, which, while part of the record, are distinguishable from the *evidentiary* record”) (emphasis in original).

20. Denied. The allegations contained in Paragraph 20 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied. By way of further response, the Township’s cited cases here are materially distinct from the issues at hand in its Petition. In *Rittmeyer*, the school district provided the requester with a litany of documents but withheld the names of two employees. *Highlands Sch. Dist. v. Rittmeyer*, 243 A.3d 755 (Pa. Cmwlth. 2020). In both *Stein* and *Coulter*, the agencies met their evidentiary burden, providing enough information for the court to determine the applicability of their cited exemptions. *Stein v. Plymouth Twp.*, 994 A.2d 1179 (Pa. Cmwlth. 2010) (wherein the petitioner sought complaints and names of complainants against his property, and thus the existence of such complaints were not at issue); *Coulter v. Dep’t of Pub. Welfare*, 65 A.3d 1085 (Pa. Cmwlth. 2013) (“DPW . . . interpreted [Coulter’s] request to be for records *regarding the investigation that DPW completed in response to her complaint*”) (emphasis added).

21. Denied. The allegations contained in Paragraph 21 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied.

22. Denied. The allegations contained in Paragraph 22 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied.

23. Denied. The allegations contained in Paragraph 23 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied.

24. Denied. The allegations contained in Paragraph 24 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied. By way of further response, the Township's citation of *Fennell* directly contradicts its argument. As the Township notes, the requester was well aware there was an investigation and specifically sought "a copy of the Commission's report of its investigation and 'anything that may have been put on record of the incident.'" *Pa. Game Comm'n v. Fennell*, 149 A.3d 101, 105 (Pa. Cmwlth. 2016). No evidence that the Township conducted an investigation has been proffered in the six months since the Request was filed, contrary to its burden under the RTKL. *See Black v. Pa. State Police*, 676 C.D. 2016, at \*10 n. 16, (Pa. Cmwlth. Nov. 23, 2016) ("[T]o establish the applicability of any of the enumerated exemptions; under Section 708(b)(17), the agency must demonstrate that the records sought relate to a noncriminal investigation").

25. Denied. The allegations contained in Paragraph 25 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied. By way of further response, Paragraph 24 above is incorporated herein by reference.

26. Denied. The allegations contained in Paragraph 26 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied.

27. Denied. The allegations contained in Paragraph 27 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied. By way of further response, the Township here misrepresents the RTKL. While the Township is *permitted* to

invoke the exemptions it has, it is not *obligated* to do so. 65 P.S. § 67.506(c) (“An agency may exercise its discretion to make any otherwise exempt record available for inspection and copying under this chapter” so long as disclosure is not prohibited by law, regulation or judicial order or decree; the record is not protected by privilege; and public interest favors access.) Thus, the Township’s assertion Requester is “not permitted to receive” the requested records, even if the exemptions do apply, is patently incorrect.

28. Denied. The allegations contained in Paragraph 28 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied. By way of further response, the Township’s argument here, that case law applies only when the case at hand is identical to precedent, is disingenuous.

29. Denied. The allegations contained in Paragraph 29 are conclusions of law to which no responsive pleading is required and the same are, therefore, denied.

#### **VII. RELIEF REQUESTED**

30. Denied. Paragraph 30 is a request for relief to which no responsive pleading is required and is, therefore, denied. By way of further response, while this Court may exercise *de novo* review, it is by no means compelled to do so, particularly when the case is only before it because the Township has failed, at any point in the six months since the Request was filed, to bring evidence supporting its invoked exemptions. *See, e.g., Pa. State Police v. Muller*, 124 A.3d 761, 766 (Pa. Cmwlth. 2015) (“An agency is not entitled to ignore its burden to show an exemption from disclosure before OOR and rely on supplementation of the record in this Court to avoid the consequences of that conduct”); *Mission Pa., LLC v. McKelvey*, 212 A.3d 119, 129 (Pa. Cmwlth. 2019) (“Lack of evidence, when the parties and participants had a full opportunity to submit evidence to the fact-finder, is not a valid reason for supplementing the record”).



31. Admitted. By way of further response, the final sentence of Paragraph 30 above is incorporated herein by reference.

32. Denied. Paragraph 32 is a request for relief to which no responsive pleading is required and the same is, therefore, denied. By way of further response, the final sentence of Paragraph 30 above is incorporated herein by reference.

**NEW MATTER**

**FIRST DEFENSE**

**PETITIONER LACKS CAPACITY TO SUE**

33. The foregoing paragraphs are incorporated as if set forth at length.

**A. AS PRELIMINARY OBJECTIONS ARE NOT PERMITTED IN STATUTORY APPEALS,  
THIS DEFENSE MAY BE RAISED ON ANSWER TO THE TOWNSHIP'S PETITION**

34. Challenges to a plaintiff's or, in this case, petitioner's capacity to sue may be raised either via preliminary objections or in an answer to the complaint. *See* Pa. R.Civ.P. 1028(a)(5) (defendant may raise lack of capacity to sue as a preliminary objection); *Erie Indemnity Co. v. Coal Operators Casualty Co.*, 272 A.2d 465, 467 (Pa. 1971) ("the issue of incapacity to sue is waived unless it is specifically raised in the form of a preliminary objection or in the answer to the complaint") (emphasis added); *Huddleston v. Infertility Center of America*, 700 A.2d 453, 457 (Pa. Super.1997) (citing *Erie Indemnity*) ("challenges to a litigant's capacity to sue must be raised by way of preliminary objections or answer").

35. Preliminary objections may not be filed in an appeal in this Court in an appeal under the RTKL. *Knopsnider v. Derry Tp. Bd. of Sup'rs*, 725 A.2d 245 (Pa. Cmwlth. 1999) ("Because the rules of civil procedure do not apply, the Board cannot challenge the filing of Knopsnider's appeal by filing preliminary objections"); *see also* Pa. R.Civ.P. 1001 (a civil action

governed by the rules of civil procedure are commenced by either a praecipe for writ of summons or a complaint).

36. As such, the defense of lack of capacity to sue is properly raised in this instance as a new matter.

B. THE TOWNSHIP LACKS CAPACITY TO COMMENCE SUIT UNDER THE PENNSYLVANIA SUNSHINE ACT, 65 PA.C.S. §§ 701-716.

37. The Township is indisputably an “agency” as defined by the Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701-716 (“Sunshine Act”). 65 Pa.C.S. § 703.

38. The Sunshine Act governs how agencies, including political subdivisions such as the Township, may, among other things, conduct meetings and consider, deliberate, and vote on official business. *See generally Id.*

39. Under the act, “[o]fficial action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public”<sup>2</sup> with limited exceptions. *Id.* § 704.

40. One such exception is that the agency may hold executive sessions, which are closed to the public, such that its constituent members can “consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.” *Id.* § 708(a)(4).

41. However, official action relating to such an executive session “shall be taken at an open meeting.” *Id.* § 708(c).

<sup>2</sup> “Official action” under the Sunshine Act is defined, in relevant part, as “(3) The decisions on agency business made by an agency[; and] (4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.” “Agency business” is further defined as “[t]he framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.” Administrative action is defined more narrowly as “[t]he execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the agency.” 65 Pa.C.S. § 704.

42. On February 15, 2021, the Lancaster Township Board of Supervisors held a regular, monthly meeting. The minutes of that meeting are attached hereto and incorporated herein as Exhibit 3.<sup>3</sup>

43. During that meeting, it was announced the Township convoked an executive session on February 2, 2021, to discuss litigation matters related to the “Butler Eagle Right to Know Appeal.” Resp. Ex. 3 p. 1.

44. There is no dispute that the convocation of that executive session was permitted under the Sunshine Act.

45. However, during that meeting, no vote was taken to commence this statutory appeal. *See* Resp. Ex. 3.

46. The Township’s filing of the instant Petition for Review runs afoul of the requirements under the Sunshine Act.

47. Under the act, this Court may “enjoin any challenged action until a judicial determination of the legality of the meeting at which the action was adopted is reached.” 65 Pa.C.S. § 713.

48. As this answer, new matter and counterclaim challenges the Township’s action in bringing this petition, *see infra* Counterclaim, this Court should **enjoin** the Township’s commencement of the instant Petition.

**SECOND DEFENSE**  
**LACK OF JURISDICTION**

49. The foregoing paragraphs are incorporated herein as if set forth at length.

<sup>3</sup> Although the exhibit has the “draft” watermark, these minutes were approved at a subsequent Board of Supervisors meeting.

50. Appeals under the RTKL may be brought to this Court within “30 days of the mailing date of the final determination.” 65 P.S. § 67.1302(a).

51. The Final Determination was issued and mailed in the instant case on January 26, 2021. Pet. Ex. A p. 10; Pet. ¶ 14.

52. Because the Township has failed to bring its Petition in compliance with the Sunshine Act, *see* First Defense *supra*; Counterclaim *infra*, the Township has failed to bring its Petition within 30 days of the mailing date of the Final Determination.

53. As the Township did not legally bring its Petition within 30 days of the Final Determination’s issuance, this Court lacks jurisdiction. *See, e.g., Campbell v. Admin. Office of Pa. Courts*, No. 793 C.D. 2017, at \*6 (Pa. Cmwlth. Feb. 27, 2018) (“Requester filed his petition for review on June 19, 2017, four days after the deadline. As such, this Court lacks jurisdiction.”).

54. For this reason, the Township’s Petition should be **dismissed with prejudice**.

**COUNTERCLAIM**  
**VIOLATION OF PENNSYLVANIA SUNSHINE ACT, 65 PA.C.S. §§ 701-716**

55. The foregoing paragraphs are incorporated herein as if set forth at length.

**A. THIS COURT HAS JURISDICTION OVER SUNSHINE ACT CHALLENGES, AND THIS CHALLENGE IS PROPERLY BROUGHT BEFORE THE DEADLINE**

56. The Sunshine Act provides “courts of common pleas shall have original jurisdiction” over challenges alleging Sunshine Act violations by agencies other than state agencies. 65 Pa.C.S. § 715.

57. The act grants standing to “any person.” *Id.*

58. The Butler County Court of Common Pleas is the proper venue, as the act states “[t]he action may be brought . . . where the agency whose act is complained of is located or where the act complained of occurred.” *Id.*

59. Additionally, the law does not contain a provision governing the manner in which a Sunshine Act challenge may be brought. *Id.*; see *Tom Mistick Sons v. City of Pittsburgh*, 130 Pa. Commw. 234, 238 (Pa. Cmwlth. 1989) (“[T]he Sunshine Act neither specifies the manner in which legal challenges are to be initiated nor does it require legal challenges to contain any particular level of specificity”).

60. As such, a counterclaim to a statutory appeal is a proper avenue for this challenge.

61. The Sunshine Act contains a provision limiting challenges to be brought “within 30 days from the date of a meeting which is open, *or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated.*” *Id.* § 713 (emphasis added).

62. In this instance, the Township did not vote to take the official action of filing the instant Petition at an open meeting. Resp. Ex. 3.

63. Therefore, an action challenging the actions of the Township in this case can be brought within 30 days of the discovery of the Sunshine Act violation.

64. Discovery of the impropriety in the instant matter occurred on February 25, 2021, when the Township filed its Petition and effected service on Requester. A Sunshine Act challenge, then, may be brought until March 26, 2021.

**B. THE TOWNSHIP UNLAWFULLY TOOK OFFICIAL ACTION WITHOUT PUBLIC DELIBERATION, KNOWLEDGE, OR ABILITY FOR INPUT, IN A CLOSED MEETING**

65. Paragraphs 37-47 are specifically incorporated herein as if set forth at length.

66. The Sunshine Act provides this Court with the ability to “render declaratory judgments or to enforce this chapter by injunction or other remedy deemed appropriate by the court.” 65 Pa.C.S. § 715.

67. The Township’s decision to hold an executive session on February 2, 2021, to discuss potential litigation; then to convene in an open meeting two weeks later and not hold a vote on filing the instant Petition; and then to file the petition constitutes a clear violation of the Sunshine Act.

68. Moreover, the Township filed this Petition with no opportunity for public comment on the matter.

69. The Sunshine Act requires political subdivisions “provide a reasonable opportunity at each” meeting for residents “both to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.” *Id.* § 710.1(a).

70. Although Pennsylvania courts have “repeatedly held that official action taken at a later, open meeting cures a prior violation of the Sunshine Act” *Smith v. Twp. Of Richmond*, 82 A.3d 407, 417 n. 10 (Pa. 2013), Lancaster Township has failed to, at any point subsequent to the filing of this Petition, “cure” its violation.

71. Further, even if the Sunshine Act violation were to be “cured,” the Township would not have approved the filing of its Petition for Review within the time prescribed by the RTKL, and this Court would not have jurisdiction to review the Final Determination.

**WHEREFORE**, Respondent Alex Weidenhof respectfully requests this Honorable Court:

- a. Enjoin the Township from litigating its Petition pending a final decision by this Court as to the legality of its filing the Petition under the Sunshine Act; and
- b. Upon such review, declare that the Township's filing of this Petition violates the Pennsylvania Sunshine Act; and
- c. Dismiss the Township's Petition for Review of an Office of Open Records Final Determination; and
- d. Order the Township provide Requester with all documents responsive to the Request within ten (10) days; and
- e. Grant such other relief as is just and proper under the circumstances.

Respectfully submitted,



Alex Weidenhof

This 26<sup>th</sup> day of March, 2021

# EXHIBIT 1



**Subject:** Right To Know Request - 10/20/20  
**From:** "Chrissy Senft" <cseft@lanaster-township.com>  
**Date:** 10/26/2020, 14:38  
**To:** "Alex Weidenhof" <aweidenhof@butlereagle.com>  
**CC:** "Chris Reese" <creese@lopecasker.com>

Good Afternoon Alex,

Per your request I have attached the Collective Bargaining Agreement with the Lancaster Township Police Department. Presently, the Public Works Department does not operate under a Collective Bargaining Agreement.

Lancaster Township is requesting an extension until November 25, 2020 (29 days from original due date) due to:

- 1) staffing limitations – no Township Manager
- 2) COVID – Currently operating remotely
- 3) a legal review is necessary, and
- 4) the records, if any, will likely require redactions.

Thank you,  
Chrissy Senft

— Attachments: —

CBA 2019-2023.pdf

611 KB

# EXHIBIT 2

**NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY**

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **December 28, 2020**.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **December 9, 2020**.

**If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.**

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters during this time to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.



**pennsylvania**  
OFFICE OF OPEN RECORDS

November 30, 2020

**Via Email Only:**

Mr. Alex Weidenhof  
The Cranberry Eagle  
8050 Rowan Rd  
Suite 504  
Cranberry Township, PA 16066  
aweidenhof@butlereagle.com

**Via Email Only:**

Christina Senft  
Agency Open Records Officer  
Lancaster Township  
113 Kings Alley  
Harmony, PA 16037  
office@lancaster-township.com  
csenft@lancaster-township.com

**RE: OFFICIAL NOTICE OF APPEAL - Weidenhof and The Cranberry Eagle v. Lancaster Township OOR Dkt. AP 2020-2509**

Dear Parties:

**Review this information and all enclosures carefully as they affect your legal rights.**

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et seq. on November 25, 2020. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19).**

**Notes for both parties (more information in the enclosed documents):**

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,

Erik Arneson  
Executive Director

Enc.: Description of RTKL appeal process  
Assigned Appeals Officer contact information  
Entire appeal as filed with OOR

# The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records ("OOR") has received the enclosed appeal, which was filed under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the enclosed information regarding the coronavirus (COVID-19). If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

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## Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR "other than *in camera* records" will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

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## Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; or are held by a contractor or vendor, the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.

Such notice must be made by: (1) Providing a copy of all documents included with this letter; and (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. Â§ 67.1101(c)).

The Commonwealth Court has held that "the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt." (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

*NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.*

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## **Statements of Fact & Burden of Proof**

Statements of fact **must** be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, [openrecords.pa.gov](http://openrecords.pa.gov).

*Any evidence or legal arguments not submitted or made to the OOR may be waived.*

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## **Preserving Responsive Records**

The agency **must** preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process.”

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## **Mediation**

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court “saving both sides time and money.”

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.

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# **pennsylvania**

## **OFFICE OF OPEN RECORDS**

**APPEALS OFFICER:**

**Magdalene C. Zeppos-Brown, Esq.**

**CONTACT INFORMATION:**

**Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234**

**FACSIMILE:**

**(717) 425-5343**

**EMAIL:**

**mazepposbr@pa.gov**

**Preferred method of contact and  
submission of information:**

**EMAIL**

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.  
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot  
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review  
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff  
are also available to provide general information about the appeals process by calling (717) 346-9903.

## REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

**NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.**

OOR Docket No: \_\_\_\_\_

Today's date: \_\_\_\_\_

Name: \_\_\_\_\_

**PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.**

Address/City/State/Zip: \_\_\_\_\_

E-mail: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Name of Requester: \_\_\_\_\_

Address/City/State/Zip: \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Address/City/State/Zip: \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail: \_\_\_\_\_

Record at issue: \_\_\_\_\_

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) \_\_\_\_\_

**I have attached a copy of all evidence and arguments I wish to submit in support of my position.**

Respectfully submitted, \_\_\_\_\_ (must be signed)

**Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.**



## Devenyi, Dylan

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**From:** no-reply@openrecordspennsylvania.com  
**Sent:** Wednesday, November 25, 2020 12:58 PM  
**To:** aweidenhof@butlereagle.com  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation

**ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to [CWOPA\\_SPAM@pa.gov](mailto:CWOPA_SPAM@pa.gov).



**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.

<b>Name:</b>	Alex Weidenhof
<b>Company:</b>	The Cranberry Eagle
<b>Address 1:</b>	8050 Rowan Rd
<b>Address 2:</b>	Suite 504
<b>City:</b>	Cranberry Township
<b>State:</b>	Pennsylvania
<b>Zip:</b>	16066
<b>Phone:</b>	724-776-4270
<b>Email:</b>	aweidenhof@butlereagle.com
<b>Agency (list):</b>	Lancaster Township
<b>Agency Address 1:</b>	113 Kings Alley
<b>Agency Address 2:</b>	
<b>Agency City:</b>	Harmony
<b>Agency State:</b>	Pennsylvania
<b>Agency Zip:</b>	16037
<b>Agency Phone:</b>	724-452-7213
<b>Agency Email:</b>	office@lancaster-township.com

<b>Records at Issue in this Appeal:</b>	Correspondence related to breaches of a collective bargaining agreement; correspondence related to employees (see attached Request for more details)
<b>Request Submitted to Agency Via:</b>	e-mail
<b>Request Date:</b>	10/20/2020
<b>Response Date:</b>	11/25/2020
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	Christina Senft, Secretary-Treasurer
<b>Attached a copy of my request for records:</b>	Yes
<b>Attached a copy of all responses from the Agency regarding my request:</b>	Yes
<b>Attached any letters or notices extending the Agency's time to respond to my request:</b>	Yes
<b>Agree to permit the OOR additional time to issue a final determination:</b>	No
<b>Interested in resolving this issue through OOR mediation:</b>	No
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>• Lancaster 20201020.pdf</li> <li>• 20201026-Interim response.pdf</li> <li>• 20201125-Final response.pdf</li> </ul>

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.

**Subject:** October 20, 2020 RTK Response  
**From:** Chrissy Senft <cseft@lanaster-township.com>  
**Date:** 25/11/20, 11:29  
**To:** Alex Weidenhof <aweidenhof@butlereagle.com>  
**CC:** Chris Reese <creese@lopecasker.com>

Alex:

These are the township's responses to your Right to Know requests dated October 20, 2020 in the order you made them:

1. We have provided you the CBA for the Lancaster Township Police Department.
2. We do not know of any alleged breaches of the Police Department CBA.
3. There is no CBA for the public works employees.
4. You have asked for correspondence related to alleged impropriety and/or wrongdoing by Township employees. Such public records are exceptions to the Sunshine Law and are not open to public access.

See Section 708(a)(7) for public records relating to an agency employee that are not available for public access, such as subsections:

- (ii) a performance rating or review,
- (vi) written criticism of an employee
- (vii) grievance material, including documents related to discrimination or sexual harassment.
- (viii) information related to discipline, demotion or discharge contained in a personnel file. This subparagraph does not apply to the final action of an agency that results in demotion or discharge.

See also 708(a)(17), subsections:

- (i) complaints submitted to an agency
- (ii) investigative materials, notes, correspondence, and reports.

By listing these subsections, we are not admitting or denying that any such records exist. Instead, we are stating that even if we had such records, they would not be available for public access. To the extent that your request falls outside of these categories and would be available for public access, we do not have such records.

5. Same answer as the one for number 4 above.

6. From January 1 through October 20, 2020, the Board of Supervisors held a number of executive sessions to discuss personnel matters. Most of them on Wednesdays for a period of time starting in February and ending recently. On many of those occasions, the executive session was continued to another date. We have attached the two sets of minutes where the executive sessions were mentioned.

Thank you,

Chrissy Senft

—Attachments—

February 17, 2020 - Board of Supervisors Regular Meeting Minutes.pdf	252 KB
November 16, 2020 - Regular Supervisors Meeting.pdf	482 KB

**Subject:** Right To Know Request - 10/20/20  
**From:** "Chrissy Senft" <csenft@lanaster-township.com>  
**Date:** 26/10/20, 14:38  
**To:** "Alex Weidenhof" <aweidenhof@butlereagle.com>  
**CC:** "Chris Reese" <creese@lopecasker.com>

Good Afternoon Alex,

Per your request I have attached the Collective Bargaining Agreement with the Lancaster Township Police Department. Presently, the Public Works Department does not operate under a Collective Bargaining Agreement.

Lancaster Township is requesting an extension until November 25, 2020 (29 days from original due date) due to:

- 1) staffing limitations – no Township Manager
- 2) COVID – Currently operating remotely
- 3) a legal review is necessary, and
- 4) the records, if any, will likely require redactions.

Thank you,  
Chrissy Senft

—Attachments—

CBA 2019-2023.pdf

611 KB



**pennsylvania**  
OFFICE OF OPEN RECORDS

## Standard Right-to-Know Law Request Form

*Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.*

**SUBMITTED TO AGENCY NAME:** Lancaster Township (Attn: AORO)

Date of Request: 20 October 2020 Submitted via: ☒ **Email** ☐ U.S. Mail ☐ Fax ☐ In Person

**PERSON MAKING REQUEST:**

Name: Alex Weidenhof Company (if applicable): The Cranberry Eagle

Mailing Address: 8050 Rowan Rd., Ste. 504

City: Cranberry Township State: PA Zip: 16066 Email: aweidenhof@butlereagle.com

Telephone: 724-776-4270 ext. 113 Fax: 724-776-0211

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ **Email** ☐ U.S. Mail

**RECORDS REQUESTED:** *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

- i. A copy of the collective bargaining agreement with the Lancaster Township Police Department
- ii. Any and all correspondence dated between Jan. 1, 2019, and Oct. 20, 2020, among Township officials, including the Secretary, Manager, and/or Supervisors, related to alleged breaches of the Police CBA
- iii. A copy of the collective bargaining agreement with Township's public works employees
- iv. Any and all correspondence dated between Jan. 1, 2018, and Oct. 20, 2020, among Township officials, including the Secretary, Manager, and/or Supervisors, related to alleged impropriety and/or wrongdoing by Township employees.
- v. Any and all correspondence dated between Jan. 1, 2020, and Sept. 30, 2020, among Township officials, including the Secretary, Manager, and/or Supervisors, related specifically to allegations of wrongdoing by former Manager Ben Kramer. This item should be interpreted to request all items that otherwise would be public under the Sunshine Act, 65 Pa.C.S. Ch. 7, in addition to all records covered by the Right to Know Law. (i.e., all documents presented to a quorum of Supervisors for deliberation in a format not designated as an executive session.)
- vi. Any documents dated Jan. 1, 2020, to Oct. 20, 2020, purporting the existence of an executive session(s) held by the Supervisors, including the date, time and place the session was held, as well as the topics discussed at the session. This information is required to be public by 65 Pa. C.S. § 708(b).

**DO YOU WANT COPIES?** ☒ **Yes, electronic copies preferred if available**

☐ Yes, printed copies preferred

☐ No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? ☐ Yes (may be subject to additional costs) ☒ **No**

**NOTE:** In most cases, a completed RTKL request form is a public record.  
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Nov. 27, 2018





**pennsylvania**  
OFFICE OF OPEN RECORDS

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than ☒ \$ 20.

**ITEMS BELOW THIS LINE FOR AGENCY USE ONLY**

Tracking: \_\_\_\_\_ Date Received: \_\_\_\_\_ Response Due (5 bus. days): \_\_\_\_\_

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: \_\_\_\_\_) Actual Response Date: \_\_\_\_\_

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$ \_\_\_\_\_

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

# EXHIBIT 3

**LANCASTER TOWNSHIP BOARD OF SUPERVISORS**  
**FEBRUARY 15<sup>TH</sup>, 2021 MEETING MINUTES**

The Lancaster Township Board of Supervisors meeting was called to order by Chairman Joseph Plesniak at 6:00 pm. Those in attendance were Supervisor Kris Kniess, Supervisor Tim Zinkham, Township Manager Danielle Rich, Secretary-Treasurer Chrissy Senft, Township Solicitor Chris Reese, Township Engineer Tom Thompson, Amanda Petersen, Connie Domhoff, Sergeant Mike Cornell, Roadmaster Mike Spiker, Charles & Debbie Scott, Dan Cox, Mike Marburger, Doug Marshall, and Gregg Semel. The February 15<sup>th</sup> meeting was duly advertised in the Butler Eagle, a newspaper of general circulation indicating the meeting would be held through the Zoom Video-Audio conferencing program.

The meeting began with the Pledge of Allegiance.

A motion was made by Supervisor Zinkham to approve the January 4<sup>th</sup> Organizational & Regular Meeting Minutes, the motion was seconded by Supervisor Kniess and passed by a majority vote. VOTE: Zinkham, Kniess, Plesniak - YES

A motion was made by Supervisor Zinkham to approve the Treasurer's Report dated January 1 – February 12, 2021, motion was seconded by Supervisor Kniess and passed by a majority vote. VOTE: Zinkham, Kniess, Plesniak – YES

Executive Sessions were held as follows:

- i. January 12, 2021 5:00pm re: Personnel & Collective Bargaining Matters (Public Works CBA)
- ii. January 26, 2021 2:00pm re: Personnel Matters (Manager Role & Employee Health Insurance)
- iii. February 2, 2021 4:00pm re: Litigation (Butler Eagle Right to Know Appeal)
- iv. February 15, 2021 5:30pm re: Litigation (Zoning Hearing Board, Seneca Landfill Variance Request)
- v. February 23, 2021 7:00pm re: Information-Gathering (Four Springs Park & April Claus Partnership)

Planning, Land Use & Zoning

Planning Commission met virtually on Thursday, January 14, 2021 to discuss the WBCA Act 537 Plan and submit questions/comments to the WBCA. The February meeting was canceled.

A motion was made by Supervisor Zinkham to approve the Arden Development Agreement providing modifications and supplements regarding Phase 7. Motion was seconded by Supervisor Kniess and passed by a majority vote. VOTE: Zinkham, Kniess, Plesniak – YES

A motion was made by Supervisor Zinkham to approve the Set-Aside Agreement from Arden Development for Phase 2, motion was seconded by Supervisor Kniess and passed by a majority vote. VOTE: Zinkham, Kniess, Plesniak – YES

A motion was made by Supervisor Zinkham to approve the following subdivisions:

1. Arden Wood Amendment #5 – Lot 721
2. Arden Wood Amendment #6, Lot 712
3. Arden Wood Amendment #7, Lot 724

Motion was seconded by Supervisor Kniess and passed by a majority vote. VOTE: Zinkham, Kniess, Plesniak – YES

Zoning Hearing Board will meet on Thursday, February 18, 2021 at 5:30 pm in the Lancaster Township Community Center to consider Seneca Landfill's application for a variance to remove minerals with 500' of a residential zoning classification and within 500' of occupied dwellings.

Road Department: Roadmaster Mike Spiker discussed the winter weather events, and preparation for the ice storm and snow accumulation for this week.

Police Department: Sergeant Cornell reported that the call volume is stable, and the department is working with both the state and the Attorney General's office on several cases. As budgeted for 2021, the new police vehicle has been completed and will be placed into service in the next few weeks.



## Ordinances & Resolutions

A motion was made by Supervisor Zinkham to approve Resolution 2021-4 to reappoint George Metropolous to serve a new, five-year term on the Zoning Hearing Board. Motion was seconded by Supervisor Kniess and passed by a majority vote. VOTE: Zinkham, Kniess, Plesniak – YES

A motion was made by Supervisor Zinkham to approve Resolution 2021-5 to comply with the requirements of the Butler County Parks Renovation Program for the purpose of obtaining grant funds for the renovation of the Community Center. Motion was seconded by Supervisor Kniess and passed by a majority vote. VOTE: Zinkham, Kniess, Plesniak – YES

## New Business

A motion was made by Supervisor Zinkham to approve an employee cell phone reimbursement policy. This policy provides a \$50 monthly stipend to the township manager, secretary/treasurer, roadmaster and police sergeant. Motion was seconded by Supervisor Kniess and passed by a majority vote. VOTE: Zinkham, Kniess, Plesniak – YES

A motion was made by Supervisor Zinkham to approve the renewal of employee health insurance and continuation of the current plan, UPMC EPO GOLD MCA with a deductible of \$1,250. The renewal rate for this plan is \$6,013.57 monthly and reflects a 14% increase. Motion was seconded by Supervisor Kniess and passed by a majority vote. VOTE: Zinkham, Kniess, Plesniak – YES

Lancaster Township is seeking a representative to serve on the Zelenople Public Library Board of Trustees. The Board meets 10 times per year on the fourth Wednesday of the month, excluding July and November. Any interested residents can download an application from our website or contact the township manager.

The Lancaster Township Police Department recently installed a drug drop box in the Municipal Building lobby creating a convenient place for anyone to dispose of unwanted prescription drugs. The box is available during regular office hours.

Lancaster Township is now on Facebook. Follow us @ LancasterTwp

## PUBLIC COMMENT

Greg Semel of the Zelenople Borough Council commented on how effective the township meeting was run and is looking forward to continuing to work together in the future.

Mike Marburger of Insight Pipe thanked both the Police Department and Road Departments for their work in various situations over the past few weeks.

A motion was made by Supervisor Zinkham to adjourn the public meeting at 6:23, was seconded by Supervisor Kniess and passed by a majority vote.

Respectfully submitted:

Christina M. Senft  
Secretary/Treasurer

**VERIFICATION**

I, Alex Weidenhof, verify that the facts and statements contained in the foregoing pleading are true and correct to the best of my personal knowledge, information, and belief. I understand this verification is subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, and I may be subject to criminal penalties if I make knowingly false averments.

Date: March 26<sup>th</sup>, 2021

  
Alex Weidenhof

**CERTIFICATE OF SERVICE**

I, Alex Weidenhof, hereby certify that on March 26<sup>th</sup>, 2021, I caused to be served the foregoing document, Respondent Alex Weidenhof's Answer to Petition for Review of an Office of Open Records Final Determination, New Matter, and Counterclaim, by email and First Class Mail, postage prepaid, to the following:

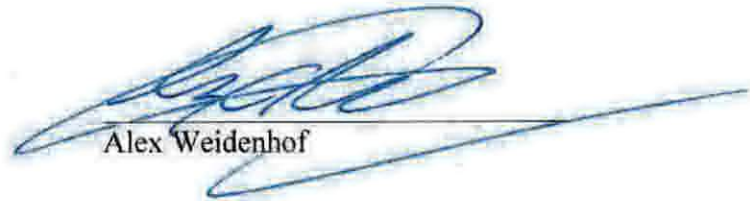
Christopher J. Reese, Esquire  
Lope, Casker & Casker  
207 E. Grandview Avenue  
Zelienople, PA 16037  
Email: [creese@lopecasker.com](mailto:creese@lopecasker.com)  
(Counsel for Petitioner)

Magdalene C. Zeppos-Brown, Esquire  
Pennsylvania Office of Open Records  
333 Market Street  
16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
Email: [mazepposbr@pa.gov](mailto:mazepposbr@pa.gov)  
(OOR Appeals Officer)

  
Alex Weidenhof

**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.



Alex Weidenhof