

July 25, 2025

William Keough
wkeough3560@gmail.com

RE: Advisory Opinion on Memorandum of Understanding

Dear Mr. Keough:

The Office of Open Records (“OOR”) received your request for an advisory opinion on July 14, 2025. The OOR may issue advisory opinions to agencies and requesters pursuant to Section 1310 of the Right-to-Know Law (“RTKL”), 65 P.S. § 67.1310(a)(2).

Your advisory opinion request concerns a Memorandum of Understanding (MOU) and asks three questions:

- 1) Is a Memorandum of Understanding or any other Exhibit referenced in a publicly available Resolution or Ordinance of the township exempt under any Exceptions for Public Records – Section 708 of the Act?
- 2) Is an agency required to provide to the public complete documentation, including Attachments and Exhibits, or a public record included on an agency agenda PRIOR to considering the agenda item?
- 3) If the use of Section 708 of the Act is applied improperly by the governing body or its staff, is the action of the governing body null and void?

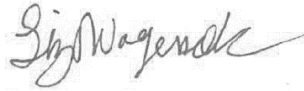
Questions 2) and 3) implicate the Sunshine Act, which is a related Act to the RTKL but one where the OOR does not have jurisdiction over disputes. More information about the Sunshine Act can be found at <https://www.openrecords.pa.gov/SunshineAct.cfm>. However, because the OOR’s only involvement with the Act is to provide training, it would be inappropriate for the OOR to issue an advisory opinion concerning any impacts of the Act. The RTKL states that the OOR shall issue advisory opinions to agencies and requesters, but only with respect to the RTKL. 65 P.S. § 67.1310(a).

For Question 1), you specifically identify Sections 708(b)(9) and (10) of the RTKL as exemptions. Section 708(b)(9) – concerning draft documents – only permits an agency to withhold the specifically enumerated draft documents (bills, resolutions, regulations, statements of policy, management directives, ordinances or amendments thereto). 65 P.S. § 67.708(b)(9). Section 708(b)(10) – concerning documents reflecting internal, predecisional deliberations – is a broader exemption, and one where an

agency is tasked with submitting evidence to the OOR demonstrating that all elements are met. To be exempt under that Section, an agency must demonstrate that records are internal, predecisional, and reflect deliberations of the agency. 65 P.S. § 67.708(b)(10)(i)(A). However, once a document is provided to a deliberative body, such as a board of commissioners, for deliberation, the exemption no longer applies. 65 P.S. § 67.708(b)(10)(ii). Therefore, it is conceivable that a document is exempt from disclosure under Section 708(b)(10) of the RTKL *prior* to it being presented to a deliberating body, but it cannot be exempt from disclosure of being presented to a deliberating body.

This response to your Advisory Opinion request will be posted on the OOR's website at <https://www.openrecords.pa.gov/RTKL/AdvisoryOpinions.cfm>.

Respectfully,

A handwritten signature in black ink, appearing to read "Liz Wagenseller", written in a cursive style.

Liz Wagenseller