



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**TAMMI IAMS,
Requester**

v.

**DONEGAL TOWNSHIP,
Respondent**

:
:
:
:
:
: **Docket No: AP 2024-0479**
:
:
:

FACTUAL BACKGROUND

On January 26, 2024, Tammi Iams (“Requester”) submitted requests (“Request”) to Donegal Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[R]ecordings and/or the notes taken by the secretary, Jamie M. Schaller, at the following advertised public meeting: January 2, 2024 @ 7 pm. This recording was taken during the public meeting of the Donegal Township Board of Supervisor where they discussed, deliberated, and voted during this meeting of January 2, 2024. ... I have provided an unopened flash drive large enough to hold the recording as a simple copy and paste is all that is required for this RTK.

It is noted that the Requester submitted two separate RTKL requests to the Township but combines the requests for purposes of this appeal. The Requester seeks the same records for two separate Township public meetings held on January 2, 2024, at 7:00 p.m. and January 24, 2024, at 7:00 p.m., respectively. On February 2, 2024, the Township granted the Request in part and provided the January 2, 2024, meeting minutes. At that time, the Township denied the Request in

part, asserting that it seeks draft minutes for the January 24, 2024, meeting which have not been adopted by the Township, 65 P.S. § 67.708(b)(21)(i).

On February 20, 2024, 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 any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On February 29, 2024, the Township submitted a position statement and supporting exhibits reiterating its grounds for denial. The Township claims that the responsive records do not exist in its possession, custody, or control, that the RTKL does not create a duty on agencies to create a record that does not currently exist, and that it is not required to maintain records if they are destroyed as part of a records retention policy. *See* 65 P.S. §§ 67.507, 67.705. Also, the Township asserts that the Request seeks records that are draft minutes used to transcribe public meeting minutes and are exempt from public disclosure until the next public meeting of the agency under the RTKL, 65 P.S. § 67.708(b)(21)(i). On April 11, 2024, the OOR requested the Township submit sufficient evidence in support of its position.² The Township did not make any additional submissions to the record.

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

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 OOR is obligated to require that all factual statements be supported by sufficient evidence. Statements contained in a submission, position statement, or brief that are not supported by an attestation or affidavit are not competent evidence under the RTKL. *See Office of the Gov. v. Davis*, 122 A.3d 1185, 1193-94 (Pa. Commw. Ct. 2015).

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)).

1. The Township failed to demonstrate that records are draft minutes and exempt from public disclosure under the RTKL

The Request seeks the recordings and the Township’s secretary’s notes from public meetings. The Township claims that both recordings and notes are destroyed upon adoption of the draft minutes. Further, the Township claims that both the recordings and the secretary’s notes are draft minutes and are exempt from disclosure under the RTKL. *See* 65 P.S. § 67.708(b)(21)(i). The OOR has consistently held that recordings of public meetings by a local agency are public records. *See Yakim v. Pitcairn Borough*, OOR Dkt. AP 2020-2049, 2020 PA O.O.R.D. LEXIS __ (holding that recordings of public meetings, if retained in the possession of an agency, are records under the RTKL); *McGovern v. Moosic Borough*, OOR Dkt. AP 2020-0732, 2020 PA O.O.R.D. LEXIS 1750; *see also Bradbury v. Methacton Sch. Dist.*, OOR Dkt. AP 2023-0841, 2023 PA O.O.R.D. LEXIS 1646 (recordings of a public meeting retained by a local agency is a public record subject to disclosure under the RTKL). Exemptions from disclosure must be narrowly construed. *See Pa. State Police v. Grove*, 161 A.3d 877, 992 (Pa. 2017) (“Consistent with the RTKL’s goal of promoting government transparency and its remedial nature, the exceptions to disclosure of public records must be narrowly construed”) (citing *Office of Governor v. Davis*, 122 A.3d 1185, 1191 (Pa. Commw. Ct. 2015)). Minutes are a distinct type of record, as set forth in 65 Pa.C.S. 706, and recordings do not fall under the commonly understood definition of that term. The Township’s

proposition that recordings of public meetings are draft minutes is contrary to previous OOR determinations and, the Township has not provided any support that the recordings are draft minutes as contemplated by the exemption. *See* 65 P.S. § 67.708(b)(21)(i). Accordingly, the Township failed to show that the responsive recordings are exempt from disclosure as “draft minutes” under the RTKL. *Id.* The responsive recordings of the January 2, 2024, and January 24, 2024, public meetings are public records which are subject to public disclosure and shall be provided to the Requester. Further, notes are also a distinct record as compared to meeting minutes, and there is an exemption under the RTKL that covers notes – 65 P.S. § 67.708(b)(12) – which was not raised by the Township.

Moreover, both parties emphasized the issue that the Requester provided a storage device for the requested records. Section 1307 of the RTKL provides that the OOR has the authority to establish fees for duplication of records for Commonwealth and local agencies. *See* 65 P.S. § 67.1307(b)(1)(i). An agency may charge the “actual cost” of duplication of an electronic record, including a video recording. *See McElroy v. Pa. Dep't of Pub. Welfare*, OOR Dkt. 2014-0194, 2014 PA O.O.R.D. LEXIS 318. Section 1307(b)(2) of the RTKL requires only that the fee for duplication be “reasonable and based on prevailing fees for comparable duplication services[.]” 65 P.S. § 67.1307(b)(2).

Here, the Requester provided a storage device for the requested records; however, the Township has not provided any evidence establishing the actual cost of duplicating the requested records. When providing the records, the Township’s duplication fee is limited to the “actual cost” of duplicating the records. However, there is nothing in the RTKL requiring an agency to provide records using a requester’s own hardware; thus, to the extent that a physical medium is required to

provide the records, such as a CD-ROM, flash drive, etc., the Township may charge fees for that medium as set forth in the RTKL.

2. The Township failed to provide sufficient evidence that the responsive records do not exist in the Township's possession, custody, or control

The Request seeks both a recording and the secretary's notes of the public meeting. The Township claims that both recordings and notes are destroyed upon adoption of the draft minutes. The Township claims that "nothing in this act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of an agency established pursuant to law, regulation, policy or other directive" and responsive recordings and notes of the meetings do not exist in its possession, custody, or control. 65 P.S. § 67.507. However, 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). Additionally, "[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request." *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (holding that, when there is evidence that a record does not exist, "[i]t is questionable to what degree additional detail and explanation are necessary...."); *Campbell v. Pa. Interscholastic Athletic Ass'n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a "more likely than not" inquiry).

There is nothing in the record supporting a claim that the requested records do not currently exist. Here, the Township failed to provide sufficient evidence in support of its claim that

responsive records do not exist in its possession, custody or control. The OOR makes no determinations as to whether responsive records should exist, as our inquiry is limited to only whether or not records are “in existence and in possession of the ... agency at the time of the right-to-know request.” *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705. It is presumed that agencies will act in good faith in discharging their statutory duties under the RTKL. *Smith Butz, LLC v. Pa. Dep’t of Env’tl. Prot.*, 142 A.3d 941, 945-946; *see also Commonwealth v. Donahue*, 626 Pa. 437, 98 A.3d 1223, 1239 (Pa. 2014). Accordingly, because the Township did not meet its burden that it does not possess, have custody or control of the records, and the Township has not set forth sufficient grounds for withholding them, the records must be provided to the Requester.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Township is required to provide all responsive records or, as described above, or an affidavit or statement under penalty of perjury that the records do not exist within thirty days. 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 Washington 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.³ 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>.

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

FINAL DETERMINATION ISSUED: April 19, 2024

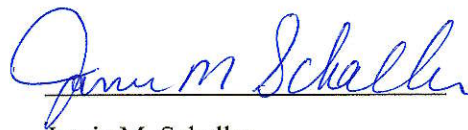
/s/ Damian J. DeStefano

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent to: Tammi Iams (via portal only); Eric A. Thomas, Esq. (via portal only)

I, Jamie M. Schaller, hereby declare under penalty of perjury pursuant to 18 Pa. C.S. 4904, that the following statements are true and correct based on my personal knowledge, information, and belief:

- I currently serve as a Township Secretary and Agency Open Records Officer for Donegal Township.
- I and others based on OOR guidance undertook a review of the position statement and attest to its accuracy and information contained therein as a true and accurate representation of the facts underlying this appeal.



Jamie M. Schaller

April 11, 2024

Via E-File Portal Only:

The Lynch Law Group, LLC
Agency Open Records Officer
Donegal Township (Washington)
PO Box 310
34 N. Liberty Street
West Alexander, PA 15376
RTKL@donegaltownshippa.com
jmcgraw@lynchlaw-group.com

RE: Iams v. Donegal Township (Washington) OOR Dkt. AP 2024-0479

Dear Donegal Township:

I am writing to seek additional information related to Donegal Township's ("Township") position statement. The position statement contains statements of fact. The OOR is obligated to require that all factual statements be supported by sufficient evidence. Both unsworn attestations made pursuant to 18 Pa.C.S. § 4904(b) and sworn affidavits may serve as sufficient evidentiary support of factual statements before the OOR. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (citing *Moore v. OOR*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010)). On the other hand, statements contained in a submission, position statement, or brief that are not supported by an attestation or affidavit, are not competent evidence under the RTKL. *See Office of the Gov. v. Davis*, 122 A.3d 1185, 1193-94 (Pa. Commw. Ct. 2015). Examples can be found at the OOR website: [OOR - RTKL Forms \(pa.gov\)](https://openrecords.pa.gov).

In order to further develop the record in this appeal, the OOR requests that the Township supplement the record, at its earliest convenience, to include an attestation or affidavit verifying the facts contained in the Township's position statement.

Thank you for your cooperation in this process.

Sincerely,

/s/ Damian DeStefano

Damian DeStefano

The Lynch Law Group

James P. McGraw, Esq.
jmcgraw@lynchlaw-group.com

Eric A. Thomas Esq.
ethomas@lynchlaw-group.com

February 29, 2024

Damien DeStefano, Esq.
Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101

Tammi Iams
38 Old National Pike
West Alexander, PA 15376
dntiams@gmail.com

Via E-File Portal Upload Only:

RE: Agency Appeal Response for
Appeal Docketed at 2024-0479

Dear Mr. DeStefano,

Attached is the Agency's response to the appeal docketed at 2024-0479.

Respectfully,



The Lynch Law Group, LLC
Donegal Township AORO

LLG

www.lynchlaw-group.com

501 Smith Drive, Suite 3 • Cranberry Township, PA 16066
375 Southpointe Boulevard, Suite 100 • Canonsburg, PA 15317
P: 724-776-8000 • F: 724-776-8001

LEGAL ARGUMENT

I. Background

This appeal has arrived at the Office of Open Records (“OOR”) on account of the apparent dissatisfaction of Requester Tammi Iams (“Requestor”) with Donegal Township’s alleged lack of response to a right-to-know request sent by the Requestor to the Township. In her appeal to OOR, the Requestor summarizes her right-to-know request (“RTKR”), fails to recognize the impossibility of production by the Township, attempts to alter the request on appeal, and submits an appeal with a hollow claim. In the following Legal Argument, the Township will outline its process in responding to the Requestor and refute her claims of non-responsiveness.

On February 2, 2024, after consultation with the Township for responsive documents, Donegal’s Agency Open Records Officer (“AORO”) promptly sent Requestor an expedient response to the email address listed on the RTKR as dntiams@gmail.com granting the request and providing the minutes from the January 2, 2024, meeting. *See Exhibit A.* In the response, the AORO echoed previous correspondence that made clear that the Agency declined to provide access to its computers and would only provide the recordings and notes used to transcribe the meeting minutes if the meeting minutes were unavailable at the next public meeting. *See Generally Exhibit A.*

On February 2, 2024, after consultation with the Township for responsive documents the AORO promptly sent the Requestor an expedient response to the email address listed on the RTKR as dntiams@gmail.com denying the request for the January 24, 2024, minutes under Section 708 of the Right-to-Know Law (“RTKL”). *See Exhibit B.*

II. The Request and Response

As set forth by the Pennsylvania Supreme Court, “there is a presumption that agencies will act in good faith...” *Office of Governor v. Donahue*, 98 A.3d 1223 (Pa. 2014). Additionally, per Section 705 of the RTKL, when responding to a request for access, “an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. §67.705. In short, just as Section 705 of the RTKL, 65 P.S. §67.705, does not require an agency to create a record that does not exist, Section 507, 65 P.S. §67.507, does not create a duty on the part of agencies to maintain records if they are destroyed as part of a records-retention policy. Simply, the RTKL governs whether records currently in existence must be disclosed. *PG Publ. Co. v. Governor's Office of Admin.*, 120 A.3d 456, 463 (Pa. Cmwlth. 2015) (*Affirmed* at 635 Pa. 263). Moreover, the Right-to-Know Statute (“RTKS”) is clear and does not provide requestors access to agency computers. 65 P.S. §67.701(b). Also, Section 708 of the RTKL states that recordings or notes used to transcribe public meeting minutes are exempt, and the exemption is preserved until the next public meeting of the agency. If official minutes are not adopted, the draft minute materials become public records and must be disclosed upon receipt of a valid RTKR. 65 P.S. §67.708(b)(21). In fact, Under the RTKL, a requester submits a request that “tells the agency what records he wants, and the agency responds by either giving the records or denying the request by providing specific reasons why the request has been denied.” *Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Cmwlth. 2010).

The Requestor's first request included in this appeal states:

I am requesting the recordings and/or the notes taken by the secretary, Jamie M. Schaller, at the following advertised public meeting: January 2, 2024 @ 7 pm. This recording was taken during the public meeting of the Donegal Township Board of Supervisor where they discussed, deliberated, and voted during this

meeting of January 2, 2024. This recording documents a record under the RTK Law Section 102 entitled Definitions. The law defines the term "Record." as "Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document." (The term "record," according to the definition, specifically identifies a "sound recording." Further, the recording of a public meeting documents an activity of the agency and is created in connection with that activity. I have provided an unopened flash drive large enough to hold the recording as a simple copy and paste is all that is required for this RTK.

See AP 2024-0479.

Here, the Township quickly conducted a good faith review to determine if the requested records were subject to public access and determined that the meeting minutes for the January 2, 2023, meeting were finalized and approved being made available to the public for inspection or review. The Township acted quickly to both determine and communicate the procedure to the requestor because as a normal practice, the Township does not retain the notes and recordings after approval of the minutes. On February 2, 2024, the AORO sent written communication to the Requestor granting the request and providing the January 2, 2023, meeting minutes, within the confines of the RTKL. *See Generally Exhibit A.* Furthermore, the Township previously communicated its procedure by reminding the requestor that notes and or recordings for meeting minutes would only be provided if the meeting minutes were not available at or before the next public meeting, citing the exemption of the RTKS in the correspondence. *See Exhibit C.*

Here, the Township sent an expedient response to the Requestor providing the meeting minutes after determining that the aforementioned exemption applied to the recordings and notes used to transcribe the meeting minutes and communicated the same to the Requestor within the timelines provided in the RTKL. Accordingly, the Requestor was properly granted access to the

meeting minutes and cannot be provided the recordings or notes as the Township no longer has the recordings or notes in its possession, custody, or control.

The Requestor's second RTKR inappropriately included in this appeal states:

I am requesting the recordings and/or the notes taken by the secretary, Jamie M. Schaller, at the following advertised public meeting: January 24, 2024 @ 7 pm. This recording was taken during the public meeting of the Donegal Township Board of Supervisor where they discussed, deliberated, and voted during this meeting of January 2, 2024. This recording documents a record under the RTK Law Section 102 entitled Definitions. The law defines the term "Record." as "Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document." (The term "record," according to the definition, specifically identifies a "sound recording." Further, the recording of a public meeting documents an activity of the agency and is created in connection with that activity. I have provided an unopened flash drive large enough to hold the recording as a simple copy and paste is all that is required for this RTK.

See AP 2024-0479

Here, on February 2, 2024, the Township denied the RTKR because it did not have the requested documents in its possession, custody, and control at the time of the request and cited the exemption section of the RTKL in its correspondence to the Requestor. *See Generally Exhibit B.*

III. Requestor's Appeal

In her appeal the Requestor: (1) regurgitates the information in her appeal docketed at 2024-0478; (2) inappropriately combines multiple RTKRs in a single appeal conflating the issues; (3) incorrectly asserts she never received communication from the AORO; (4) alters her request by combining a RTKR seeking January 24, 2024, minutes (denied on a five-day response) with a RTKR seeking January 2, 2024, minutes (granted on a five-day response); and (5) ignores the RTKL by providing inconsequential evidence of an old audit, pictures of an unverified recorder, receipts for the purchase of "a" recorder, and pictures of unverified computers.

A written right-to-know request response requires an agency to 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. Moore v. Office of Open Records, 992 A.2d 907 (Pa. Cmwlth. Ct. 2010) citing 65 P.S. §67.901 (emphasis added). The RTKL also requires the agency to determine if the request is indeed a record and is in the possession, custody, and control of the agency at the time of the request. Id. at 909. See Also Paxtang Borough v. Hoyer, 2017 Pa. Commw. Unpub. LEXIS 145 (Pa. Commw. Ct. 2017)(an affidavit describing the search for responsive records and attesting to the nonexistence of additional responsive records is sufficient to satisfy an agency's burden of proof. In the absence of evidence to the contrary, public officials are assumed to act in good faith, and unsubstantiated allegations of unlawful actions or bad faith are insufficient to overcome this presumption). Id. at 909.

The courts in Pennsylvania are clear on the use of the word "currently" as used in Section 705 of the RTKL, stating that "an agency shall not be required to create a record which does not *currently exist*." 65 P.S. § 67.705. (emphasis added). Id. at 909. The standard is whether such a record exists and is in the possession of the agency **at the time of the right-to-know request**. Not at some moment in time during the appeal process months later. The court further opined in the absence of evidence to the contrary, public officials are assumed to act in good faith and the Township cannot grant access to notes or recordings that were destroyed as part of its regular record keeping policy. Id. at 909.

Regurgitating the Appeal Argument in the Appeal Docketed at 2024-0478 by Defining a "Record" under the RTKL and Ignoring Agency Correspondence During the Statutory Extension Does Not Help Determine the Agency's Compliance With the RTKL Because the Agency Communicated an Exemption to the Requestor.

In her appeal, the Requestor states:

On January 12, 2024, at 3:07 PM an email from Anna O’Friel, Legal Assistant of The Lynch Law Group sent a 30-day extension (Attachment #2). Upon receiving the email, a reply was sent via email at 3:58 PM asking to clarify the date of February 12, 2024, as the 30th day would be February 11th, 2024, please note that as of the date of this appeal that email has not been viewed or opened.

See AP-2024-0479.

The Requestor has not provided any helpful or meaningful information in her appeal as she ignores the agency’s correspondence on February 1, 2024, whereby the agency explained its denial of computer access and claimed an exemption for draft notes/recordings. In fact, the Requestor suggests that because one of her emails was not “opened,” the Township did not respond. In contrast, the Township sent electronic mail to the Requestor in the middle of the statutory extension to notify the Requestor of its intended handling of the request.¹ Moreover, the Requestor proves the Township’s position was communicated to her by including the Township’s February 1, 2024, response in her appeal.

Combining Multiple RTKRs With Differing Agency Responses and Issues is Inappropriate and Only Serves to Confuse.

The Requestor has combined two requests in this appeal. One request sought drafting records for a January 2, 2024, meeting and was granted by the AORO on February 2, 2024, and the second sought drafting records for a January 24, 2024, meeting, whereby the AORO denied the request under Section 708 of the RTKL. This appeal can only be considered hollow in its current presentation because it does nothing to prove the appellants allegations and appears to be intentionally introduced in a scattered, inconsistent, and contradictory manner.

Requestor Incorrectly Asserts Lack of Communication by the Agency by Saying She Never Received an Agency Response in Contradiction to Statements Made in Her Appeal.

¹ See Exhibit C

In her appeal, the Requestor states:

On February 2, 2024, at 2:30 PM I received an email from Anna O’Friel, Legal Assistant of The Lynch Law Group with a Denial letter attached. (Attachment #2) Within the denial letter it was stated...The letter referenced section 708(b)(21) and 67.701(b) of the RTKL. Considering that the received date would be January 29, 2024, and the denial letter is dated February 2, 2024, that puts this RTK request appeal on the 11th business day from January 2, 2024, and I have reached out to the Lynch Law Group to see if they sent anything as they seem to have a habit of saying they sent something but didn’t or they send the wrong items **but I have not received any response at this time.** (Attachment #3, #3a & #3b)(emphasis added).

See AP-2024-0479.

Requestor conflates and misunderstands the RTKL because the statute allows fifteen (15) business days from the date of response or deemed denial. 65 P.S. §67.1101(a). The Township has provide proof that it replied to the Requestor by both granting the request for January 2, 2024, documents and denying the request for January 24, 2024, documents.² Requestor has provided no proof she did not receive the Township's responses. In fact, Requestor outlines the February 2, 2024, correspondence in great detail, elaborates on the February 1, 2024, descriptive email relating to Township computer access and the exemption cited under Section 708, and recites sections of the denial letter for the January 24, 2024, minutes. This is thus a hollow appeal as it only serves to harass and annoy the Township.

Citing Portions of Final Determinations and the RTKS Without Complete Analysis Does not Prove the Requestor's Appeal and Ignores the Impossibility of Providing the Record.

The Requestor fails to acknowledge the basic premise of the Final Determination she cited at 2020-0732. The appeal officer documented that the “Borough has not argued that any exemption under the RTKL or privilege applies to the records...” This opinion is distinguishable from the

² See Generally the Attached Exhibits

current issue because the Township clearly communicated the exemptions associated with the request and adhered to its normal record keeping procedures.

In her appeal the Requestor states:

There are several RTK Appeal's that have been granted that discuss the recordings of a secretary. See Docket No.: AP 2020-0732 Edward McGovern v. Moosic Borough where it was stated within the Final Determination that the RTKL defines "record" as "Information regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency." This is the same as what has been requested from Donegal, the audio recordings of a meeting used to transcribe the written minutes.

See AP-2024-0479.

Here, the true fallacy of the Requestor's appeal comes to light when she proffers the definition of a "record" when no argument exists relating to said definition. Furthermore, Requestor provides a snippet of "AL-46" without any context and misinterprets the same. See AP-2024-0479. Even if the snippet had some contextual meaning to the appeal, it suggests that the right-to-know requests and responses be kept and mentions nothing about agency records or non-produced documents. The statements in the appeal completely ignore the impossibility of producing the notes or recordings as the Township no longer has the notes or recordings as part of its regular record retention policy. These assertive unfounded statements do not support the Requestor's appeal or provide evidence of the Township's failure to adhere to the RTKL. More importantly, the statements do not provide any evidence that changes the impossibility of production into production.

In her appeal the Requestor further states:

See Docket No.: AP 2020-0011 John Lombardo v. Pittston Area School District where within the Final Determination it states that the recordings document a record of the district and was created in connection with that activity. This is the same as my appeal. The recording is a record of the Township and was created in connection with the activity of a public meeting.

See AP 2024-0479.

This Final determination involved school district issues that differ from municipal procedures issues and are thus distinguishable from the facts at issue. When the RTKL changed in 2009 the OOR issued an advisory opinion that seemed to clarify the written note exemption but did nothing to clear the air relevant to electronic information.

Elaborating on the Tenuous Notion of Providing a Portable Flash Drive Versus Asking for Access to Township Computers Ignores the Obvious.

Here the Requestor goes to great lengths to explain the supplication of a Flash Drive while ignoring the obvious implication of its use. The Requestor's assertion, "not once did I ask for access to the township computers, I simply supplied a New Unopened 4TB Portable Flash Drive, which connects via USB" does nothing to obviate the need to insert said Flash Drive into a Township computer to transfer data. Nor does it serve to prove that the Township violated the RTKL in declining to allow access to its computers. Moreover, Requestors statement, "I believe that Mr. Thomas's reference to section 65 PS §67.701(b) is moot" is not even a valid legal argument because it completely ignores the statutory provision. The decision is not the Requestors, but the Township's, and the Township rightfully declined access to its computers.

The Requestor Violates the RTKL by Altering Her Request.

The Requestor may not alter the request on appeal. Right-to-Know case law makes clear one cannot alter the request on appeal, **even where the new requested records are substantially similar to those in the request.** *Michak v. Pa. Department of Public Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012)(emphasis added).

Here, the Requestor attempts to alter her request by stretching the scope of the request and discussing fee imposition, Township equipment purchases, old procedural Board issues, behaviors

and movements of the Supervisors at public meetings, and previous RTKR information in an attempt to elaborate on specific information she believes should be placed on the Flash Drive and to assert that the current Supervisors do not follow the previous Supervisors procedures. All of this evidence provided by the Requestor is outside the scope of the original request.

The Requestor Provides Stale Information to Support Her Appeal Assuming That the Old Board Procedures Will Exist Indefinitely.

In her appeal the requestor states:

The township now owns two recorders, the original Olympus Digital Voice Recorder and the township purchased a new Philips recorder in December 2023. The Olympus has been used by township since I left, at the end of my elected supervisor term December 31, 2022, and then started using the new recorder in January 2024. The only records that were provided in response to this RTK were minutes of the December 28, 2023, meeting. I did not receive any notes from the secretary or recordings...other resident's Flash Drives attached to township computers...why is there no indication about this USB...Mrs. Croft's RTK request asked for the same...I would have been searching for the drive from the RTK request to find the Township RTK records.

See AP-2024-0479.

The Requestor has now deviated to making procedural arguments relating to the previously elected Board of Supervisors. Requestor provides receipts, unverified photos, and images to show that the Township uses drafting materials to create its meeting minutes. Also, Requestor goes to great lengths to establish that previous RTKRs involved Flash Drives and seems to believe that because of the previous procedural activity, the current Board of Supervisors must adhere to the same process. Furthermore, the evidence provided by the Requestor is an audit conducted on a previous employee for violating internal procedures relating to computer access. This evidence does nothing to prove the Township violated the RTKL in claiming the exemption and rightfully denying access to its computers.

IV. Conclusion

The Requestor has submitted a hollow appeal and has not provided evidence to prove her appeal and as such the appeal must be dismissed because the Township provided a timely response including, the exemptions claimed, the minutes as required under the RTKL, and cannot comply with any other responsive document production because it no longer has the records in question. Therefore, her appeal at number 2024-0479 must be dismissed by the OOR for all the reasons stated above.



Eric A. Thomas, Esq.
PA I.D. #328898
The Lynch Law Group, LLC
501 Smith Drive, Suite 3
Cranberry Twp., PA 16066
(724) 776-8000 (Phone)
(724) 776-8001 (Fax)
ethomas@lynchlaw-group.com

Eric Thomas

From: Anna O'Friel
Sent: Friday, February 2, 2024 2:30 PM
To: Darrin-Tammi Iams
Cc: Eric Thomas; James McGraw
Subject: Iams RTK 1.26.24 Response
Attachments: Iams RTK 1.26.24 Response 2.2.24.pdf

Please see attached.



Anna O'Friel
Legal Assistant
The Lynch Law Group

Cranberry Office: 501 Smith Drive, Suite 3, Cranberry Township, PA 16066
Southpointe Office: 375 Southpointe Boulevard, Suite 100, Canonsburg, PA 15317
t. 724.776.8000 | f. 724.776.8001
www.LynchLaw-Group.com

PRIVILEGED AND CONFIDENTIAL

This message and any attachments are solely for the use of intended recipients. They may contain privileged and/or confidential information, attorney work product or other information protected from disclosure. If you are not the intended recipient, you are hereby notified that you received this email in error, and that any review, dissemination, distribution or copying of this email and any attachment is strictly prohibited. If you receive this email in error, please contact the sender and delete the message and any attachments associated therewith from your computer. Your cooperation in this matter is appreciated.



The Lynch Law Group

James P. McGraw III Esq.
jmcgraw@lynchlaw-group.com

Eric A. Thomas Esq.
ethomas@lynchlaw-group.com

RIGHT-TO-KNOW-LAW RESPONSE

February 2, 2024
Ms. Tammi Iams
38 Old National Pike
West Alexander, PA 15376

Via email: dntiams@gmail.com

Dear Ms. Iams,

Thank you for writing to Donegal Township to request records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*

On January 26, 2024, via email, you requested recordings and/or notes taken as draft meeting minutes as more fully described in the enclosure attached to this correspondence. Additionally, you have provided a portable thumb drive ("PTD") to the Township expecting the Township will load responsive right-to-know documents onto the PTD. The Right-to-Know Statute is clear and does not provide requestors access to agency computers. 65 P.S. § 67.701(b). Please be advised that your requests associated with the PTD would require the Township to install the PTD into Township computers and the Township declines to provide you access to its computers. Also, concerning the recent right-to-know requests for notes and/or recordings used to transcribe public meeting minutes, the meeting minutes are approved and attached hereto in electronic format as requested. Thus, your request is *granted*.

Be mindful that the recent right-to-know requests for notes and/or recordings used to transcribe public meeting minutes are exempt under Section 708. The exemption for draft minutes is only preserved until the next public meeting of the agency. If official minutes are not adopted, draft minutes become public records and must be disclosed upon receipt of a valid right-to-know request. Accordingly, the township will only provide said notes and/or recordings if the meeting minutes are not available at or before the next public meeting. 65 P.S. § 67.708(b) (21).

You have a right to appeal any denial in writing to: Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101-2234. Appeals can also be filed online at the Office of Open Records website, <https://www.openrecords.pa.gov>.

www.lynchlaw-group.com

501 Smith Drive, Suite 3 • Cranberry Township, PA 16066
375 Southpointe Boulevard, Suite 100 • Canonsburg, PA 15317
P: 724-776-8000 • F: 724-776-8001


Ms. Tammi Iams
February 2, 2024
Page 2

If you choose to file an appeal, you must do so within 15 business days of the mailing date of the agency's response. See 65 P.S. § 67.1101. Please note that a copy of your original RTKL request, the agency's extension notice (if applicable), and this denial letter should be included when filing an appeal. More information about how to file an appeal under the RTKL is available at the Office of Open Records website, <https://www.openrecords.pa.gov>.

Respectfully,

The Lynch Law Group, LLC
Open Records Officer, Donegal Township

Enclosures


www.lynchlaw-group.com

501 Smith Drive, Suite 3 • Cranberry Township, PA 16066
375 Southpointe Boulevard, Suite 100 • Canonsburg, PA 15317
P: 724-776-8000 • F: 724-776-8001

**DONEGAL TOWNSHIP BOARD OF SUPERVISORS
REORGANIZATION MEETING MINUTES
JANUARY 2, 2024**

Donegal Township
34 North Liberty Street
West Alexander, PA 15376

23480

1. Call Meeting to Order: Jim Bauer called the meeting to order at 7:15 pm
2. Prayer: Given by Jim Bauer
3. Pledge of Allegiance: Recited
4. Announcement of Recording: Jim made the announcement the meeting was being recorded.
5. Election of Board Officers:

Motion to appoint Temporary Chairman

**Jim Bauer made the motion to appoint Ed Shingle the Temporary Chairman. Randy Polan second.
Motion Carried 3/0.**

Motion to appoint Chairman

**Randy Polan made the motion to appoint Jim Bauer as the Chairman of the Board. Ed Shingle second.
Motion Carried 3/0.**

Motion to appoint Vice Chairman

**Ed Shingle made the motion to appoint Randy Polan as Vice Chairman. Jim Bauer second. Motion
carried 3/0.**

6. Public Comments.

Kathy Croft -- Did you appoint Mike Curtis to the Planning Commission?

Board - Yes.

Kathy Croft -- Can he be on the Planning and the UCC Board?

Ed Shingle -- yes, he can I checked on this.

Ed Shingle -- The same with Jeri Zwicker

Kathy Prescott -- I'm not so sure that an elected auditor can be on another board or position.

Ed Shingle -- when I checked on it you could be appointed to a position, you couldn't hold two elected positions.

Jim Bauer – Asked Jim McGraw if Jeri Zwicker could hold two positions?

Jim McGraw – In PA it's a very strict..., every type of municipality has a code that for whatever reason when this issue comes up reads something different, in respect to 2nd Class Township Code.

JD Martin – Would there ever be a situation where an Auditor would have to audit something with Planning, in other words is there a conflict of interest?

Jim McGraw and the Board looking up the 2nd Class Township Code.

Kathy Croft – found in the 2nd Class Code in Section 404 that - no Auditor shall at the same time hold any other elected, appointed Township Office or position or be an employee of the township for which he has been elected or appointed.

Ed Shingle – She is going to have to resign from auditor if she wants to stay on the planning commission. She will have to decide.

Jamie Schaller - #24 is for the reappointment of the planning commission members.

Jim McGraw – when we get to #24 what we can do instead of reappoint planning commission members, you can reappoint the two for now for year 2024, and someone can talk to her about what board/position she would like to stay on.

7. Motion to reappoint Jamie M. Schaller as Secretary/Treasurer.

Ed Shingle made the motion to reappoint Jamie M. Schaller as Secretary/Treasurer. Randy Polan second. Motion Carried 3/0.

8. Motion to set the Secretary/Treasurer Bond.

Jim Bauer – We would like to lower the Treasurer's Bond from \$1,800,000.00 to \$500,000.00.

Discussion on if the bond could be lowered or needs to stay at the \$1,800,00.00. Board looking at the 2nd class township code and how it reads.

Jim Bauer made the motion to keep the Treasurer's Bond at \$1,800,000.00. Randy Polan second. Roll Call Vote: Ed Shingle – No Jim Bauer – Yes Randy Polan – Yes. Motion Carried 2/1.

9. Motion to retain Rhonda Shough as the Township Financial Records Clerk.

Ed Shingle made the motion to retain Rhonda Shough as the Township Financial Records Clerk. Randy Polan second. Motion Carried 3/0.

10. Motion to set the Township Financial Records Clerk Bond.

Discussion on the bond for Rhonda Shough. We also looked into a blanket bond that would cover all employees. Jim Bauer - we would have to revisit the blanket bond, not sure how it worked exactly.

Jim Bauer – How do the bonds run?

Jamie Schaller – Rhonda's is renewed in June 2024 and mine will be in September 2024.

Jim Bauer -- then we could address at that time.

Jim McGraw -- you could table because the renewal is not until June. You could look at at that time and decide what you want to do.

Ed Shingle made the motion to table this item. Randy Polan second. Motion Carried 3/0.

11. Motion to reappoint The Lynch Law Group as Solicitor.

Ed Shingle made the motion to reappoint the Lynch Law Group as Solicitor. Jim Bauer second. Motion Carried 3/0.

12. Motion to reappoint The Lynch Law Group as the Right to Know Officer.

Jim Bauer made the motion to reappoint the Lynch Law Group as the Right to Know Officer. Ed Shingle second. Motion Carried 3/0

13. Motion to retain Chief John Yancosek as Chief of Police.

Ed Shingle made the motion to retain Chief John Yancosek. Randy Polan second. Motion Carried 3/0.

14. Motion to reappoint Eric Graham as Fire Marshal.

Randy Polan made the motion to reappoint Eric Graham as Fire Marshal. Ed Shingle second. Motion Carried 3/0.

15. Motion to reappoint Mark Gordon as Code Enforcement Officer.

Ed Shingle made the motion to appoint Mark Gordon at \$20.00 per hour at 5 hours per week as an employee. Jim Bauer asked if there was a second. No second. Motion Defeated.

16. Motion to reappoint Municipal Consulting as the Building Code Officials.

Jim Bauer asked Randy Polan if he had any input on the matter.

Randy Polan -- I don't know of anyone else that would be available.

Jim Bauer -- Jamie, is there any problems with working with these guys, every once in a while, I may wait to hear back from them on a question.

Randy Polan -- We may need to stay on them about reviews. Sometimes they don't show up for inspections.

Jamie Schaller -- I was told once, and I don't know what type of job it was, that when the resident called for an inspection, they were told to take a picture of it and send to them.

Kathy Croft -- in 2018 there were discussions on them not being responsive and the office turning information in to them and then it never comes back to the office.

Randy Polan – Why pay an inspector if he does not come out.

Jim Bauer made the motion to appoint Municipal Consulting as the Building Code Officials.

Is there a second? No second. Motion defeated for a lack of a second.

Jim Bauer – We need to look into options.

Eric Graham – I know there are permit applications that may be ready to be turned into the office.

17. Motion to appoint or reappoint the UCC Appeals Board. Current Members: James Barr, John Pavalla, and Michael Curtis.

Ed Shingle made the motion to reappoint James Barr, John Pavalla, and Michael Curtis. Randy Polan second. Motion Carried 3/0.

18. Motion to reappoint Harshman LLC as the Township Engineer.

Randy Polan made the motion to reappoint Harshman LLC as the Township Engineer. Ed Shingle second. Motion Carried.

19. Motion to continue Keystone Collections Group as the Earned Income Tax Collector.

Ed Shingle made the motion to continue Keystone Collections Group as the Earned Income Tax Collector. Jim Bauer second. Motion Carried 3/0.

20. Motion to continue Keystone Collections Group as the Local Services Tax Collector.

Jim Bauer made the motion to continue the Keystone Collections Group as the Local Services Tax Collector. Ed Shingle second. Motion Carried 3/0.

21. Motion to reappoint Susanne Dorsey as the Donegal Township representative to the Washington County Tax Collection District.

Randy Polan made the motion to reappoint Susanne Dorsey as the Donegal Township representative to the Washington County Tax Collection District. Ed Shingle second. Motion Carried 3/0.

22. Motion to reappoint D & B Environmental Services as the Sewage Operator.

Jim Bauer made the motion to reappoint D & B Environmental Services as the Sewage Operator. Ed Shingle second. Motion Carried 3/0.

23. Motion to reappoint Garratt Callahan as the Water Operator.

Ed Shingle made the motion to reappoint Garratt Callahan as the Water Operator. Randy Polan second. Motion Carried. 3/0.

24. Motion to reappoint Planning Commission Members.

Ed Shingle made the motion to reappoint Mike Curtis and Ethan Ward to the Planning Commission. Randy Polan second. Motion Carried 3/0.

25. Motion to advertise the date and times for the Planning Commission Meetings.

Jim Bauer made the motion to approve advertising the date and times for the Planning Commission Meetings. Ed Shingle second. Motion Carried 3/0.

26. Motion to reappoint Norman Allan Company for IT Professional Services.

Ed Shingle made the motion to reappoint the Norman Allan Company for IT Professional Services. Randy Polan second. Motion Carried 3/0.

27. Motion to charge \$2.00 for Tax Duplicates to be collected by the Tax Collector.

Ed Shingle made the motion to charge \$2.00 for Tax Duplicates to be collected by the Tax Collector. Randy Polan second. Motion Carried 3/0.

28. Motion to charge \$45.00 for Tax Certification to be collected by the Tax Collector.

Ed Shingle made the motion to charge \$45.00 for Tax Certification to be collected by the Tax Collector. Jim Bauer second. Motion Carried 3/0.

29. Motion to appoint/reappoint a Deputy Tax Collector (Donna Kelsall).

Jim Baer made the motion to reappoint a Deputy Tax Collector (Donna Kelsall). Randy Polan second. Motion Carried 3/0.

30. Motion to appoint an Office Supervisor.

Ed Shingle made the motion to appoint Jim Bauer as the Office Supervisor. Randy Polan second. Motion Carried 3/0.

31. Motion to appoint a Water and Police Department Supervisor.

Jim Bauer made the motion to appoint Ed Shingle as the Water and Police Department Supervisor. Randy Polan second. Motion Carried 3/0.

32. Motion to appoint a Public Works Department Supervisor.

Jim Bauer made the motion to appoint Randy Polan as the Public Works Supervisors. Ed Shingle second. Motion Carried 3/0.

33. Motion to appoint/reappoint a Vacancy Board (JD Martin).

Randy Polan made the motion to reappoint JD Martin to the Vacancy Board. Ed Shingle second. Motion Carried 3/0.

34. Motion to appoint/reappoint an Emergency Management Director (Zack Prescott).

Jim Bauer made the motion to reappoint Zack Prescott as the Emergency Management Director. Ed Shingle second. Motion Carried 3/0.

35. Motion to retain and increase the hourly rate to \$15.00 hour for Rich Lough, Carl Shaner and Kathy Leech.

Randy Polan made the motion to retain and increase the hourly rate to \$15.00 per hour for Rich Lough, Carl Shaner and Kathy Leech. Ed Shingle second. Motion Carried 3/0.

36. Motion to appoint a Voting Delegate for the Pennsylvania State Convention.

Ed Shingle made the motion to appoint Jim Bauer as the Voting Delegate for the Pennsylvania State Convention. Randy Polan second. Motion Carried 3/0.

37. Motion to establish that three (3) signatures are required to validate checks. Two (2) Supervisors and the Secretary/Treasurer.

Randy Polan made the motion to establish three (3) signatures are needed to validate checks. Two (2) Supervisors and the Secretary/Treasurer. Ed Shingle second. Motion Carried 3/0.

38. Motion to schedule the date and times for the agenda meetings for 2024 and advertise the same:

Jim Bauer made the motion to schedule and advertise the Agenda Meeting dates as the third Tuesday unless noted (January and April no Agenda Meeting) at 7:00 pm. Ed Shingle second. Motion Carried 3/0.

39. Motion to schedule the date and times for the Board of Supervisors Monthly Meetings and advertise the same.

Jim Bauer made the motion for the monthly business meetings for the fourth Thursday at 7:00 pm with the exception of January (January 17, 2024), November (November 21, 2024) and December (December 19, 2024). Ed Shingle second. Motion Carried 3/0.

40. Motion to observe the Holidays as set forth in the contracts. Any Holiday falling on Saturday will be Observed on Friday and any Holiday falling on a Sunday will be observed on Monday.

Ed Shingle made the motion to observe the Holiday Schedule as presented. Jim Bauer second. Motion Carried 3/0.

41. Motion to conduct the meetings per the Robert's Rules of Order.

Jim Bauer made the motion to conduct the meetings per the Robert's Rules of Order. Ed Shingle second. Motion Carried 3/0.

42. Motion to set the mileage reimbursement to 0.67 cents per mile or as updated per the IRS mileage regulations.

Ed Shingle made the motion to set the mileage reimbursement to 0.67 cents per mile or as updated per the IRS mileage regulations. Randy Polan second. Motion Carried 3/0.

43. Motion to approve the fee schedule for 2024.

Jim Bauer made the motion to proceed with the existing fee schedule and table the 2024 schedule. Ed Shingle second. Motion Carried 3/0.

44. Motion to appoint the Observer Reporter as the official Legal Advertising newspaper for Donegal Township.

Randy Polan made the motion to approve the Observer Reporter as the official legal advertising newspaper. Ed Shingle second. Motion Carried 3/0.

45. Motion to approve/reject the Secretary/Treasurer to pay any bill necessary in order to avoid delinquent charges and / or secure discounts.

Ed Shingle made the motion to reject the Secretary/Treasurer paying any bill necessary in order to avoid delinquent charges and / or secure discounts. Jim Bauer second. Motion Carried 3/0.

46. Motion to approve the Secretary/Treasurer to pay any reoccurring invoices prior to the meeting dates.

Jim Bauer made the motion to approve the Secretary/Treasurer to pay any reoccurring invoices prior to the meeting dates. Randy Polan second. Motion Carried 3/0.

47. Public Comments

Kathy Prescott – I know you passed raising the taxes and the millage rate. Do you need to reaffirm the millage rate with this meeting?

Kathy Croft – you could make it an FYI.

Jim McGraw – you could make it an informational item that Jamie can document in the minutes.

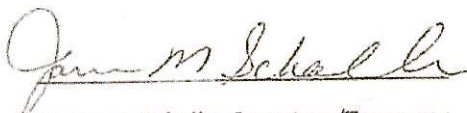
Jamie Schaller – the millage rate was approved at the November 30, 2023 Meeting and it was set at 3.05 mills.

Kathy Prescott – they are changing the requirements for adding an item to the agenda.

Jim McGraw – This is on an appeal to the Supreme Court and the Township's should watch what they want to add or amend the agenda for until this ruling comes in.

48. Adjournment of meeting.

Randy Polan made the motion to adjourn the meeting at 8:43 pm. Jim Bauer second. Motion Carried 3/0.



Jamie M. Schaller Secretary/Treasurer



James R. Bauer Jr. Chairman



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 may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Donegal Township Washington County Attn: AORO-The Lynch Law Group

Date of Request: Friday, January 26, 2024 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Tammi Iams Company (if applicable): _____

Mailing Address: _____

City: _____ State: _____ Zip: _____ Email: dntiams@gmail.com

Telephone: Cell: 724-288-7182 Fax: _____

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. 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. Use additional pages if necessary.*

I am requesting the recordings and/or the notes taken by the secretary, Jamie M. Schaller, at the following advertised public meeting: January 2, 2024 @ 7 pm. This recording was taken during the public meeting of the Donegal Township Board of Supervisor where they discussed, deliberated, and voted during this meeting of January 2, 2024. This recording documents a record under the RTK Law, Section 102 entitled Definitions. The law defines the term "Record," as "information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document." (The term "record," according to the definition, specifically identifies a "sound recording." Further, the recording of a public meeting documents an activity of the agency and is created in connection with that activity. I have provided an unopened flash drive large enough to hold the recording as a simple copy and paste is all that is required for this RTK.

DO YOU WANT COPIES? ☐ Yes, printed copies (default if none are checked)
☒ Yes, electronic copies preferred if available
☐ No, in-person inspection of records preferred (may request copies later)

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

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 ☐ \$100 (or) ☐ \$_____.

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.

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 Feb. 3, 2020

Eric Thomas

From: Anna O'Friel
Sent: Friday, February 2, 2024 2:31 PM
To: Darrin-Tammi Iams
Cc: Eric Thomas; James McGraw
Subject: Iams RTK 1.26.24 Denial
Attachments: Iams RTK 1.26.24 Denial 2.2.24.pdf

Please see attached.

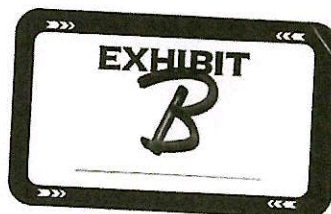


Anna O'Friel
Legal Assistant
The Lynch Law Group

Cranberry Office: 501 Smith Drive, Suite 3, Cranberry Township, PA 16066
Southpointe Office: 375 Southpointe Boulevard, Suite 100, Canonsburg, PA 15317
t. 724.776.8000 | f. 724.776.8001
www.LynchLaw-Group.com

PRIVILEGED AND CONFIDENTIAL

This message and any attachments are solely for the use of intended recipients. They may contain privileged and/or confidential information, attorney work product or other information protected from disclosure. If you are not the intended recipient, you are hereby notified that you received this email in error, and that any review, dissemination, distribution or copying of this email and any attachment is strictly prohibited. If you receive this email in error, please contact the sender and delete the message and any attachments associated therewith from your computer. Your cooperation in this matter is appreciated.



The Lynch Law Group

James P. McGraw III Esq.
jmcgraw@lynchlaw-group.com

Eric A. Thomas Esq.
ethomas@lynchlaw-group.com

RIGHT-TO-KNOW-LAW RESPONSE

February 2, 2024
Ms. Tammi Iams
38 Old National Pike
West Alexander, PA 15376

Via email: dntiams@gmail.com

Dear Ms. Iams,

Thank you for writing to Donegal Township to request records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*

On January 26, 2024, via email, you requested recordings and/or notes taken as draft meeting minutes as more fully described in the enclosure attached to this correspondence. Additionally, you have provided a portable thumb drive ("PTD") to the Township expecting the Township will load responsive right-to-know documents onto the PTD. The Right-to-Know Statute is clear and does not provide requestors access to agency computers. 65 P.S. § 67.701(b). Please be advised that your requests associated with the PTD would require the Township to install the PTD into Township computers and the Township declines to provide you access to its computers. Also, concerning the recent right-to-know requests for notes and/or recordings used to transcribe public meeting minutes, the draft meeting minutes are exempt under Section 708. The exemption for draft minutes is only preserved until the next public meeting of the agency. If official minutes are not adopted, draft minutes become public records and must be disclosed upon receipt of a valid right-to-know request. Accordingly, the township will only provide said notes and/or recordings if the meeting minutes are not available at or before the next public meeting. 65 P.S. § 67.708(b) (21).

In the intervening time, relevant records custodians at the Township have reviewed your request and determined that the next public meeting has not occurred. Therefore, your request for the draft notes and/or recordings from the January 24, 2024, public meeting is ***denied under Section 708 of the RTKL.***

www.lynchlaw-group.com

501 Smith Drive, Suite 3 • Cranberry Township, PA 16066
375 Southpointe Boulevard, Suite 100 • Canonsburg, PA 15317
P: 724-776-8000 • F: 724-776-8001

Ms. Tammi Iams
February 2, 2024
Page 2

You have a right to appeal any denial in writing to: Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101-2234. Appeals can also be filed online at the Office of Open Records website, <https://www.openrecords.pa.gov>.

If you choose to file an appeal, you must do so within 15 business days of the mailing date of the agency's response. See 65 P.S. § 67.1101. Please note that a copy of your original RTKL request, the agency's extension notice (if applicable), and this denial letter should be included when filing an appeal. More information about how to file an appeal under the RTKL is available at the Office of Open Records website, <https://www.openrecords.pa.gov>.

Respectfully,

The Lynch Law Group, LLC
Open Records Officer, Donegal Township

Enclosure

www.lynchlaw-group.com

501 Smith Drive, Suite 3 • Cranberry Township, PA 16066
375 Southpointe Boulevard, Suite 100 • Canonsburg, PA 15317
P: 724-776-8000 • F: 724-776-8001



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 may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Donegal Township Washington County Attn: AORO-The Lynch Law Group

Date of Request: Friday, January 26, 2024 **Submitted via:** ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Tammi Iams **Company (if applicable):** _____

Mailing Address: _____

City: _____ **State:** _____ **Zip:** _____ **Email:** dntiams@gmail.com

Telephone: Cell: 724-288-7182 **Fax:** _____

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. 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. Use additional pages if necessary.*

I am requesting the recordings and/or the notes taken by the secretary, Jamie M. Schaller, at the following advertised public meeting: January 24, 2024 @ 7 pm. This recording was taken during the public meeting of the Donegal Township Board of Supervisor where they discussed, deliberated, and voted during this meeting of January 2, 2024. This recording documents a record under the RTK Law Section 102 entitled Definitions. The law defines the term "Record," as "Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document." (The term "record," according to the definition, specifically identifies a "sound recording." Further, the recording of a public meeting documents an activity of the agency and is created in connection with that activity. I have provided an unopened flash drive large enough to hold the recording as a simple copy and paste is all that is required for this RTK.

DO YOU WANT COPIES? ☐ Yes, printed copies (default if none are checked)

☒ Yes, electronic copies preferred if available

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

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

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 ☐ \$100 (or) ☐ \$ _____.

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.

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 Feb. 3, 2020

Eric Thomas

From: Eric Thomas
Sent: Thursday, February 1, 2024 4:53 PM
To: Darrin-Tammi Iams
Cc: Anna O'Friel; James McGraw
Subject: Right-To-Know Requests

Dear Ms. Iams:

You have provided a portable thumb drive ("PTD") to the Township expecting the Township will load responsive right-to-know documents onto the PTD. The Right-to-Know Statute is clear and does not provide requestors access to agency computers. 65 P.S. § 67.701(b). Please be advised that your requests associated with the PTD would require the Township to install the PTD into Township computers and the Township declines to provide you access to its computers. Also, concerning the recent right-to-know requests for notes and/or recordings used to transcribe meeting minutes, it is important to note that the Section 708 exemption for draft minutes is only preserved until the next public meeting of the agency. If official minutes are not adopted, draft minutes become public records and must be disclosed upon receipt of a valid right-to-know request. Accordingly, the township will only provide said notes and/or recordings if the meeting minutes are not available at or before the next public meeting. 65 P.S. § 67.708(b) (21).

Eric

Eric A. Thomas

The Lynch Law Group

Cranberry Office: 501 Smith Drive, Suite 3, Cranberry Township, PA 16066

Southpointe Office: 375 Southpointe Boulevard, Suite 100, Canonsburg, PA 15317

t. 724.776.8000 | f. 724.776.8001

www.LynchLaw-Group.com

PRIVILEGED AND CONFIDENTIAL

This message and any attachments are solely for the use of the intended recipients. They may contain privileged and/or confidential information, attorney work product, or other information protected from disclosure. If you are not the intended recipient, you are hereby notified that you received this email in error and that any review, dissemination, distribution, or copying of this email and any attachments is strictly prohibited. If you receive this email in error, please contact the sender and delete the message and any attachments associated therewith from your computer. Your cooperation in this matter is appreciated.

