

**[J-28A-2015, J-28B-2015 and J-28C-2015] [MO: Saylor, C.J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA, : No. 45 EAP 2014
DEPARTMENT OF PUBLIC WELFARE, :
Appellee : Appeal from the Order of the
Commonwealth Court entered on
02/19/2014 at No. 1935 CD 2012 affirming
in part and reversing in part the
determination entered on 09/17/2012 of the
Office of Open Records at No.
AP2011-1098.

v.

JAMES EISEMAN, JR. AND THE PUBLIC :
INTEREST LAW CENTER OF : ARGUED: May 5, 2015
PHILADELPHIA, :
Appellants :

AETNA BETTER HEALTH, INC., HEALTH : No. 46 EAP 2014
PARTNERS OF PHILADELPHIA, INC., :
AND KEYSTONE MERCY HEALTH : Appeal from the Order of the
PLAN, : Commonwealth Court entered 02/19/2014
Appellees : at No. 1949 CD 2012 affirming in part and
reversing in part the determination entered
on 09/17/2012 of the Office of Open
Records at No. AP2011-1098.

v.

JAMES EISEMAN, JR., AND THE PUBLIC :
INTEREST LAW CENTER OF : ARGUED: May 5, 2015
PHILADELPHIA, :
Appellants :

UNITEDHEALTHCARE OF : No. 47 EAP 2014
PENNSYLVANIA, INC. D/B/A :
UNITEDHEALTHCARE COMMUNITY : Appeal from the Order of the
PLAN AND HEALTHAMERICA : Commonwealth Court entered 02/19/2014
PENNSYLVANIA INC. D/B/A : at No. 1950 CD 2012 affirming in part and
COVENTRYCARES, : reversing in part the determination entered
on 09/17/2012 of the Office of Open

Appellees	:	Records at No. AP2011-1098.
	:	
v.	:	ARGUED: May 5, 2015
	:	
	:	
JAMES EISEMAN, JR. AND THE PUBLIC	:	
INTEREST LAW CENTER OF	:	
PHILADELPHIA,	:	
	:	
Appellants	:	

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: October 27, 2015

I agree with the Commonwealth Court’s majority that documents containing MCO Rates are not “financial records” within § 102 of the RTKL, 65 P.S. § 67.102. See Dep’t of Public Welfare v. Eiseman, 85 A.3d 1117, 1127 (Pa. Cmwlth. 2014) (en banc) (“Because MCO Rates are not disbursed ‘by an agency,’ [the] OOR erred in concluding MCO Rates are ‘financial records.’”). MCO Rates are rates set by a private company, not an agency. The private company disburses the funds — the agency does not. While the entire scheme of payment immediately suggests bureaucratic confusion and obfuscation, the plain language of the RTKL does not cover this situation — perhaps it should, but as it currently exists, in my judgment it does not.

I would remand the matter to the OOR to decide, in the first instance, whether the MCO Rates are exempt from disclosure under § 708(b)(11). Contra id. (“Because we conclude the MCO Rates are not ‘financial records,’ we next consider the RTKL exceptions that OOR did not fully analyze based on its adherence to Lukes[v. Dep’t of Public Welfare], 976 A.2d 609 (Pa. Cmwlth. 2009)]. Typically, we would remand to [the] OOR to serve as fact-finder.”). Thus, I respectfully dissent.