



FINAL DETERMINATION

IN THE MATTER OF	:
	:
ANTHONY MATTEO,	:
Requester	:
	:
v.	: Docket No: AP 2024-0581
	:
ABINGTON TOWNSHIP,	:
Respondent	:

FACTUAL BACKGROUND

On January 22, 2024, Anthony Matteo (“Requester”) submitted a request (“Request”) to Abington Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Any and all correspondence between any Jenkintown Borough Officials, Council, Chief of Police and any Abington Township Supervisor, Official, Chief of Police or Police Commander regarding disbandment or absorption of the Jenkintown Police (Borough) Dept.

On February 28, 2024, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Township denied the Request, arguing that the requested records are exempt from public disclosure under Section 708(b)(10)(i)(A) of the RTKL, pertaining to records that reflect internal, predecisional deliberations. *See* 65 P.S. § 67. 708(b)(10)(i)(A).

On February 28, 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 March 10, 2024, the Township submitted a request to extend the submission deadline from March 11, 2024, to March 20, 2024. On March 11, 2024, the OOR extended the submission deadline to March 21, 2024. On March 21, 2024, the Township submitted a second request to extend the submission deadline to March 25, 2024. At that time, the submission deadline was extended to March 28, 2024.

On March 25, 2024, the Township submitted a position statement and a statement made under penalty of perjury from Tara Wehmeyer (“Wehmeyer Statement”), the Township’s Open Records Officer (“AORO”), reiterating its grounds for denial.

LEGAL ANALYSIS

The Township is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Township is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands*

¹ As part of the appeal, the Requester requested that the OOR conduct an *in camera* review of the withheld records. The Requester also 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).”).

Condemnation Approval Bd., 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). While the Requester sought an *in camera* review of the withheld records, the OOR has the necessary information and evidence before it to properly adjudicate the matter. Therefore, the request for *in camera* review is denied.

The Township argues the responsive records reflect the Township's internal, predecisional deliberations and are thus not subject to public disclosure. *See* 65 P.S. § 67.708(b)(10)(i)(A). Section 708(b)(10)(i)(A) of the RTKL exempts from public disclosure a record that reflects:

The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, ...including predecisional deliberations relating to a budget recommendation, ...or course of action or any research, memos or other documents used in the predecisional deliberations.

Id. For this exemption to apply, three elements must be satisfied: 1) “[t]he records must...be ‘internal’ to a governmental agency”; 2) the deliberations reflected must be predecisional, i.e., before a decision on an action; and 3) the contents must be deliberative in character, i.e., pertaining to proposed action. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011).

Records satisfy the “internal” element when they are maintained internal to one agency or among governmental agencies. *Pa. Dep’t of Educ. v. Bagwell*, 131 A.3d 638, 658. Further, communications do not need to be internal to a single agency, as the exemption recognizes that exempt communications may occur between agencies. *See Kaplin*, 19 A.3d 1209 at 1216. “Only information that constitutes ‘confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice’ is protected as deliberative.” *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 378-79 (Pa. Commw. Ct. 2013) (quoting *In re Interbranch Comm’n on Juvenile Justice*, 988 A.2d 1269, 1277-78 (Pa. 2010)).

To establish that records are deliberative, an agency must show that the information relates to the deliberation of a particular decision. *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 378-88 (Pa. Commw. Ct. 2014). The term “deliberation” is generally defined as “[t]he act of carefully considering issues and options before making a decision or taking some action....” BLACK’S LAW DICTIONARY 492 (9th ed. 2009). Additionally, factual material can still qualify as deliberative information if its “disclosure would so expose the deliberative process within an agency that it must be deemed excepted,” or in other words, when disclosure of the factual material “would be tantamount to the publication of the [agency’s] evaluation and analysis.” *Id.* at 387-88 (citing *Trentadue v. Integrity Communication*, 501 F.3d 1215, 1228-29 (10th Cir. 2007)); see *Haverstick v. Delaware County Dist. Attorney’s Office*, OOR Dkt. AP 2022-2082, 2022 PA O.O.R.D. LEXIS 2682 * 13-15. However, it is noted that factual material contained in otherwise deliberative documents is still subject to disclosure if it is severable from its context. *McGowan*, 103 A.3d 374 at 382-83.

In this appeal, the Township submits the Wehmeyer Statement, which states, in part:

1. I am the Assistant Township Manager of [the Township].
2. I also serve as the [AORO] for the Township and have served in such capacity during all relevant times and have personal knowledge of the facts contained herein.
3. Ms. Maria Wyrsta, Administrative Assistant and RTK Coordinator, and Mr. Nathan Vasserman, Information Technology Officer, regularly assist me with the processing of Right to Know requests received by the Township.
4. [The Township] received the underlying request on January 22, 2024.
- ...
6. Upon receipt of the Request, the Township undertook a search for records.
- ...

8. In the course of processing this Request, the Township conducted a search of paper and electronic files in an effort to locate responsive records. As a result of that search, Mr. Vasserman located emails on the Township's server.

9. No other correspondence records were located other than the above-mentioned email records.

10. Following review, it was determined that all responsive emails are exempt from public disclosure because they reflect internal, predecisional deliberations.

...

12. The responsive records include emails exchanged between Township employees related to the subject matter of the [R]equest, and emails exchanged between Township employees and Jenkintown Borough ("Borough") employees related to the subject matter of the [R]equest. The emails do not include third parties and have not been shared with any third parties.

13. The emails were exchanged for the purpose of preliminary contemplation of a potential future course of action related to the status of the Jenkintown Borough Police Department.

14. The emails include opinions and information assembled in the course of analyzing a potential future course of action for a neighboring municipality, which has the potential to impact or involve the Township. Depending on the decision made by the neighboring municipality, the Township could be requested or required to engage in related decision-making. However, at this time, no decision has been made and no action has been taken. It is expected that the Township will engage in additional analysis, inquiry and research if the Township is required to make a decision in the future.

...

16. The Township is not empowered to make any decisions regarding the status of the Jenkintown Police Department, as such decisions are solely within the authority of Borough.

17. However, the Township and Borough are neighboring municipalities. Therefore, it is possible that the Township could, at some time in the future, be presented with a formal proposal or other considerations stemming from future decisions of the Borough pertaining to policing and/or public safety within the Borough. The responsive records in this matter contemplate that possibility.

18. In that case, the Township would be required to consider whether or not the Township would have the ability and/or desire to support the public safety needs of the Borough, in the event it is requested to do so by the Borough.

19. The Township has not been informed of any decision having been made by Jenkintown. The Township's understanding is that the Borough has engaged in preliminary considerations on that topic. No formal proposal has been presented to the Township at this time.

20. No decision has been made by the Township regarding whether or not the Township will proceed with any course of action related to the public safety needs of the Borough.

21. All exchanges reflected in the responsive records are preliminary and predecisional, consistent with the nebulous and hypothetical nature of the topic.

22. The Township is not aware of any planned timeline for dissolving the Jenkintown Police Department.

23. The potential course of action has not been presented to a quorum of the Township Board of Commissioners for deliberation.

24. No decision has been presented to either governing body for a vote at a public meeting.

25. [] ... [T]hese records relate to both communications that are internal within the Township and inter-agency communications that are internal conversations between those two agencies.

...

29. The emails were exchanged between Township and Borough employees for the purpose of analyzing current and future police operations, policies and procedures.

30. No decision has been made as to whether the Township will make any changes to police operations, policies and procedures, and no action has been taken to begin a formal consideration process.

31. Since being produced, the records have been maintained internally by the Township and/or the Borough, and copies of their contents have been kept confidential and have not been disclosed to anyone who was not engaged in the preliminary analysis.

32. None of the options contemplated in connection with police operations have been implemented, and all remain under consideration.

33. All factual material contained in the records is included in order to provide context for any analysis or future recommendations.

34. The factual statements contained in the emails reveal and describe the Township and/or Borough's current topics of deliberation, and the operational areas that are currently being analyzed.

35. The emails are the only records of communications that are relevant to this request.

36. No other responsive records were located, and therefore no other responsive records have been withheld from disclosure.

In this instance, the Township presents sufficient evidence to withhold the responsive emails from dissemination under the RTKL because the responsive emails contain internal, predecisional deliberations. 65 P.S. § 67.708(b)(10)(i)(A). The Township asserts that responsive emails,² located on the Township's servers, were restricted to Township and Jenkintown Borough ("Borough") employees. This evidence shows that the responsive emails were "internal" to a governmental agency. *See* Wehmeyer Statement, ¶¶ 8-9, 12-25, 29-36; *Kaplin*, 19 A.3d 1209 at 1216 (Records satisfy the "internal" element when they are maintained internal to one agency or among governmental agencies... communications do not need to be internal to a single agency, as the exemption recognizes that exempt communications may occur between agencies.)

Moreover, the Township has showed that the responsive emails contain deliberations which are predecisional, and the Township has not taken official governmental action on the matters regarding law enforcement contained in the responsive emails. *See* Wehmeyer Statement, ¶¶ 14-23. Lastly, the Township demonstrated that the contents of the emails are deliberative in character pertaining to the policymaking of the Township's law enforcement, which reflect the opinions, recommendations or advice regarding a potential Township action. *See Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 378-79 (Pa. Commw. Ct. 2013). Accordingly, the Township met the

² The Township did provide the number of the responsive emails in its evidence.

burden of proof that the responsive emails are exempt from public disclosure under Section 708(b)(10) of the RTKL. *See* 65 P.S. § 67.708(b)(10)(i)(A).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Township is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Montgomery County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per 65 P.S. § 67.1303, but as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.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>.

FINAL DETERMINATION ISSUED: April 26, 2024

/s/ Damian J. DeStefano

DAMIAN J. DESTEFANO
APPEALS OFFICER

Sent to: Anthony Matteo (via portal only); Tara Wehmeyer, AORO (via portal only);
Nicole Feight, Esq. (via portal only)

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