



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MEGAN BROCK AND DAILY CALLER	:	
NEWS FOUNDATION,	:	
Requester	:	Docket No.: AP 2025-0395
	:	(Consolidated appeal of OOR Dkt.
v.	:	Nos. AP 2025-0395 and AP 2025-0399)
	:	
PENNSYLVANIA OFFICE OF THE	:	
GOVERNOR,	:	
Respondent	:	

FACTUAL BACKGROUND

On January 8, 2025, Megan Brock and Daily Caller News Foundation (collectively, “Requester”) submitted a request (“Request 1”) to the Pennsylvania Office of the Governor (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[C]opies of any/all electronic communications, presentations, and attachments (incl. URL links and electronic database links) sent or received by Katie Merritt and/or Ashleigh Strange to or from any/all of the following: Amanda Warren, Ryan Matthews, Joshua Neyhart, Joe Lee, Lindsey Mauldin, abrown@ppkeystone.org, Sam Robinson, from September 1, 2024, December 31, 2024, on the pa.gov domain, with any or all of the following keywords or phrases: “Gender Affirming” “LGBT” “Planned Parenthood” “LGBTQ+” “school board(s)” “LGBTQ” “education” “sex ed” “sexual education” “health resource center” “community school(s)” “CSE” “Transgender” “Trans” “HRC” “district(s)” “Hormone Therapy” “gender identity” “PPKeystone[”.]

On January 10, 2025, the Requester submitted a second Request (“Request 2”) to the Office, seeking:

[C]opies of any/all electronic communications, emails, presentations, and attachments (incl. URL links, electronic database links, and embedded documents) sent or received by Ashleigh Strange and/or Katie Merritt to or from, any or all of the following: Kati McClure, Amber Brown, Melissa Reed, Anthony Schaeffer, Marlene Pray, Melissa Reed, Sydney Etheredge, Dayle Steinberg, Signe Espinoza, Patrick Smith, Adam Hosey, from September 1, 2024, to January 1, 2025, that contain the following keywords: “Gender Affirming” “LGBT” “Planned Parenthood” “LGBTQ+” “Trans” “Transgender” “Hormone Therapy” “Puberty Blockers” “Gender Identity” “School(s)” “Rainbow Room” “Spectrum”[.]

On February 14, 2025, following a thirty-day extension, 65 P.S. § 67.902(b), the Office denied Request 1, asserting that the responsive records are protected by the attorney-client privilege and are exempt from disclosure as records reflecting the internal, predecisional deliberations of the Office. 65 P.S. § 67.305(a)(2); 65 P.S. § 67.708(b)(10)(i)(A). On February 18, 2025, following a thirty-day extension, the Office granted Request 2 and provided the Requester with responsive records while also asserting that it redacted personal identification information from the records provided. *See* 65 P.S. § 67.708(b)(6).

On February 19, 2025, the Requester submitted two appeals to the Office of Open Records (“OOR”) and the OOR invited both parties to supplement the record in each appeal and directed the Office to notify any third parties of their ability to participate in the appeals.¹ 65 P.S. § 67.1101(c). The appeal as to Request 1 was docketed as OOR Dkt. AP 2025-0395, while the appeal as to Request 2 was docketed at OOR Dkt. AP 2025-0399. Because the appeals involve the same parties and similar Requests, the appeals are hereby consolidated at OOR Dkt. AP 2025-0395. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals office shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

¹ The Requester granted the OOR an extension of time to issue this 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).”).

On March 10, 2025,² the Office submitted two attestations (“Eisenstein Attestation – Request 1” and “Eisenstein Attestation – Request 2”) from Marc Eisenstein, Open Records for the Office, who attests to the redactions made and records withheld regarding both Requests. On March 25, 2025, at the request of the OOR, the Office submitted an exemption log identifying records responsive to Request 1 that were withheld, along with a supplemental attestation from Mr. Eisenstein (“Eisenstein Supplemental Attestation”). Additionally, again at the request of the OOR, on March 31, 2025, the Office submitted another supplemental attestation (“Eisenstein Supplemental Attestation 2”), providing information that the exemption log failed to address, specifically, the status of individuals who sent or received emails withheld in response to Request 1.³ The Requester did not submit any additional information or argument with regard to either appeal.

LEGAL ANALYSIS

The Office is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 Office 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*,

² On February 26, 2025, the Office sought an extension of time to supplement the record in each appeal, and on the same date, the OOR granted the extension request, notifying the parties that the record in both matters would remain open until March 10, 2025.

³ All attestations from Mr. Eisenstein are made under the penalty of perjury. Under the RTKL, a statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Office has acted in bad faith, “the averments in [the attestations] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

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)). The Requester asked the OOR to conduct an *in camera* review of the withheld records; however, because the OOR has the necessary information and evidence before it to adjudicate this matter, the request for *in camera* review is denied.

1. The Office has proven that the records responsive to Request 1 reflect the internal, predecisional deliberations of the Office

The Office has identified and withheld four emails responsive to Request 1 that the Office argues reflect internal, predecisional deliberations. Section 708(b)(10)(i)(A) of the RTKL exempts from disclosure records reflecting:

[t]he internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 67.708(b)(10)(i)(A). To withhold a record under Section 708(b)(10)(i)(A), an agency must show: 1) the deliberations reflected are internal to the agency, including representatives; 2) the deliberations reflected are predecisional, i.e., before a decision on an action; and 3) the contents are deliberative in character, i.e., pertaining to a proposed action. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011).

In support of the Office's position, Mr. Eisenstein attests that the Office identified all records responsive to Request 1 and withheld four emails consisting of ten pages of records. Eisenstein Attestation – Request 1, ¶ 5; Eisenstein Supplemental Attestation, ¶ 4; Eisenstein Supplemental Attestation 2, ¶ 4. Specifically, the Office withheld emails that are between employees of the Office and members of the Governor's Advisory Commission on LGBTQ

Affairs. Eisenstein Supplemental Attestation 2, ¶ 6. Therefore, the Office has proven that the withheld emails are internal to the Office as three of the emails (REL0000002570, REL0000001391, and REL0000000368) are between Office employees, and the fourth email (REL0000002376) is between an Office employee and members of the Governor’s Advisory Commission on LGBTQ Affairs. *See DeMaria v. York Cnty.*, OOR Dkt. AP 2024-0417, 2024 PA O.O.R.D. LEXIS 876 (communications between advisory board members and employees are considered internal for purposes of Section 708(b)(10)).

Additionally, Mr. Eisenstein further attests that the records “include discussion amongst agency officials or employees regarding responses to press and public inquiries, where agency personnel exchanged thoughts and ideas regarding planning for such responses prior to reaching a decision on such matter[.]” and “[c]ommunications between agency members deliberating matters of policy and communications strategy[.]” Eisenstein Attestation – Request 1, ¶ 8; Eisenstein Supplemental Attestation, ¶ 7. As the emails discuss thoughts and ideas between employees and Commission members regarding how to respond to press inquiries and are communications deliberating policy matters, the emails are predecisional and deliberative. Therefore, based on the evidence submitted by the Office, including the exemption log, the Office has proven by a preponderance of the evidence that the four identified emails (REL0000002570, REL0000001391, REL0000000368, and REL0000002376) withheld in response to Request 1 reflect the internal, predecisional deliberations of the Office.⁴ 65 P.S. § 67.708(b)(10)(i)(A); *Delaware County v. Schaefer ex rel. Philadelphia Inquirer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012) (burden of proof under the RTKL’s preponderance of the evidence standard, which is “the lowest evidentiary standard” and “is tantamount to a more likely than not inquiry”).

⁴ Because the Office has proven that the records withheld are exempt under Section 708(b)(10)(i)(A) of the RTKL, the OOR need not address the Office’s additional grounds for withholding the records.

However, the Office did not prove that a fifth record identified within the exemption log, an attachment to REL0000002376, is exempt from disclosure. Specifically, the Office identified REL0000002376,0001 as being a “JPEG File Interchange” and “Nonresponsive Photo Attachment[.]” The Office offers no evidence regarding the contents of the attachment or its responsiveness to Request 1, other than offering a conclusory statement that the record is not responsive. Generally, an agency may not redact information from responsive records solely because the agency believes the information is not responsive. *See Chwastyk v. Telford Borough Police Dep’t.*, OOR Dkt. AP 2025-0309, 2025 PA O.O.R.D. LEXIS 434 (*citing Kerr v. N. Huntingdon Twp.*, OOR Dkt. AP 2014-1080, 2014 PA O.O.R.D. LEXIS 1031) (“Nor is there an exemption under the RTKL which permits an agency to redact content in a responsive record that is presumptively public because that content is nonresponsive”). Therefore, because Request 1 specifically seeks “attachments” and the Office identified the underlying email as responsive to Request 1 but did not provide evidence that the attachment to the email identified as REL0000002376,0001 is exempt from disclosure under the RTKL or otherwise nonresponsive, the Office may not withhold such attachment.

2. Personal email addresses and telephone numbers are exempt from access under Section 708(b)(6) of the RTKL

The Office argues that it conducted a good faith search for records responsive to Request 2 and provided all responsive records to the Requester and “withheld no documents from the production.” Eisenstein Attestation – Request 2, ¶¶ 3, 6. The Office also asserts that it did, however, redact personal identification information from the records provided to the Requester. Specifically, the Eisenstein Attestation provides that the Office redacted “[d]irect email addresses and phone numbers of individuals ... [and that] [t]hese email addresses and phone numbers are

personal to the individuals associated with such addresses and numbers and have not been held out to the general public as a means for the receipt of unsolicited communications.” *Id.* at ¶ 5.

Section 708(b)(6) of the RTKL expressly exempts from public disclosure personal identification information, including personal telephone numbers and email addresses. 65 P.S. § 67.708(b)(6)(i)(A). There is no evidence in the record to suggest that the withheld email addresses or telephone numbers have been held out to the public; therefore, based on the evidence submitted, the Office has proven that no additional records responsive to Request 2 exist and that the Office was permitted to redact personal identification information from the records provided.⁵ *Id.*; *Office of the Lieutenant Governor v. Mohn*, 67 A.3d 123, 133-34 (Pa. Commw. Ct. 2013) (finding that government-issued email addresses are “personal” under Section 708(b)(6)), *abrogated in part on other grounds*, *Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142 (Pa. 2016); *Off. of the Governor v. Raffle*, 65 A.3d 1105, *abrogated in part on other grounds*, *Pa. State Educ. Ass’n*, 148 A.3d 142 (pertaining to agency-issued telephone numbers); *but see Pa. State Sys. of Higher Educ. v. Fairness Ctr.*, No. 1203 C.D. 2015, 2016 Pa. Commw. Unpub. LEXIS 245 (Pa. Commw. Ct. 2016) (holding that otherwise exempt email addresses held out to the public are subject to disclosure).

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part and dismissed as moot in part**, and the Office is required to provide REL0000002376,0001 to the Requester within thirty days. This Final Determination is binding on all parties. Within thirty days of the

⁵ On appeal, the Office provided “two non-personal email addresses” that were “inadvertently” included in the Office’s redactions. The email addresses are for the Advisory Commission Executive Directors and the LGBTQ Commission. Eisenstein Attestation, ¶ 5. Therefore, to the extent the records provided are responsive to Request 2, the appeal as to this information is dismissed as moot. *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records and, thus, “the controversy has been mooted”).

mailing date of this Final Determination, any party may appeal or petition for review to the Commonwealth Court. 65 P.S. § 67.1301(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 Section 1303 of the RTKL. 65 P.S. § 67.1303. However, 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.⁶ 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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 16, 2025

/s/ Kathleen A. Higgins

KATHLEEN A. HIGGINS
DEPUTY CHIEF COUNSEL

Sent via OOR portal to: Megan Brock; Marc Eisenstein, AORO

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).