pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MEGAN SHANNON,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2025-1848**
	:	
CITY OF PHILADELPHIA MAYOR'S OFFICE,	:	
Respondent	:	

FACTUAL BACKGROUND

On May 13, 2025, Megan Shannon ("Requester") filed a request ("Request") with the City of Philadelphia Mayor's Office ("Office" or "City") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking "[a] copy of the [] Office's current contract with Kate Philips & Co. [("Kate Philips")] [and a] copy of all correspondence between the [] Office and Kate Philips [] from 1/1/25 to present relating to marketing, PR, social media, and crisis communications support." On May 20, 2025, the City invoked a thirty-day extension of time to respond. *See* 65 P.S. § 67.902(b). On June 17, 2025, the Requester granted the City additional time to respond, and on July 1, 2025, the City provided the responsive contract and correspondence, redacted of alleged internal, predecisional deliberative content.[1] *See* 65 P.S. §

[1] The City also redacted Meeting ID codes, passcodes, and phone conference ID numbers, arguing that disclosure of this information would be reasonably likely to threaten computer security. *See* 65 P.S. § 67.708(b)(4). However, the Requester later noted that she does not challenge these redactions or the internal correspondence that was redacted from the record identified as 32358_0000022.

67.708(b)(10)(i)(A). On the same day, the Requester asked the City to resend the records without redactions to communications with third-party consultants per *Chester Water Authority v. Pennsylvania Department of Community and Economic Development*, 249 A.3d 1106, 1113 (Pa. 2021). The City responded that it believed the matter was distinguishable from *Chester Water Authority.*

On July 2, 2025, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Office to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On July 17, 2025, the Requester requested an extension of time to file a submission and agreed to an extension of the final determination due date. *See* 65 P.S. § 67.1101(b)(1).

On July 22, 2025, the City submitted a position statement, reiterating its arguments. The City also submitted an exemption log and statements made under the penalties of unsworn falsification to authorities by Kathleen Lonie ("Lonie Attestation"), the Director of Administrative Services and Open Records Officer for the Office, and Margot Smith, Esq. ("Smith Attestation"), Open Records Officer for the City's Law Department and Chief Deputy City Solicitor.

On August 15, 2025, the Requester submitted a position statement, noting that her appeal is limited to the City's application of the exemption for internal, predecisional and deliberative records. Although the City was afforded additional time to submit a supplemental submission, it did not do so.

LEGAL ANALYSIS

The Office 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 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*, 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 Office argues that that it appropriately redacted internal, predecisional and deliberative content. 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, 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). In order 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).

Here, the Lonie Attestation provides that the emails at pages 32358_00000037 through 32358_00000040 are communications between employees of the Office, Kate Philips and Clear Point PA ("Clear Point"), discussing how to best promote the Mayor's affordable housing policy on social media. Lonie Attestation, ¶ 7. The Attestation further provides that the consultants

provide communications advice to the Office to enable better communications with stakeholders and the public. *Id.* at ¶ 8. The Office argues that formulating communication strategies requires a free flow of ideas, and that finding that such communications are not exempt would have a chilling effect on exchanges of ideas between the parties and thereby hinder the Office's ability to communicate. *Id*.

The City cites to *Rodgers v. Hanover Borough*, OOR Dkt. AP 2023-1190, 2023 PA O.O.R.D. LEXIS 1647, where the OOR found that a study that was commissioned exclusively by the Borough to aid in its deliberations and maintained internally qualified for the exemption. Similarly, in *Sloss v. Pennsylvania Department of Transportation*, OOR Dkt. AP 2024-2495, 2024 PA O.O.R.D. LEXIS 2838, plans created by a Department contractor were exempt where there was evidence that they were subsequently received, maintained, and utilized by the Department for its internal discussions and were not shared outside of the Department.

Indeed, the "origination of records from outside an agency does not preclude application" of the exemption. *Off. of the Governor v. Davis*, 122 A.3d 1185, 1193 (Pa. Commw. Ct. 2015) (citing *Bagwell v. Pa. Dep't of Educ.*, 76 A.3d 81 (Pa. Commw. Ct. 2013) (holding that records originating with Penn State University, which is not an agency under the RTKL, may become records of an agency when records are used in agency decision-making)). The OOR has noted that records originating outside of the agency may still be exempt particularly where the records constitute "research, memos or other documents used in the predecisional deliberations." *Shannon v. Pa. Dep't of Educ.*, OOR Dkt. AP 2021-1351, 2021 PA O.O.R.D. LEXIS 1797 (finding that a report by the agency's consultant assessing a charter school's renewal application was exempt where there was evidence that the report was generated exclusively for the agency's use and was not shared with anyone outside the agency); *see also Wolfson v. Allegheny Cnty.*, OOR Dkt. AP

2021-2372, 2021 PA O.O.R.D. LEXIS 2529 (finding that a master spreadsheet of proposals that was internally compiled but discussed with an outside accounting firm to ensure eligibility qualified as internal).

However, an agency's communications with third-party consultants are not internal. *Chester Water Auth.*, 249 A.3d at 1113. *Chester Water Authority* concerned communications between a Commonwealth agency and a private contractor and subcontractors, who were hired to provide professional legal and financial services to the City of Chester. The Court held that, "Section 708(b)(10)(i)(A) does not serve to insulate communications exchanged between a Commonwealth agency and a private consultant from the [RTKL's] general requirement for openness." *Id*. at 1114. Relying on the plain language of Section 708(b)(10)(i)(A), the Court noted that "[p]rivate consultants providing services as independent contractors do not qualify as agencies, members, employees or officials who may engage in protected internal communications." *Id*. at 1113. The Court expressly did not address "whether (or to what degree) the research-memos-documents rubric of Section 708(b)(10)(i)(A) might serve as an exception to the statute's specified focus on matters internal to the agency." *Id*. at 1109, n.5. In sum, while research prepared for an agency by a third party may qualify for exemption, communications with third parties are not internal to the agency and are thus, not exempt.

In the instant matter, evidence establishes that the records contain communications between the Office and Kate Philips discussing how to best promote the Mayor's affordable housing policy on social media. While arguing that the matter is distinguishable from *Chester Water Authority*, the City expressly acknowledges that the emails were exchanged with a third party. As there is no indication that the communications are research or memos prepared for and

used exclusively by the Office, the OOR can discern no reason to distinguish the matter from *Chester Water Authority*.

Further, the Requester cites to *In re: Appeal of Megan Shannon v. City of Philadelphia*, No. 2040601968 (Phila. CCP Apr. 1, 2025), where the Philadelphia Court of Common Pleas overturned an OOR decision that found that a memorandum prepared by a consulting firm was exempt. While the City argued for the first time before the Court that portions of the responsive records constituted "research, memos or other documents used in … deliberations," the Court found that the City had not argued this before the OOR, and in any case, the records were not internal. Thus, they were not exempt.

As stated above, the City has not argued that the records at issue in in the present matter fall under the research-memos-documents rubric. That the disclosure of these records may have a chilling effect on the Office's communication with its consultants is irrelevant to a determination of whether Section 708(b)(10)(i)(A) of the RTKL applies, under *Chester Water Authority*. "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." *Off. of the Governor v. Davis*, 122 A.3d 1185, 1191 (Pa. Commw. Ct. 2015) (en banc) (internal citation omitted). Accordingly, the City has not met its burden of proof. *See* 65 P.S. § 67.708(a)(1).

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Office is required to produce unredacted copies of the records 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 Philadelphia 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 as per Section 1303 of the RTKL, 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.[2] 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: September 10, 2025

/s/ Blake Eilers
Blake Eilers, Esq.
Senior Appeals Officer

Delivered via e-file portal to: Megan Shannon; Kathleen Lonie; Omar Rabady, Esq.; Margot Smith, Esq.

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