

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF

**JAXON WHITE AND WITF,
Requester**

v.

**PENNSYLVANIA OFFICE OF THE
GOVERNOR,
Respondent**

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Docket No: AP 2025-3285

FACTUAL BACKGROUND

On September 29, 2025, Jaxon White and WITF (collectively “Requester”) submitted a request (“Request”) to the Pennsylvania Office of the Governor (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...Chat histories of all ChatGPT and ChatGPT Enterprise sessions conducted by Governor’s Office employees on state-owned devices or used in job-related functions in the following departments: Executive Office, Communications and Press, Digital Strategy, Legislative Affairs, Policy and Planning Office, Research.

The timeframe for this request is 1/1/2025 to the date this [R]equest is processed...

On November 5, 2025, following a thirty-day extension, 65 P.S. § 67.902(b), the Office denied the Request, arguing that the Request is insufficiently specific, 65 P.S. § 67.703, and that “even if sufficiently specific, such records are exempt...notes and working papers used solely for that official’s or employee’s own personal use,” 65 P.S. § 67.708(b)(12).

On November 12, 2025, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ The Requester also requested that the OOR conduct an *in camera* review of the withheld records. 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 December 12, 2025, the Office submitted a position statement reiterating its argument that the records responsive to the Request are exempt personal notes and working papers, which have no official purpose, 65 P.S. § 67.708(b)(12).² In support of its position, the Office submitted three attestations of its Open Records Officer, Marc Eisenstein (“Eisenstein Attestations”), and the attestation of its Director of Emerging Technologies, Harrison MacRae (“MacRae Attestation”).³ The first Eisenstein Attestation (“Eisenstein Attestation”), which was submitted on November 26, 2025, describes a portion of the Department’s search for records responsive to the Request, specifically that the Office consulted with Harrison MacRae. The MacRae Attestation explains how the Office’s ChatGPT Enterprise application may be utilized and how records of any use of ChatGPT are retained. The second Eisenstein Attestation (“Eisenstein Attestation 2”), which was submitted on December 5, 2025, further describes the Office’s search for records responsive to the Request and describes how ChatGPT was used by certain Office employees. The third Eisenstein Attestation (“Eisenstein Attestation 3”), which was submitted on December 12, 2025, confirms that the Office’s Deputy Secretary of Legislative Affairs does not use ChatGPT for Office business.

¹ The Requester granted the OOR a thirty-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 On appeal, the Office does not argue that the Request is insufficiently specific, 65 P.S. § 67.703. Therefore, the OOR need not address this argument.

³ The MacRae Attestation was submitted on November 26, 2025.

On that same day, the Requester submitted a statement in support of the 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*, 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)). While the Requester sought an *in camera* review of the withheld records, the OOR has the information and evidence before it to properly adjudicate the matter. Therefore, the request for *in camera* review is denied.

On appeal, the Office argues that the records responsive to the Request are exempt personal notes and working papers, which have no official Office purpose. *See* 65 P.S. § 67.708(b)(12). The Requester argues that “[b]lanket reliance on a single exemption to block public access to records that could be used for myriad distinct purposes is not permitted by the RTKL” and that “[i]f there are responsive ChatGPT records that trigger the personal notes exemption, the law allows them to be withheld[;] [h]owever, it does not allow blanket denial based on bald reliance on the statute; the law requires...[the Office] to locate and review responsive records and to support any claimed exemptions on a particularized basis.”⁴

⁴ Here, based on the appeal record, Section 708(b)(12) could reasonably apply to all responsive records. *See* 65 P.S. § 67.708(b)(12). Further, there is no requirement that an agency provide an exemption log or address each record individually in its response to an RTKL request.

Section 708(b)(12) exempts from disclosure “[n]otes and working papers prepared by or for a public official or agency employee used solely for that official’s or employee’s own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.” *Id.*

This exemption protects “notes and working papers prepared by or for a public official or agency employee regarding agency-related business, but not for an official function.” *Escalera v. Adams Cnty.*, OOR Dkt. AP 2011-0184, 2011 PA O.O.R.D. LEXIS 176. The records must be for the specific employee’s own personal use and not distributed outside of their office⁵ and must be used to carry out the employee’s official duties.⁶ This exemption covers documents “necessary for that official that are ‘personal’ to that official in carrying out his public responsibilities.” *City of Phila. v. Phila. Inquirer*, 52 A. 3d 456, 461 (Pa. Commw. Ct. 2012) (*en banc*). The Commonwealth Court has also held that:

“Personal” within this definition does not mean that it has to involve a public official’s personal affairs—a message slip that his wife called—because those types of documents are not covered by the RTKL; it covers those documents necessary for that official that are “personal” to that official in carrying out his public responsibilities.

Smith ex rel. Smith Butz, LLC v. Pa. Dep’t of Env’t Prot., 161 A.3d 1049, 1066-67 (Pa. Commw. Ct. 2017).

In support of the Office’s position, the MacRae Attestation states:

3. ...The ChatGPT Enterprise application is a generative artificial intelligence application that analyzes and interprets user inputs and generates new, model-predicted outputs primarily using Large Language Models.
4. Within the Office of the Governor, and in the Executive Office, Communications and Press Office, Digital Strategy Office, Office of Legislative Affairs, Office of Policy and Planning, and Research Office, Meghan Patel and Orlando Almonte have licenses to use ChatGPT enterprise[.]

⁵ *Glunk v. Pa. Dep’t of State*, 102 A.3d 605 (Pa. Commw. Ct. 2014).

⁶ *Pa. Dep’t of Labor & Indus. v. Tabor*, 2016 Pa. Commw. Ct. Unpub. LEXIS 251 (Pa. Commw. Ct. 2016).

5. As Director of Emerging Technologies, I am aware of how ChatGPT Enterprise functions to provide data and analysis to Commonwealth Officials and employees, generally, and specifically how Officials and Employees are directed or permitted to use ChatGPT Enterprise.
6. I am also aware of how ChatGPT chat histories are retained and used (or not used) by the Office of the Governor.
7. Based upon this knowledge and experience, I confirm that chat histories are not shared among employees in the ordinary course of business.
8. During user research during the formal pilot period of ChatGPT implementation, employees were invited to share limited chat histories with the Office of Emerging Technologies, only insofar as such histories related to use cases that users wanted to highlight to the Office of Emerging Technologies. The Office of Emerging Technologies reviewed those conversations in the course of engaging in deliberations and consideration regarding implementation of ChatGPT to better understand how the application might be implemented, and were not shared outside of the Commonwealth.

ChatGPT Chats are records of how individual employees use the ChatGPT application and contain data input into the application by employees and the product and analysis of such inputs generated by the application.

9. Chat histories, or records of these inputs and outputs are retained only by default under the ChatGPT application, and their retention serves no business purpose.

Employees and Officials are advised that ChatGPT outputs are not “final products” and are used instead to inform the individuals’ eventual use. Employees are prohibited from providing ChatGPT outputs as final products and human intervention is required before ChatGPT outputs serve any official purpose.

10. ChatGPT inputs and outputs, standing alone, do not serve official purposes.
11. Instead, the purpose and usage of ChatGPT is to assist individual staff members in conveniently performing individual functions.
12. ChatGPT itself, and in particular records of Chats, exist merely for the convenience of the individual staff members who create them.
13. ChatGPT provides the functional equivalent of drafts documents. Essentially, individuals use ChatGPT to develop iterative incarnations of the employees’ or officials’ as yet unformalized thoughts and approaches.

14. These iterative engagements with the application are the “working papers” of the individual employees and officials who then review and revise the ChatGPT outputs to develop a final product.
15. Only the final human-developed product serves as a record of the agency and has an official purpose.

See MacRae Attestation, ¶¶ 3-15. In further support of the Office’s position, the Eisenstein Attestation 2 states:

4. ...In preparation for this response, I directly consulted with each employee and official of the Office’s programs from which this request seeks records, except for those who were out of the office as identified later in this affirmation.
5. In addition to those employees who used enterprise ChatGPT, as addressed in the affirmation of Harrison MacRae, some employees and officials indicated that they have used non-enterprise ChatGPT on occasions that coincided with...[Office] business.
6. As previously averred by Harrison MacRae, ChatGPT Chats are records of how individual employees use the ChatGPT application and contain data input into the application by employees and the product and analysis of such inputs generated by the application.
7. Chat histories, or records of these inputs and outputs are retained only by default under the ChatGPT application, and their retention serves no business purpose.
8. The employees and officials who used non-enterprise ChatGPT confirmed that they did not use ChatGPT to produce “final products” and instead used the application to inform their drafting and research on an individual basis.
9. ChatGPT inputs and outputs, standing alone, do not serve official purposes and were not used for any non-draft or non-research purposes.
10. Instead, ChatGPT was used to assist individual staff members in conveniently performing individual functions.
11. ChatGPT was used by these employees and officials to provide drafts, thoughts and internal notes. These employees and officials used ChatGPT to develop iterative incarnations of the employees’ or officials’ yet unformalized thoughts and approaches.
12. These iterative engagements with the application are the “working papers” of the individual employees and officials who then review and revise the ChatGPT outputs to develop a final product.

13. Only the final human-developed product, of which none responsive to this [R]equest exist, serves as a record of the...[Office] and has an official purpose....

See Eisenstein Attestation 2, ¶¶ 4-13. Finally, the Eisenstein Attestation 3 confirms that, as part of the Office’s search, Justin “Cornelius [was contacted] and [it was] determined that he did not use ChatGPT for...[Office] business as described in the Request[.]....”⁷ See Eisenstein Attestation 3, ¶ 5.

Under the RTKL, a sworn affidavit or 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 acted in bad faith, “the averments in [the statements] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. 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)).

In light of the rapidly evolving nature of generative AI, the OOR will adjudicate each appeal on a case-by-case basis, guided by the unique facts and evidentiary record of each matter. Here, the MacRae Attestation explains the Office’s ChatGPT capabilities and identifies the staff members who “have licenses to use ChatGPT [E]nterprise.” See MacRae Attestation, ¶¶ 3-5. Additionally, the MacRae Attestation states that “[c]hat histories, or records of these inputs and outputs are retained only by default under the ChatGPT application, and their retention serves no business purpose.” See MacRae Attestation, ¶ 9; see also Eisenstein Attestation 2, ¶ 7. The Eisenstein Attestations describe the Office’s search and confirm that all employees who have

⁷ Justin Corneilus is the Office’s Deputy Secretary of Legislative Affairs. See Eisenstein Attestation 3, ¶ 4.

licenses to use ChatGPT enterprise were contacted as were employees “who [have] used non-enterprise ChatGPT.” *See* Eisenstein Attestation, ¶¶ 3-4; Eisenstein Attestation 2, ¶¶ 4-8; Eisenstein Attestation 3, ¶ 5. Further, the MacRae Attestation and the Eisenstein Attestation 2 both affirm that ChatGPT “inputs and outputs, standing alone, do not serve official purposes and were not used for any non-draft or non-research purposes[.]” stating that Office employees use ChatGPT to assist in “develop[ing] iterative incarnations of the employees’ or officials’ as yet unformalized thoughts and approaches” and that ChatGPT “exist[s] merely for the convenience of the individual staff members who create them” because “chat histories are not shared among employees in the ordinary course of business.” *See* MacRae Attestation, ¶¶ 7, 9-14; Eisenstein Attestation 2, ¶¶ 8-12. Finally, both the MacRae Attestation and the Eisenstein Attestation 2 verify that “the individual employees and officials...then review and revise the ChatGPT outputs to develop a final product” and that “[o]nly the final human-developed product, of which none responsive to this [R]equest exist, serves as a record of the agency and has an official purpose.” *See* Eisenstein Attestation 2, ¶¶ 13-14.; *see also* MacRae Attestation, ¶¶ 14-15. As such, the evidence provided by the Office affirms that responsive ChatGPT records were created by Office employees for their personal use regarding Office-related work but the output was not used for official Office purposes and was not shared by or among Office employees. Accordingly, the Office demonstrated, by a preponderance of the evidence,⁸ that certain responsive records are exempt personal notes under Section 708(b)(12) of the RTKL. *See* 65 P.S. 67.708(a).

Nonetheless, the McRae Attestation also states:

During user research during the formal pilot period of ChatGPT implementation, employees were invited to share limited chat histories with the Office of Emerging Technologies, only insofar as such histories related to use cases that users wanted

⁸ “A preponderance of the evidence standard, the lowest evidentiary standard, is tantamount to a more likely than not inquiry.” *Delaware County v. Schaefer ex rel. Phila. Inquirer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012).

to highlight to the Office of Emerging Technologies. The Office of Emerging Technologies reviewed those conversations in the course of engaging in deliberations and consideration regarding implementation of ChatGPT to better understand how the application might be implemented, and were not shared outside of the Commonwealth.

See McRae Attestation, ¶ 8. Although, these chat histories were not shared outside of the Commonwealth, the Office’s evidence does not show that all the responsive records were used for the employees’ own personal use as contemplated by the Commonwealth Court, which has interpreted the “notes and working papers” exception as limited. Section 708(b)(12) is to be construed narrowly which is consistent with the RTKL’s remedial nature and goal of promoting government transparency. See *Pa. PUC v. Nase*, 302 A.3d 264 (Pa. Commw. Ct. 2023); see also *Glunk*, 102 A.3d 605; *Phila. Inquirer*, 52 A. 3d at 46. Rather, the Office’s evidence shows that some chat histories were used by the Office of Emerging Technologies to improve the implementation of ChatGPT, meaning those chat histories were not “personal” to each employee because the chat histories were not used solely for the employees use.⁹ See McRae Attestation, ¶ 8; see also, e.g., *Walter v. Canton Borough*, OOR Dkt. AP 2024-1248, 2024 PA O.O.R.D. LEXIS 1295 (The agency failed to show that redacted personal notes were used solely by one individual to carry out official duties.). Accordingly, the Office has not demonstrated that these chat histories meet the criteria of personal notes or working papers. Because the Office has not raised any further grounds for denial, the appeal is granted as to these records.¹⁰

CONCLUSION

⁹ See 65 P.S. § 67.708(b)(12); *Smith*, 161 A.3d at 1066-67.

¹⁰ The Office does not raise the constitutional right to privacy, and it is not clear how it would apply in this instance. The Request seeks chat histories generated from the use of ChatGPT on state-owned devices, and Commonwealth policy states that there is no expectation of privacy “when using IT Resources,” such as computers, mobile devices, Internet, and cloud-based services and platforms. Management Directive 205.34 Amended – Commonwealth of Pennsylvania Information Technology Acceptable Use Policy, https://www.pa.gov/content/dam/copapwp-pagov/en/oa/documents/policies/md/200/205_34.pdf. There is nothing in the record before the OOR indicating that the chat histories are from personal accounts on personal devices.

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and, within thirty days, the Office required to provide the chat histories described above to the Requester. 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 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 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.¹¹ 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 AND MAILED: January 12, 2026

/s/ Erika Similo

APPEALS OFFICER
ERIKA SIMILO

Sent via OOR portal to: Jaxon White
Thomas P. Howell, Esq.
Marc Eisenstein

¹¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).