



Beyond the [Department] Secretary and Deputy Secretary for OCYF, public records produced by, sent to, received by or copying any of the following [Department] employees, consultants or contractors, should be included:

- Andrew Barnes
- Rachel Berger
- Meaghan Abbott
- Amanda Dorris
- Natalie Bates
- Michele Walsh

On January 12, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department issued a Final Response denying the Request in part, arguing that certain records responsive to the Request are exempt from public disclosure as personal identification information, internal, predecisional deliberations, and confidential under the Child Protective Services Law (“CPSL”). *See* 65 P.S. §§ 67.708(b)(6) and (b)(10); 23 Pa. C.S. § 6339.

On February 2, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>2</sup> The OOR invited both parties to supplement the record and directed the Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On February 6, 2026, the Department requested an extension of time to provide remaining responsive records to the Requester and submit evidence and argument in this appeal. On February 9, 2026, the Requester submitted correspondence, noting that despite granting multiple extensions to the Department and despite the issuance of the Department’s Final Response on January 12, 2026, the Department had yet to provide her with any records responsive to the Request and arguing that the Department has demonstrated a pattern of seeking extensions but failing to

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<sup>2</sup> The Requester granted the OOR an 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).”)

adequately produce responsive records. On February 11, 2026, the OOR granted the Department's request for an extension to provide submissions in this appeal. Because the Department estimated that it would provide the Requester with responsive records on February 20, 2026, the Requester was permitted until March 11, 2026 to review the responsive records and the Department's basis for withholding records and submit any evidence or argument she wished to have considered.

On February 27, 2026, the Department submitted a position statement, arguing that the Department conducted a good faith search and provided responsive records to the Requester during the course of the appeal.<sup>3</sup> The Department also argues that certain records were withheld or redacted on the basis of personal identification information and internal, predecisional deliberations. 65 P.S. §§ 67.708(b)(6), (b)(10). In support of its position, the Department submitted the attestation of Michele Walsh, an Executive Assistant with the Office of Children, Youth, and Families ("OCYF") within the Department ("Walsh Attestation").

On March 9, 2026, the Requester submitted argument that the Department failed to conduct a good faith search for and provide all records responsive to the Request. On March 19, 2026, the OOR reopened the record for the Department to provide additional evidence and argument related to the issues specifically raised by the Requester and to address its search in relation to custodians specifically identified in the Request. To date, the Department has not submitted additional evidence.

### **LEGAL ANALYSIS**

The Department 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

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<sup>3</sup> The appeal is dismissed as moot in relation to the records provided during the course of the appeal. *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").

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 Department is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access or do not exist. 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)).

**1. The Department proved that certain records are exempt as personal identification information**

The Department states that it redacted certain records on the basis of personal identification information. Section 708(b)(6)(i)(A) of the RTKL exempts personal identification information, including “[a] record containing all or part of a person’s Social Security number, driver’s license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number.” 65 P.S. § 67.708(b)(6)(i)(A). However, organizational email addresses and personal information that is held out to the public are not exempt. *See Pa. State Syst. of Higher Educ. v. The Fairness Ctr.*, No. 1203 C.D. 2015, 2016 Pa. Commw. Unpub. LEXIS 245 (Pa. Commw. Ct. 2016) (holding that email addresses “held out to the public” are not personal identification information subject to the exemption). The Walsh Attestation states:

28. The responsive records also consisted of e-mails that contained personal e-mail addresses and phone numbers of Department employees, contractors, and stakeholders.
29. My understanding is that this information was redacted pursuant to the personal identification information exemption of the RTKL.
30. It is my good faith belief that there are no additional responsive records in the possession or control of OCYF other than that which has been provided.

See Walsh Attestation ¶¶ 28-30.<sup>4</sup> The Requester does not appear to challenge the Department's redaction of the responsive records on the basis of personal identification information. Personal email addresses and telephone numbers of non-employee stakeholders and contractors are expressly exempt from disclosure and there is no evidence to suggest that the email addresses and phone numbers of agency personnel are held out to the public. Accordingly, the Department has met its burden of proving that it appropriately redacted this information. See 65 P.S. § 67.706; see also *Shepherd v Pa. Dep't of Human Serv.*, OOR Dkt. AP 2025-1314, 2025 PA O.O.R.D. LEXIS 1552; *Palm v. Pa. Dep't of Human Serv.*, OOR Dkt. AP 2025-2779, 2025 PA O.O.R.D. LEXIS 3345.

**2. The Department proved that certain records are exempt as internal, predecisional deliberations**

The Department argues that it properly withheld communications which reflect internal, predecisional deliberations of the Department. 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

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<sup>4</sup> Under the RTKL, an attestation is generally competent evidence to sustain an agency's burden of proof. 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 competent evidence that the Department acted in bad faith, "the averments in [the attestation] should be accepted as true."

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). For purposes of this exemption, records that are exchanged with another governmental agency are considered “internal” to the agency. *See Off. of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. Ct. 2015); *see also West Chester Univ. of Pa. v. Schackner*, 124 A.3d 382, 398 (Pa. Commw. Ct. 2015) (“Records satisfy the ‘internal’ element when they are maintained internal to one agency or among governmental agencies”). However, communications with outside consultants and independent contractors are not “internal,” and are therefore, not subject to the exemption. *See Chester Water Auth. v. Pa. Dep’t of Community and Econ. Dev.*, 249 A.3d 1106, 1112-13 (Pa. 2021).

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) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). 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); *see also Heintzelman v. Pa. Dep’t of Cmty. & Econ. Dev.*, OOR Dkt. AP 2014-0061, 2014 PA O.O.R.D. LEXIS 254, *aff’d* No. 512 C.D. 2014, 2014 Pa. Commw. Unpub. LEXIS 644 (Pa. Commw. Ct. 2014). Factual material contained in otherwise deliberative documents is required to be disclosed if it is severable from its context. *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014).

The Department identified twenty-four records that it withheld as internal, predecisional deliberations of the Department. The Walsh Attestation states, in relevant part:

16. Part 2 and 3 of this [R]equest included a total of 24 records that were determined to be internal and predecisional to the Department and were withheld.
17. Additional records were provided to the [R]equester containing redactions for

- internal predecisional deliberations.
18. Eight (8) of these records are emails which include only Department employees as both sender and recipient.
  19. No Department contractors or outside parties are included in the decisions being made in these e-mails.
  20. These e-mails were created specifically to guide and inform the decisions that needed to be made by the Department regarding potential intergovernmental agreements (“IGAs”) related to the potential use of medical professionals by OCYF.
  21. As part of the departmental process for creating these IGAs, multiple drafts were reviewed and edited by Department employees, including Department legal counsel.
  22. These drafts and edits are included as attachments to the emails referenced above.
  23. It is my understanding that the finalized IGAs have been provided to the [R]equester as attachments to emails which were provided.
  24. The withheld records also contained records of survey materials sent to Child Advocacy Centers (“CAC”) throughout Pennsylvania.
  25. These records include drafts of the surveys that include Department employees’ edits and comments, as well as copies of the survey responses that were received from the CACs.
  26. These documents were created specifically to assist the Department in making determinations and decisions about how to best assist CACs in providing medical examinations or otherwise utilizing medical professionals.
  27. It is my understanding that the finalized version of this survey and the compiled responses have been provided to the [R]equester.

*See Walsh Attestation ¶¶ 16-27.* The Department’s evidence reflects that it withheld certain emails and documents that discuss child advocacy center survey responses received by the Department, are draft intergovernmental agreements, or are discussions between Department personnel related to draft intergovernmental agreements, and these responsive records have been maintained internally.

The Requester challenges that a draft intergovernmental agreement was almost entirely redacted. The Requester further challenges that early drafts of a survey that the Department was creating to send out to child advocacy centers and the survey responses received which were distributed for comment within the Department were withheld on the basis of internal, predecisional deliberations. Although communications with an agency’s contractor are not internal

for RTKL purposes, the “origination of records from outside an agency does not preclude application” of Section 708(b)(10)(i)(A). *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) (finding that records originating with a different entity that 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 this is particularly the case when 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; *see also Wolfson v. Allegheny County*, OOR Dkt. AP 2021-2372, 2021 PA O.O.R.D. LEXIS 2529. Draft contracts and draft surveys that are in the process of editing solely within an agency and have yet to be finalized and published meet the definition of predecisional and deliberative content of an agency. *See Metzner v. Phila. Housing Auth.*, OOR Dkt. AP 2023-2930, 2024 PA O.O.R.D. LEXIS 733 (relating to draft contracts); *Brock v Council Rock Sch. Dist.*, OOR Dkt. AP 2021-1738, 2021 PA O.O.R.D. LEXIS 2430 (relating to draft surveys). Further, the Department provided the Requester with the finalized child advocacy center surveys and the compiled survey responses. *See* 65 P.S. § 67.708(b)(10)(iv). Accordingly, based on this evidence, the OOR finds that the Department proved that the content of these twenty-four records are exempt as internal, predecisional deliberations.

### **3. The Department failed to demonstrate that it conducted a complete search**

The Requester argues that the Department did not provide all responsive records. In response to a request for records, an agency is required to “make a good faith effort to determine if ... the agency has possession, custody or control of the record.” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort” as used in Section 901 of the RTKL, in *Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections*, the Commonwealth

Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession. ... When records are not in an agency's physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors. ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020).

An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Here, the Walsh Attestation provides:

4. As part of my duties as Executive Assistant in OCYF, I serve as OCYF's liaison to the Right-to-Know Law ("RTKL") Office.
5. As RTKL liaison, I am the initial point-of-contact for all RTKL requests which are assigned to OCYF.
6. Upon reviewing the RTKL requests that seek records that may be in OCYF's possession, I determine who, if anyone, in OCYF might possess responsive records.
7. I then coordinate OCYF's response and ensure responsive records are turned over to the RTKL office in a timely manner.

...

9. [The Request] had 4 separate parts seeking records related to (1) the Keystone Child Abuse Medical Forum; (2) enlisting medical expertise and consultation at ChildLine, regional OCYF offices and county children and youth service agencies; (3) piloting or formally establishing a program related to medical expertise and consultation, including known or projected costs, and; (4) development of policy or protocols related to medical expertise and consultation.
10. The following individuals all searched for responsive records and, as is Department policy, directed their relevant staff to search as well: Laval Miller-Wilson, OCYF Deputy Secretary, Natalie Bates, OCYF Chief of Staff, Amanda Dorris, Director of the Bureau of Policy, Programs and Operations, Caitlin Robinson, Director of the Bureau of Children and Family Services,

Dr. Rachel Berger, OCYF Medical Director, as well as the individuals specifically named in the request.

11. I was specifically named in the [R]equest as a person who might have responsive records, so I also checked my own records in response.
12. The individuals identified above and their staff are the only individuals in OCYF who could be reasonably expected to have responsive records for this [R]equest.
- ...
22. It is my good faith belief that there are no additional responsive records in the possession or control of OCYF.

See Walsh Attestation ¶¶ 4-12, 22. “The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). An attestation by the individual who searched for responsive records is sufficient to meet an agency’s burden of proving the nonexistence of a record. *Id.*; see also *Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (finding that in the absence of countervailing evidence establishing that the agency acted in bad faith or that the agency records exist, averments of nonexistence should be accepted as true.”); *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021), *appeal granted in part*, 280 A.3d 870, *aff’d*, No. 71 MAP 2022, No. 72 MAP 2022, 2024 Pa. LEXIS 1087 (Feb. 21, 2024) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, which is tantamount to a “more likely than not” inquiry). However, the Request explicitly seeks communications of Secretary Arkoosh, Andrew Barnes, and Department contractors, and the Department’s evidence fails to address whether a search was conducted for communications in the possession of those custodians. Further, the Requester identifies categories of records that should have been produced but were not, such as email attachments, sample templates, and reports referenced in emails that were not produced.

The OOR does not determine whether records should exist, as our inquiry is limited to

whether or not records are “in existence and in possession of the ... agency at the time of the right-to-know request.” *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705. However, the fact that the search appears to have been incomplete and the Requester has identified particular records that are likely to exist without a sufficient rebuttal by the Department causes the OOR to question the statement in the Walsh Attestation that no additional responsive records exist in the Department’s possession, custody, or control. As such, the Department has not met its burden of proof that it conducted a search as set forth in 65 P.S. § 67.901 and that all non-exempt responsive records were provided to the Requester. *See Hodges*, 29 A.3d at 1192.

### CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part, and dismissed as moot in part**, and the Department is required to conduct a good faith search for records responsive to the Request and provide all responsive records in accordance with this Final Determination within thirty days. If no additional responsive records exist, the Department is required to provide the Requester with a detailed affidavit or attestation made under the penalty of perjury describing the search for responsive records and affirming their non-existence. 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.<sup>5</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on

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

the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: April 13, 2026**

*/s/ Catherine R. Hecker*

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CATHERINE R. HECKER  
APPEALS OFFICER

Sent via the OOR portal to: Cathleen Palm  
Andrea Bankes