



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
AMY AUSTRAL GERNETH,	:
Requester	:
	:
v.	: Docket No: AP 2026-1124
	:
EAST UNION TOWNSHIP,	:
Respondent	:

FACTUAL BACKGROUND

On February 11, 2026, Amy Austra Gerneth (“Requester”) submitted a request (“Request”) to East Union Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

During the regular [T]ownship meeting on 2-9-26, Kyle Mummey stated he had received an email from an attorney with [the Pennsylvania State Association of Township Supervisors (“PSATS”)] advising the board of supervisors should not include Supervisor Careyva in Executive Sessions because she was a liability to the [T]ownship. Please provide a copy of the email [Mr.] Mummey referenced during the monthly [T]ownship meeting.

On March 20, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Township granted the Request in part, providing a redacted version of the email and denied the Request in part, redacting portions of the email reflecting the internal, predecisional deliberations of the Township, “as well as deliberations between agency members and officials of another agency[.]” 65 P.S. § 67.708(b)(10). That same day, the Requester appealed to 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 Township to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 7, 2026, the Requester submitted a screenshot of her position statement, an email from Attorney Coburn (“Careyva email PSATS (1).pdf”),¹ and an “Audio transcription from the February 09 [Township] Meeting.pdf”.

On April 13, 2026, the Township submitted a position statement, reiterating its grounds for denial. The Township claims that the redactions were proper because it “is a dues-paying member of PSATS and his communications were with the solicitor of PSATS”; therefore, “the Chairman’s statement reflects an internal sharing of information among counsel and decision-makers, which is entirely consistent with the deliberative process the exemption is designed to protect.” In support of its position, the Township submitted the attestations, made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, of Kyle Mummey (“Mummey Attestation”), Chairman of the Township Board of Supervisors, and Wendy Danchision (“Danchision Attestation”), Vice-Chairwoman of the Township Board of Supervisors.

On April 13, 2026, the Requester submitted a supplemental position statement, objecting to the Danchision Attestation and correspondence, asking the OOR to conduct *in camera* review.

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

¹ The redacted email in question was sent by Attorney Scott Coburn, Education Director & Counsel with PSATS.

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 in this matter, the OOR has the information and evidence before it to properly adjudicate the appeal. Therefore, the request for *in camera* review is denied.

The Township argues that it properly redacted an email sent by Attorney Coburn to Mr. Mummey as records reflecting the internal, predecisional deliberations of the Township. 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). Records exchanged with another agency are considered “internal” to the agency for the purposes of this exemption. *See Off. of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. Ct. 2015). However, communications with outside consultants and independent contractors are not. *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1112-13 (Pa. 2021) (holding that Section 708(b)(10) facially does not apply to

communications with outside consultants).

To be deliberative in nature, a record must make recommendations or express opinions on legal or policy matters and cannot be purely factual in nature. *Kaplin*, 19 A.3d at 1214. 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). In addition, to prove that a record is exempt under this section, an agency must explain how the information withheld reflects or shows the deliberative process in which an agency engages during its decision-making. *See Twp. of Worcester v. Off. of Open Records*, 129 A.3d 44, 61 (Pa. Commw. Ct. 2016). Further, purely factual material contained in otherwise deliberative documents is required to be disclosed if it is severable from its context. *See Pa. Pub. Util. Comm’n v. Nase*, 302 A.3d 264, 272 (Pa. Commw. Ct. 2023) (quoting *McGowan*, 103 A.3d at 383). However, “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 exempted;’ or in other words, when disclosure of the factual material ‘would be tantamount to the publication of the [agency’s] evaluation and analysis.’” *McGowan*, 103 A.3d at 387 (quoting *Trentadue v. Integrity Communication*, 501 F.3d 1215, 1228-29 (10th Cir. 2007)).

In support of the Township’s position, the Mummey Attestation² asserts the following:

3. The records requested under the [RTKL] relate to my communications with [PSATS]. The Township is a dues-paying member of PSATS, and the

² Under the RTKL, an affidavit or statement made under 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Township has acted in bad faith, “the averments in the [attestations] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’t Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Township routinely relies on PSATS for professional guidance and advisory opinions on matters affecting Township governance.

4. The specific subject matter of the requested records concerns my inquiry to PSATS regarding how to address a situation involving a Township Supervisor sharing information outside of executive sessions. I sought PSATS's advice in order to understand the Township's options and obligations before taking any official action. I have previously sought legal advice from PSATS on prior occasions, which they have provided.
5. My communication with PSATS was made in the course of performing my official duties as Chairman and was undertaken for the purpose of obtaining pre-decisional, advisory, and consultative guidance. The information sought from PSATS was intended to assist me in evaluating potential courses of action and making decisions on a matter of Township governance.
6. The requested record contains my consultation with PSATS officials intended to guide myself and the Vice Chairperson's internal deliberations. This was used to help me determine how to address the conduct of a Supervisor and whether any corrective or administrative action was appropriate. The records do not reflect any final action, policy, or determination of the Township and no action was taken.
7. The deliberative nature of the communications included asking the PSATS solicitor what potential options are available in this situation. Prior to emailing Mr. Coburn, I discussed with the Vice-Chairperson the conduct of the Supervisor improperly disclosing confidential information, including pending litigation, to the public. Both the vice-chairperson and myself were concerned with the impact this Supervisor's conduct could have on the Township. PSATS's advice was used solely for the purposes of informing our discussions and deliberating on the best course of action.

In addition, the Danchision Attestation largely mirrors the same language set forth in the Mummey Attestation. *See* Danchision Attestation, ¶¶ 3-6.

In this instance, the redacted record is an email sent by Attorney Coburn, an employee of PSATS. As previously stated, communications with outside consultants and third-party contractors generally are not considered "internal" to the agency for the purposes of internal, predecisional deliberations exemption. *See Chester Water Auth., supra*. The Cumberland County Court of Common Pleas has directly held that PSATS "is neither a Commonwealth agency nor a

local agency within the meaning of section 102 of the [RTKL].” *See PSATS v. OOR*, No. 2012-6207 (Cumberland Com. Pl. Mar. 7, 2013).³ Here, while the OOR acknowledges that the Township is a dues-paying member of PSATS, the Township’s evidence is insufficient to demonstrate that the redacted email involving a representative of PSATS is “internal” for the purpose of the Section 708(b)(10)(i)(A) exemption. *See Chester Water Auth.*, 249 A.3d at 1113 (“... private consultants providing services as independent contractors do not qualify as agencies, members, employees or officials who may engage in protected internal communications”); *see also Knights v. Center Twp.*, OOR Dkt. AP 2023-1686, 2024 PA O.O.R.D. LEXIS 177 (finding that communications between the township solicitors and a public relations consultant, who was hired by the township to provide services during the potential sale of a sewer were not exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL). Accordingly, because PSATS is neither a Commonwealth agency nor a local agency, any communications with PSATS cannot be “internal” for the purposes of the Section 708(b)(10)(i)(A) exemption and cannot be exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL.⁴ 65 P.S. § 67.708(b)(10)(i)(A).

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Township is required to provide the email in unredacted form 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 Schuylkill 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. However, as the quasi-judicial tribunal

³ While the Cumberland County decision is not binding on the OOR, it nonetheless is persuasive authority to find that PSATS is neither a Commonwealth agency nor local agency.

⁴ No additional grounds for redacting the responsive record were raised.

adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁵ 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: April 30, 2026

/s/ Lyle Hartranft

LYLE HARTRANFT, ESQ.
APPEALS OFFICER

Sent via e-file portal to: Amy Austra Gerneth; Michael Gaizick, AORO

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