



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

<b>IN THE MATTER OF</b>	:
	:
<b>KAREN WALKER AND HOLLAND &amp; KNIGHT LLP,</b>	:
<b>Requester</b>	:
	:
	: <b>Docket No: AP 2026-1641</b>
<b>v.</b>	:
	:
<b>PENNSYLVANIA DEPARTMENT OF GENERAL SERVICES,</b>	:
<b>Respondent</b>	:

### FACTUAL BACKGROUND

On March 2, 2026, Karen Walker, Esq. and Holland & Knight LLP (collectively “Requester”) submitted a request (“Request”) to the Pennsylvania Department of General Services (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. All public records submitted by Summit Correctional Services (“Summit”) in response to the RFP, including but not limited to Summit’s proposal submitted in response to the RFP and any documents related to its oral presentation;<sup>1</sup>
2. All public records reflecting any clarification of, or modification to, the proposal submitted in response to the RFP by Summit;
3. All public records relating to any request by [the Department] and/or the Department of Corrections (“DOC”) that Summit clarify anything in its proposal submitted in response to the RFP;

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<sup>1</sup> In a footnote, the Request states: “Since Summit appears to have been selected for contract award, its proposal is no longer subject to exemption from public disclosure under 65 Pa.C.S. § 67.708(b)(26) (exempting a proposal “pertaining to agency procurement or disposal of supplies, services or construction *prior to the award of the contract*” (emphasis in original)).

4. Any best and final offers or revised pricing information submitted by Summit to [the Department] and/or DOC;
5. All public records relating to any verification of Summit and its subcontractors as responsible contractors as described in Section 7 of the June 6, 2025 Recommendation for Contractor Selection relating to the RFP;
6. All public records not previously produced to Aramark that relate to [the Department's] decision not to select Aramark for contract award arising from the RFP;
7. All public records not previously produced to Aramark that relate to [the Department's] decision to select Summit for contract award arising from the RFP;
8. All public records reflecting any e-mail communications between any officer, employee, or agent of [the Department] and/or DOC and any officer, employee or agent of Summit where any such communication relates to the award of the contract resulting from the RFP;
9. All public records relating to any negotiations conducted in connection with the RFP; and
10. Any contract, including any drafts of such contract, entered into with Summit as a result of the RFP.

On April 8, 2026, following a thirty-day extension, 65 P.S. § 67.902(b), the Department denied the Request, asserting that responsive records constitute exempt internal, predecisional deliberations, noncriminal investigations, agency procurement records, records exempt under the Procurement Code, and the attorney work-product doctrine. 65 P.S. § 67.708(b)(10); 65 P.S. § 67.708(b)(17); 65 P.S. § 67.708(b)(26); 62 Pa.C.S. § 101 *et seq.*

On April 23, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the Department’s denial and stating grounds for disclosure. 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 May 5, 2026, the Department submitted a position statement reiterating its grounds for denial. Additionally, the Department contends that despite the Requester's arguments, it did, in fact, conduct a good faith search for any responsive records. Finally, the Department advised that upon further consideration, it was providing an email that was sent to Summit, discussing the details of the award of the contract. In support of its position, the Department submitted the attestation of Kelly Martini ("Martini Attestation"), Chief Procurement Officer for the Department.<sup>2</sup> On May 7, 2026,<sup>3</sup> the Requester submitted a supplemental position statement, reiterating the argument that they are entitled to responsive records, citing the Procurement Code.

### 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 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. 65 P.S. § 67.708(a)(1). The preponderance of the evidence standard 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)).

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<sup>2</sup> The Martini Attestation is made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

<sup>3</sup> The Requester's submission was received after the record closed; however, to develop the record, the submission was considered. *See* 65 P.S. § 1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

**1. The appeal is dismissed as moot in part**

On May 5, 2025, as previously stated above, during the pendency of the appeal, the Department provided an email record responsive to Item 8 of the Request. Accordingly, insofar as the record is responsive to the Request that has been provided during the appeal, the appeal is dismissed as moot as to this record. *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”).

**2. The Department has demonstrated that certain records are exempt as proposal documents and records of the proposal evaluation committee under Section 708(b)(26)**

The Department argues that records responsive to Items 1-5 and 9 are proposal documents and/or records of a proposal evaluation committee, and are, therefore, exempt from disclosure under Section 708(b)(26) of the RTKL. Section 708(b)(26) exempts the following from public disclosure:

A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa. C.S. § 513 (relating to competitive sealed proposals).

65 P.S. § 67.708(b)(26). *See United Healthcare of Pa., Inc. v. Pa. Dep't of Human Servs.*, 187 A.3d 1046, 1057 (Pa. Commw. Ct. 2018) (concluding that the General Assembly intended the phrase “award of contract” for purposes of Section 708(b)(26) to mean the execution of the contract, not the selection of offerors). Section 708(b)(26) also shields from public disclosure any “other records” used by an evaluation committee during the course of evaluations of competitively

bid proposals. See *McKeesson Health Solutions v. Pa. Dep't of Pub. Welf.*, OOR Dkt. AP 2009-1104, 2010 PA O.O.R.D. LEXIS 10.

Concerning Item 1 of the Request, in support of its position that records are exempt from access under Section 708(b)(26) of the RTKL as proposal information, the Martini Attestation states, in part:

12. [] Item 1 seeks Summit's proposal and any documents related to Summit's presentation. The records responsive to this [Item] are Summit's proposal and records that provide details about the proposal. The records demonstrate how Summit would implement the strategies and plans within its proposal if selected, through a presentation, which was required as part of the RFP. As the contract from this RFP is not executed, the proposal and its contents, including presentation materials, remain exempt from disclosure under 65 P.S. § 67.708(b)(26).

Here, despite the Requester's arguments, the evidence provided by the Department is clear that the underlying contract from this RFP has not yet been executed, and therefore pursuant to *United Healthcare of Pa., Inc.*, the contract has not officially been "awarded." Accordingly, proposal documents responsive to Item 1 of the Request are exempt from access under Section 708(b)(26) of the RTKL.

The Department also asserts that records responsive to the remaining Items as stated above are exempt from access as records of an evaluation committee. In support of its position, the Martini Attestation states, in part:

13. [] Items 2, 3, and 4, seek records relating to any questions or clarifications of, or modification to, Summit's proposal submitted in response to the RFP, any requests by [the Department]/DOC that Summit clarify anything, or any best and final offers or revised pricing submitted by Summit. The records responsive to these [Items] are communications utilized to further evaluate the proposals submitted in response to an active RFP and include legal advice of Counsel, financial information of offeror, and detailed information about Summit's proposal submitted in response to an active RFP. The communications with offeror allowed evaluators and those in the role of decision making to make a determination as to which offeror was in the best interest of the Commonwealth. In accordance with the Procurement Code Section 513(f), discussions and

negotiations may be conducted with responsible offerors for the purpose of clarification and obtaining best and final offers. Offerors provided clarifications to their proposals and made adjustments to arrive at best and final offers. This allowed evaluators and those in the role of decision making to make a determination as to which offeror was in the best interest of the Commonwealth. As such, some of these documents are exempt under attorney-client privilege and the RTKL. While the remaining are exempt under Section 708(b)(26) as they either pertain to an active RFP or to records utilized by an evaluation committee.

14. [] Item 9 seeks records relating to any negotiations in connection with the RFP. Much like the records discussed in Paragraph 13, the records responsive to this [Item] are communications utilized to further evaluate the proposals submitted in response to an active RFP. The communications with offerors allowed evaluators and those in the role of decision making to make a determination as to which offeror was in the best interest of the Commonwealth. In accordance with the Procurement Code Section 513(f), discussions and negotiations may be conducted with responsible offerors for the purpose of clarification and obtaining best and final offers. It is important to note that 513(f) also prohibits the disclosure of any information derived from proposals submitted by competing offerors during this process. As the contract arising from this RFP has not been executed, the records pertaining to this [Item] remain exempt under Section 708(b)(26).
15. [] Item 5 seeks the records relating to verification that Summit and its subcontractors are responsible contractors. In preparation of the recommendation memo a contractor is reviewed through the Contractor Responsibility Program (CRP) System. This is an internet-based system used to collect and disseminate information regarding a contractor's obligations, suspensions and debarments by the Commonwealth, federal government and other government entities. The records within the CRP are not publicly accessible due to their sensitivity as they may contain financial information, details of fraudulent transactions, criminal charges, failure to pay taxes, etc. [Citation omitted].
16. The other portion of the responsible contractor determination is the technical submittal evaluation. When reviewing this portion of the proposal the evaluation committee must score the technical portion of the proposal 75% or higher to deem the contractor responsible, otherwise the proposal is eliminated from consideration. In this instance, Summit's technical proposal received a score of 75% or higher, therefore deeming Summit a responsible contractor. As can be seen on the Recommendation for Contractor Selection, which is posted on e-Marketplace, and part of Requester's appeal, Summit's technical score is 600. The evaluation committee's scoring information, score sheets, rubrics and assessment of how this score was reached cannot be provided as the notes and

scoring of the evaluation committee remain exempt under 65 P.S. § 67.708(b)(26).

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 Department has acted in bad faith, “the averments in the [attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. 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)).

Here, a review of the language of these Items of the Request, as well as the evidence provided by the Department, is sufficient to establish that the Department withheld responsive records used by the proposal evaluation committee to assist them in consideration of the subject RFP. Additionally, the evidence establishes that certain records also reveal the “financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder’s or offeror’s economic capability,” which is expressly exempt under Section 708(b)(26) of the RTKL. Martini Attestation ¶ 13. The OOR has held that (1) proposals relating to an agency procurement are exempt prior to the award of a contract and (2) records *used or created* by a proposal evaluation committee are permanently exempt. *See, e.g., UnitedHealthcare of Am. v. Pa. Dep’t of Human Services*, OOR Dkt. AP 2020-1501, 2020 PA O.O.R.D. LEXIS 2874, *aff’d*, *UnitedHealthcare of Pa., Inc. v. Pa. Dep’t of Human Services*, No. 1117 C.D. 2020, 2022 Pa. Commw. Unpub. LEXIS 547 (Pa. Commw. Ct. 2022) (finding that various records related to an RFA were exempt, including, among other records, the proposals, documents used or created by the evaluation committee, clarification documents, selection memos, evaluator score sheets, evaluator workbooks, evaluation committee instructions/scoring guide,

evaluation committee training PowerPoint presentations and the master score sheet); *Pennsylvania Health and Wellness, Inc. v. Pa. Dep't of Human Resources*, OOR Dkt. AP 2020-1398, 2021 PA O.O.R.D. LEXIS 644 (finding records such as list(s) of criteria used with the weight assigned to each criteria, correspondence, memoranda, notes and/or records justifying the selection of MCOs and/or the award of contracts, and instructions, protocols or requirements provided to team members on how to score the submissions exempt from access under Section 708(b)(26) of the RTKL)).

Further, these are records “of” the committee and “used” by the committee because the evidence is clear that these records are relevant tools that were provided to the committee, which members of the committee used to conduct their evaluation of the applicants as tasked and, are records that were created and used to aid the evaluation committee in considering relevant information to decide which applicant will be successful. Accordingly, the OOR finds that the Department properly withheld records responsive to Items 2-5 and 9 of the Request pursuant to Section 708(b)(26) of the RTKL.<sup>4</sup> *See, e.g., Hontos v. Dep't of Human Services*, OOR Dkt. AP 2024-2697, 2025 PA O.O.R.D. LEXIS 138; *Sher v. Dep't of Human Services*, OOR Dkt. AP 2025-0013, 2025 PA O.O.R.D. LEXIS 530; *Saylor v. Dep't of Gen. Services*, OOR Dkt. AP 2025-2495, 2025 PA O.O.R.D. LEXIS 2476.

### **3. The Department has demonstrated that certain records are exempt under Section 708(b)(10) of the RTKL**

The Department also asserts that records responsive to Items 6-7 reflect its internal, predecisional deliberations. Section 708(b)(10)(i)(A) exempts from public disclosure a record that reflects:

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<sup>4</sup> Because the OOR finds that these records are exempt from access under Section 708(b)(26) of the RTKL, the OOR need not reach the Department’s alternative grounds for denying access to these records. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

[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, ... 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). For purposes of this exemption, records that are exchanged with another 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 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 be exempt from disclosure, 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). 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).

In support of the Department's position, the Martini Attestation states, in part:

17. The Request for Items 6 and 7 seeks records relating to the decision to award the contract to Summit and not Aramark. The decision to award the contract to Summit, and therefore not awarding the contract to Aramark, is multifaceted. The records involved include evaluations made by the committee and correspondence that reflects the predecisional communications between employees and officials of the Commonwealth regarding an RFP which reflects the thoughts and impressions of agency officials with respect to pending proposals submitted in response to an RFP and recommendations regarding a course of action. As such, these records are exempt from disclosure under Section 708(b)(10)(i)(A).

As a preliminary observation, the relevant Items clearly consist of language that facially seek documents that reasonably would be used, considered, evaluated, and relating to the Department's decision about Aramark and Summit concerning the subject RFP. *See Pa. Game Comm'n v. Fennell*, 148 A.3d 101 (Pa. Commw. Ct. 2016) (explaining that the OOR must consider uncontradicted statements contained in the appeal as evidence when construing exemptions).

Here, the evidence provided by the Department establishes that responsive records include evaluations and correspondence made by the committee, and those are internal because they were exchanged between employees and officials of the Department concerning the subject RFP. Ms. Martini affirms that records were deliberative in nature because they "reflect[] the thoughts and impressions of agency officials with respect to pending proposals submitted in response to an RFP and recommendations regarding a course of action." The evidence further reasonably supports that the responsive records are predecisional, prior to the Department's decisions concerning the specified RFP generally, and prior to the Department's decision concerning which applicant would

be the successful offeror. *See, e.g., Martini Attestation*. Accordingly, the OOR finds that the Department properly withheld records responsive to Items 6 and 7 pursuant to Section 708(b)(10) of the RTKL. *See, e.g., Sher, OOR Dkt. AP 2025-0013, 2025 PA O.O.R.D. LEXIS 530* (finding certain records and communications to be internal documents of the department concerning its review and decision pertaining to the subject RFA, and therefore not subject to disclosure under Section 708(b)(10)); *Saylor, supra*.

**4. The Department is not required to provide the contract responsive to Item 10 of the Request until fully executed under the Procurement Code**

Finally, Item 10 of the Request seeks “[a]ny contract, including any drafts of such contract, entered into with Summit as a result of the RFP.” Concerning this Item of the Request, the Martini Attestation states, in part:

18. The Request for Item 10 seeks the contract, and any drafts, entered into with Summit. While it is true that the parties have reached an agreement, the contract is not executed until it has all Commonwealth signatures. As this has not occurred, there is no contract to provide. Until the final Commonwealth signature has been placed on the contract, the contract can be rescinded at any given moment, or it could even be disapproved. If the Commonwealth were to then be forced to negotiate a new contract with another vendor, having the current negotiated contract released to the public would put the Commonwealth at a distinct disadvantage and could have a serious economic impact. The Procurement Code requires that the recommendation for contractor selection be posted when the offeror returns the contract. It does not require the posting of the contract until the contract is executed, because the possible economic ramifications would be too severe for the Commonwealth to handle and it would be a disservice to the people of this Commonwealth.

In response, the Requester argues that Section 106.1(b)(4) of the Procurement Code supports that the Department must provide the signed copy of the contract with Summit, regardless of whether it has been fully executed. This section of the Procurement Code states the following, in part:

- (b) Public posting and availability of procurement information.-The purchasing agency shall post the following procurement documents on the department's or, in the case of an independent agency, its own publicly accessible Internet website or otherwise make available in the manner indicated below:

...

- (4) The written determination required by section 513(g) shall be posted upon receipt of the final negotiated contract signed by the selected offeror. Subject to proper redaction under the [RTKL], responsive proposals received by the purchasing agency and, *until fully executed*, the final negotiated contract are not required to be posted but shall be made available to the public upon request.

62 Pa.C.S. § 106.1(b)(4) (emphasis added). Despite the Requester's arguments, the OOR interprets that Section 106.1(b)(4) of the Procurement Code is stating that a final negotiated contract must be *fully executed first*, and upon that condition being fulfilled, it shall be made available to the public upon request. Such interpretation is consistent with *United Healthcare of Pa., Inc.*, where the Commonwealth Court had concluded that the *execution* of the contract holds weight. 187 A.3d at 1057-58 (finding that the General Assembly intended the phrase "award of contract" for purposes of Section 708(b)(26) to mean the *execution* of the contract, not the selection of offerors, finding this interpretation the most logical when read in conjunction with relevant provisions of the Procurement Code). Moreover, the Department provides evidence that the contract is not yet fully executed because it does not have all Commonwealth signatures, and therefore there is no final contract, as it is still possible that "[u]ntil the final Commonwealth signature has been placed on the contract, the contract can be rescinded at any given moment, or it could even be disapproved." Accordingly, the OOR cannot conclude that the Department must be required to provide a contract responsive to Item 10 of the Request pursuant to the Procurement Code.<sup>5</sup>

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<sup>5</sup> On April 30, 2026, the Department submitted correspondence advising that "[the Department] has reason to believe that the contract will be executed within the next two weeks."

## CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Department is not required to take any further action. 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 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.<sup>6</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 the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: May 19, 2026**

*/s/ Tope L. Quadri*

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TOPE L. QUADRI  
APPEALS OFFICER

Sent via portal to: Karen Walker, Esq.  
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<sup>6</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).