



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
MEGAN BROCK and DAILY WIRE,	:
Requester	:
	:
v.	:
	:
	:
PENNSYLVANIA OFFICE OF THE	:
GOVERNOR,	:
Respondent	:

Docket No: AP 2026-1337
Consolidated Appeal of OOR Dkt. Nos.
AP 2026-1337, AP 2026-1338 and AP
2026-1339

FACTUAL BACKGROUND

On February 24, 2026, Megan Brock and Daily Wire (collectively the “Requester”) submitted three requests (collectively the “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:

[1.] Any/all email communication records (including attachments, URL links and electronic database links) sent and/or received by Ashleigh Strange from December 1, 2025, to January 31, 2026, that contain any or all of the following keywords: “PREA”[;] “Department of Corrections”[; and] “DOC”.

[2.]. Any/all email communication records and/or (including attachments, embedded documents, URL links and electronic database links) sent and/or received by Ashleigh Strange to or from any/all of the following members of the Pennsylvania Advisory Commission on LGBTQ Affairs: Katharine Dalke, Keisha McToy, Jacen Bowman, Ashley Coleman, J.J. De La Cruz, Corinne Goodwin, Michele Kessler, Michael Mahler, Sean Meloy, Maria Montano, Beck Moore, Damon Myers, Steven Negron-Candelario, Heidi Notario, Michelle Palmer-Felton, Missy Peters, Isabelle Porter, Raymond Smeriglio, Skylar Smith, Hannah Smith-Brubaker, Father Dan Storrs, Ariel Torres, Carolyn Von Sturm, Hannah Wenger, MD, Gina Winstead, Nat Yap, Matt Yarnell, Jared Whitford, from December 1,

2025, to February 1, 2026, containing any communication about gender affirming care (for kids and adults), including but not limited to insurance coverage for gender affirming care.

For further specificity please only provide records that contain any or all of the following keywords: “gender affirming”[;] “gender-affirming”[;] “trans”[;] “transgender”[;] “planned parenthood”[;] “CHOP”[;] “puberty blockers”[;] “Trump”[;] “Children’s Hospital of Philadelphia”[;] “health care”[;] “HHS”[;] “RFK”[;] “DOJ”[;] “Hormone(s)”[;] “LGBTQ”[;] “LGBTQIA+”[;] “LGBTQ+”[;] “GHAT”[;] “Hormone Therapy”[;] “bottom surgery”[;] “top surgery”[;] and “[M]edicaid”[.]

[3.] Any/all email communication records (including attachments, URL links and electronic database links) sent and/or received by Lindsey Mauldin, Hunter Cramer, Josph Lee, Danielle Okai, Samuel Robinson, Will Simons, Akbar Hossain, Orlando Almonte, Jacob Finkel, Thomas Foley, Meghna Patel, Erin Corrigan, Christina Finello, Josh Shapiro, to any or all of the following: Ahaviah Glaser, Sarah Guerrieri, Kathleen Lane, Patricia Redmond, Peter Grollman, Michele Ryan, Madeline Bell, Nadia Dowshen, Linda Hawkins, Meredith Matone, Alycyn Simpson, Joseph Mitchell, from July 1, 2025, to November 30, 2025, containing any communications about the June 12, 2025, U.S. Department of Justice [(“DOJ”)] administrative subpoenas issued to the Children’s Hospital of Philadelphia [(“CHOP”)] and/or UPMC seeking information about minors receiving gender-affirming care, including but not limited to information about the subpoenas scope, surrounding legal battle, impact, and Governor Shapiro[’]s filing an amicus brief opposing the CHOP subpoena in support of CHOP.

For further specificity please only provide records that contain any or all of the following keywords: “gender affirming”[;] “gender-affirming”[;] “trans”[;] “transgender”[;] “CHOP”[;] “puberty blockers”[;] “Trump”[;] “Children’s Hospital of Philadelphia”[;] “health care”[;] “HHS”[;] “DOJ”[;] “Hormone(s)”[;] “LGBTQ”[;] “LGBTQIA+”[;] “GHAT”[;] “Hormone Therapy”[;] “bottom surgery”[;] “top surgery”[;] “[M]edicaid”[;] “brief”[;] “subpoena”[;] “quash”[;] “patient privacy”[;] “friend of the court”[;] “amicus”[;] “medically necessary”[.]¹

On April 2, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Office partially granted the Request and provided responsive records.² Additionally, the Office redacted and withheld records, asserting the redacted information is

¹ Items 1 through 3 are numbered by the OOR for clarity purposes and are internally numbered by the Office as C-2026-030, C-2026-031 and C-2026-033.

² The Office provided 17 pages of redacted responsive records and withheld 15 pages of documents. *See Eisenstein Attestation ¶¶ 6, 7, 8.*

exempt personal identification information, 65 P.S. § 67.708(b)(6), and the withheld records are exempt internal, predecisional deliberative records, 65 P.S. § 67.708(b)(10).³

On April 3, 2026, the Requester filed three separate appeals with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.⁴ Specifically, the Requester asserts that the Office did not meet its burden of proof regarding the claimed exemptions and failed to provide a detailed exemption log. 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 this appeal. 65 P.S. § 67.1101(c). The OOR consolidated Items 1 through 3 of the Request on April 8, 2026, *sua sponte*.⁵

On April 15, 2026, the Office submitted an attestation made under the penalty of perjury, 18 Pa.C.S. § 4902, authored by Marc Eisenstein (“Eisenstein Attestation”), the Office’s Agency Open Records Office (“AORO”). The Office reiterated its grounds for denial of the Request. Additionally, the Office provided 4 pages of records with the Eisenstein Attestation that it no longer claims are exempt (“Supplemental Records”),⁶ as well as two privilege logs (“Logs”)⁷ and a directory of senders and recipients (“Directory”) for the individuals listed within the Log.⁸

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

³ The Office did not withhold any records in response to Item 3 of the Request.

⁴ 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).”).

⁵ The appeals were docketed as OOR Dkts. AP 2026-1337, AP 2026-1338 and AP 2026-1339. Because the appeals involved similar requests and records, as well as the same agency and Requester, the appeals were consolidated into OOR Dkt. AP 2026-1337. *See* 65 P.S. § 67.1102(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”).

⁶ *See* Eisenstein Attestation, Exhibit C.

⁷ The contents of the Logs are affirmed to be accurate. *See* Eisenstein Attestation p. 2, Exhibits A and B.

⁸ *See* Eisenstein Attestation, Exhibit D.

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)). Likewise, “[t]he 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).

1. The appeal as it relates to the records provided during the appeal is moot

During the pendency of the appeal, the Office provided the Requester with 4 additional pages of responsive records that are no longer claimed to be exempt. *See* Eisenstein Attestation ¶ 11.⁹ The Supplemental Records appear to encompass a memorandum, dated December 2, 2025. *See* Eisenstein Attestation, Exhibit C. As such, the appeal as to the records provided to the Requester during the pendency of the appeal is dismissed as moot. *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 Office has demonstrated it appropriately withheld some records responsive to the Request that reflect internal, predecisional deliberative materials

Section 708(b)(10)(i)(A) of the RTKL exempts from disclosure records reflecting:

⁹ Under the RTKL, a sworn affidavit or statement 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 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 *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

[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 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).

The Office argues that it withheld records that contain internal, predecisional deliberative information. In support of the Office's assertion the records were properly withheld pursuant to Section 708(b)(10)(i)(A), the Eisenstein Attestation indicates, in relevant part, the following:

10. With respect to materials denoted in both [the Log] as containing internal, predecisional deliberations, the Office withheld records that reflect collaboration and consideration of matters within and by the executive branch of Commonwealth government. Such records reveal the thoughts and impressions of [Office] officials with respect to pending matters discussed between [Office] officials and employees within the Governor's Office or between the Governor's Office and other agencies. In such communications officials discussed plans, risks and benefits of various approaches and courses of action prior to implementing such actions, as detailed in Exhibits A and B. Such communications were not disclosed beyond the agencies.

Additionally, the Logs describe these withheld records as:

Communication circulated among [the Office] and Department of Corrections [{"DOC"}] personnel for review, comment and consideration in which agency personnel provided thoughts and analysis regarding how agencies should respond to a [F]ederal Executive Order.

...

Commentary on draft digital content circulated among [the Office] and [the DOC] personnel for review, comment and consideration.

...

Draft digital content circulated among [the Office] and [the DOC] personnel for review, comment and consideration. (attachment to REL0000001082).

Communication circulated between [the Office] and the Governor's Advisory Commission on LGBTQ Affairs Commissioner for review, comment and consideration in which agency personnel discussed recent federal health policy actions.

The withheld records were sent to, commented on or sent by entities within the Office, the DOC or the Governor's Commission on LGBTQ Affairs. *See* Directory; *see also* Logs. Thus, the Directory demonstrates that the withheld records are internal to the Office.

The Office must also establish that the withheld records are predecisional and deliberative in nature. Furthermore, an agency must "submit evidence of specific facts showing how the information relates to a deliberation of a particular decision." *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 379 (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). 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).

Recently, in *Shepherd v. Pennsylvania Office of the Governor*, in discussing *McGowan v. Pennsylvania Department of Environmental Protection*, 103 A.3d 274 (Pa. Commw. Ct. 2014), the Commonwealth Court found the following:

McGowan guides that not every internal agency communication involving a decision to be made or a question to be answered is subject to the predecisional

deliberative exemption. Rather, it is apparent that the exemption protects those communications which reflect that an agency is deliberating, as in *McGowan*, a particular determination, ruling or policy. See *Office of General Counsel v. Bumsted*, 247 A.3d 71, 84 (Pa. Cmwlth. 2021) (only information that constitutes confidential deliberations of law or policymaking reflecting opinions, recommendations or advice is protected as deliberative). This ‘big picture’ approach avoids an overbroad interpretation of the deliberative process exemption, which could conceivably lead to the exemption of virtually any discussion or dialogue that occurs within an agency. Moreover, it furthers the RTK Law’s directive that exemptions from disclosure must be narrowly construed.

2025 Pa. Commw. Unpub. LEXIS 277, 14 (June 5, 2025). As a result, the Commonwealth Court conducted an *in camera* review of the records identified as exempt under Section 708(b)(10)(i)(A) and found that while the records contained discussion of various administrative and agency minutiae, none of the discussions rose to the level of a predecisional deliberation regarding a significant decision of the agency.

As noted in the Eisenstein Attestation, the records contain internal, predecisional deliberative discussions concerning collaboration and consideration of matters within the executive branch of the Commonwealth government. Eisenstein Attestation ¶ 10. Further, the Eisenstein Attestation indicates the withheld records contain discussions of plans, risks and benefits of various approaches prior to implementation of action. *Id.* Additionally, the Log reveals specifically that the records concern responses to a Federal Executive Order and federal health policy, as well as draft digital content circulated between the Office and the DOC’s Legislative Liaison and Communications Director. See Logs.

Thus, the Logs and Eisenstein Attestation support that the above records were appropriately withheld, as the records contain the internal, predecisional deliberations of the Office regarding

policymaking and official decisions—not merely administrative decisions. Thus, the Office has properly withheld these responsive records under Section 708(b)(10)(i)(A) of the RTKL.¹⁰

3. The Office has appropriately redacted personal identification information privacy from the responsive records

Section 708(b)(6)(i)(A) of the RTKL exempts from disclosure “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).

The Office argues that it redacted personal identifying information from the records responsive to the Request that it provided to the Requester prior to the appeal.

In support of its position, the Eisenstein Attestation indicates, in relevant part, the following:

8. The materials provided to Requester and withheld as detailed in Exhibits A and B contain email addresses or telephone numbers. Such emails addresses and telephone numbers have been redacted from the materials provided to Requester, and are exempt from access within the otherwise exempt materials described in Exhibits A and B. To the best of the undersigned’s knowledge, information and belief, such emails addresses and telephone numbers are identifiable to individuals and have not been held out to the general public as an address or number at which those individuals sought unsolicited contact from the public at large.

The OOR routinely finds that email addresses that have not been held out to the public, and home, cellular and personal telephone numbers, are facially exempt. *See, e.g., Brock v. Bucks Cnty.*, OOR Dkt. AP 2022- 1118, 2022 PA O.O.R.D. LEXIS 1653; *Gentner v. Palisades Sch. Dist.*, OOR Dkt. AP 2022-0519, 2022 PA O.O.R.D. LEXIS 996. Thus, to the extent the redactions represent redactions of email addresses that have not been held out to the public, as well as home,

¹⁰ The Requester asserts that the records, if exempt, should be released in redacted format; however, “where a record falls within an exemption under Section 708(b), it is not a public record as defined by the RTKL and an agency is not required to redact the record...” *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 481 (Pa. Commw. Ct. 2010). As the records identified by the Office are internal, predecisional deliberative records, the Office does not need to redact the responsive records.

cellular and personal telephone numbers, those items have been appropriately redacted and are exempt from disclosure. 65 P.S. § 67.708(b)(6)(i)(A); 65 P.S. § 67.708(a).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Office 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; 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.¹¹ 65 P.S. § 67.1303. 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: June 1, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Megan Brock (via portal only)
Marc Eisenstein (via portal only)

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