



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**STEPHEN WHITEHEAD,
Requester**

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:

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v.

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Docket No.: AP 2026-1820

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**QUAKERTOWN BOROUGH,
Respondent**

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On April 28, 2026, Stephen Whitehead (“Requester”) submitted a request (“Request”) to Quakertown Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[A]ccess to the following records related to the February 20, 2026 student protest in...[the Borough]:

1. **Internal planning and operational documents[:]** All internal planning memos, memoranda, briefing sheets, notes, operational or planning documents, event plans, deployment plans, crowd management plans, staffing projections, or similar documents prepared by or for the Quakertown Borough Police Department related to the planned February 20, 2026 student protest in Quakertown, including any anticipated police staffing, tactics, security presence, or changes to or cancellation of such plans.
2. **Communications with the school district[:]** All communications (including but not limited to emails, text messages, memoranda, letters, and messages sent through any internal or external messaging platforms) between any employee or official of the...Borough Police Department and any employee, official, or agent of the Quakertown Community School District regarding the February 20, 2026 student protest, including communications about planning, staffing, security presence, cancellation of the protest, or anticipated police response, from February 1, 2026 through February 21, 2026.

On May 7, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”) claiming that the Request was deemed denied on May 5, 2026 and stating grounds for disclosure. *See* 65 P.S. § 67.901. The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On May 11, 2026, the Requester provided a submission in support of the appeal.

On May 15, 2026, the Borough submitted a position statement, arguing that the records responsive to Item 1 of the Request are exempt from disclosure as reflecting the Borough’s internal, predecisional deliberations, 65 P.S. § 67.708(b)(10), and that Item 2 of the Request is insufficiently specific, 65 P.S. § 67.703.

On May 16, 2026, the Requester submitted a supplemental statement in response to the Borough’s submission.

LEGAL ANALYSIS

The Borough 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 Borough 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)).

1. The Borough did not demonstrate that it properly withheld the records responsive to Item 1 of the Request as reflecting its internal predecisional deliberations

The Borough argues that the records requested in Item 1 of the Request are facially exempt from disclosure as reflecting its internal, predecisional deliberations. *See* 65 P.S. § 67.708(b)(10)(i)(A). Among other things, the Requester argues that the face of Item 1 of the Request alone does not show that the requested records are exempt from disclosure and that Borough has not met its burden of proof on appeal.

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). To withhold a record under Section 708(b)(10)(i)(A), an agency must show: 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). Additionally, 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, 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 Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014). However, factual material can still qualify as deliberative information when its disclosure

“would be tantamount to the publication of the [agency’s] evaluation and analysis.” *Id.* at 387 (quoting *Trentadue v. Integrity Communication*, 501 F.3d 1215, 1228-29 (10th Cir. 2007)).

Here, the Borough does not provide any evidence in support of its position. Rather, the Borough argues that the plain language of Item 1 of the Request establishes that it seeks records that are internal, predecisional and deliberative. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 121; *see also Pa. Game Comm’n v. Fennell*, 149 A.3d 101, 104-05 (Pa. Commw. Ct. 2016); *Off. of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. Ct. 2015) (en banc) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record).

The plain language of the Request states that the records sought in Item 1 are “[i]nternal planning and operational documents....” Thus, all responsive records are necessarily internal to the Borough. Similarly, Item 1 of the Request seeks documents related to a particular protest and includes the language “planning documents[,]” including “memoranda, briefing sheets, [and] notes[,]” and language such as “staffing projections[,]...anticipated police staffing, tactics, [and] security presence....” Therefore, based on the plain language of the Request, some of the records sought are documents that the Borough created prior to the protest. However, without additional information, the OOR is unable to conclude that all of the documents responsive to Item 1 of the Request are predecisional because the Borough failed to provide evidence confirming as such. *See W. Chester Univ. of Pa. v. Schackner et al.*, 124 A.3d 382, 393 (Pa. Commw. Ct. 2015) (“The evidence must be specific enough to permit this Court to ascertain how disclosure of the entries would reflect that the records sought fall within the proffered exemptions”) (citing *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 375-79 (Pa. Commw. Ct. 2013)). Likewise, based only on the plain language of Item 1 of the Request, the OOR is unable to conclude that all of the responsive records are deliberative in nature. The Borough argues that “Webster’s Dictionary defines ‘deliberation’

as “the act of thinking about or discussing something and deciding carefully[,]”¹ and that “[p]lanning is a synonym for deliberating....” Nonetheless, the Borough did not provide evidence to show how the withheld records reflect or show the deliberative process in which it engaged in during its decision-making prior to the protest. *See Twp. of Worcester*, 129 A.3d at 61. Additionally, the Borough did not address whether any of the withheld records contain severable, factual information that is subject to disclosure. *See McGowan*, 103 A.3d at 382-83. Accordingly, based on the plain language of Item 1 alone, the OOR is constrained to find that the Borough did not meet its burden of proving that the responsive records are exempt from disclosure. *See* 65 P.S. § 67.708(a)(1).

2. Item 2 of the Request is sufficiently specific in part

The Borough argues that Item 2 of the Request is insufficiently specific because the scope of the request is overbroad in both the type of records sought and the identification of senders and recipients. *See* 65 P.S. § 67.703. The Requester argues that Item 2 of “the [R]equest is narrowly tailored by subject matter, a precise date range (February 1–21, 2026), and specific parties.”

Section 703 of the RTKL states that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” *Id.* When determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* at 1125 (quoting 65 P.S. § 67.102). Second, “[t]he scope of the request must identify ‘a discrete group of documents, either by type ... or by

¹ *See* <https://www.merriam-webster.com/dictionary/deliberation> (last accessed May 27, 2026).

recipient.” *Id.* (quoting *Carey*, 61 A.3d at 372). Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126 (citing *Carey*, *supra*). “The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request’s timeframe is narrow enough is generally dependent upon the specificity of the request’s subject matter and scope.” *Id.*

The above factors are intended “to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested.... The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements.” *Pa. Dep’t of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Off. of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting “the valid part of the request was included in a laundry list of requested materials”).

Here, the Item 2 of the Request has a subject matter, “the February 20, 2026 student protest[,]” has a somewhat broad scope, “communications...between any employee or official of the...Borough Police Department and any employee, official, or agent of the Quakertown Community School District[,]” and has a relatively short, finite timeframe of “February 1, 2026 through February 21, 2026.” *See Pa. Dep’t of Educ.*, 119 A.3d 1121. Although the use of the term “communications” alone does little to aid the Borough in its search for responsive records, “emails, text messages, memoranda, letters, and messages (sent through any internal or external messaging platforms)” are particular types of documents for which the Borough can search. Further, while the term “agent” is too general, the Borough Police Department should know with which School

District employees or officials it communicates about events such as the protest referenced in the Request and surely knows which of its own employees are tasked with such matters.

Accordingly, because it has a narrowly defined subject matter and a finite timeframe of twenty days, Item 2 of the Request is sufficiently specific as it pertains to “emails, text messages, memoranda, letters, and messages (sent through any internal or external messaging platforms)” between the “Borough Police Department and any employee [or] official...of the Quakertown Community School District.” As such, the Borough must search for emails, text messages, memoranda, letters, and messages between its Police Department personnel and the School District for the specified timeframe and provide all records located to the Requester. The remainder of Item 2 – to the extent that it seeks a type of “communication” other than those identified above, or any “communications” with unidentified agents – is insufficiently specific.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and within thirty days, the Borough is required to provide all records responsive to Item 1 of the Request. The Borough is also required to conduct a good faith search for records responsive to the portion of Item 2 of the Request as described above and provide all responsive records 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 Bucks 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 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.² All documents or communications following the issuance of

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

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 5, 2026

/s/ Erika Similo

ERIKA SIMILO
APPEALS OFFICER

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