



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**GARY SAMPLE,
Requester**

v.

**EAST PETERSBURG BOROUGH,
Respondent**

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Docket No: AP 2026-2065

FACTUAL BACKGROUND

On May 13, 2026, Gary Sample (“Requester”) submitted a request (“Request”) to East Petersburg Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[a]ll documents and memorialization[] for the period January 1, 2022 to present, to include but not limited to, notes, minutes, plans, emails and electronic records that detail, explain, mention, cite, present, describe and opine any and all aspects of the ‘future administration building.’”

On May 15, 2026, the Borough granted the Request in part, providing “the Request for Proposals that were issued to architectural firms soliciting proposals for future projects, including a possible future administration building [and stating that the] meeting minutes that reference the future administration building project are publicly available on the Borough’s website, including discussion relected in the March committee meeting minutes.” The Borough denied the Request in part, withholding concept drawings prepared by Borough staff under 65 P.S. §

67.708(b)(10)(i)(A), and proposals submitted in response to the Request for Proposals pursuant to 65 P.S. § 67.708(b)(26).

On May 26, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for denial. 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. *See* 65 P.S. § 67.1101(c).

On May 29, 2026, the Borough submitted the “2026 March 03 Proposed Graystone Rd Borough office layout with illustrations.”

On June 1, 2026 (dated May 30, 2026), in response to a request by the OOR regarding whether the Borough’s provision of records satisfied his Request, the Requester submitted correspondence, explaining that a March 26, 2026 meeting lists the appearance of two Borough employees, Mr. Kevin Martin and Mr. Jeff Moseman and that he “received no notes, outlines, attendee material or other documents generated by the two Borough employees which memorialize and support their verbal presentation and remarks.”

On June 2, 2026, in response to the Requester’s correspondence, the OOR extended the submission period to June 8, 2026 to provide the Borough with an opportunity to respond.

On June 4, 2026, the Borough submitted the attestation, made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, of Karen St. Clair (“Clair Attestation”), the Borough’s Open Records Officer (“AORO”). The Clair Attestation asserts that the Borough conducted a good faith search of its records, identified all records responsive to the Request and provided them to the Requester or withheld them pursuant to Sections 708(b)(10)(i)(A) and (b)(26) of the RTKL. Clair Attestation, ¶¶ 5, “Exempt Records”. In addition, the Borough provided the following records responsive to the Request: a) February 28, 2026 email; b) March 2, 2026 to

March 3, 2026 email chain; c) March 5, 2026 email chain; d) March 6, 2026 email chain; and f) the Borough's Engineer's Opinion of Probable Construction Cost, dated March 13, 2026.¹ Clair Attestation, ¶ 4(a-f). Finally, in support of its position that it properly withheld records pursuant to Sections 708(b)(10)(i)(A) and (b)(26) of the RTKL, the Borough submitted an Exemption Log.

On June 11, 2026, the Requester submitted a position statement, seemingly challenging the Borough's submission. The Requester asks the OOR to "issue a Determination to compel the production of: 1) the entire content of each of the three bids when approved or denied by the Borough Council[;] 2) the Jeff Moseman seven page email and attachments[;] 3) the opinion of probable construction cost[;] and 4) all communications since January 1, 2022 that address the future administration building.

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 appeal is moot in part

During the appeal, the Borough provided records responsive to the Request. Clair

¹ The Engineers Opinion was resubmitted to the Portal on June 15, 2026.

Attestation, p 2, ¶¶ 3-4. As such, the appeal is dismissed as moot as it relates to the records (i.e. a Power Point presentation, which included “the concept drawings of a future administration building prepared by [Borough] employees”, sets of email chains, and the “Borough Engineer’s Opinion of Probable Construction Cost, dated March 13, 2026”) provided on 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”).

2. Bid proposals are exempt from access

The Borough argues that it properly withheld exempt procurement records. Section 708(b)(26) of the RTKL exempts from 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 an agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).

65 P.S. § 67.708(b)(26). While Section 708(b)(26) references the Commonwealth Procurement Code, the OOR has found that the exemption applies to local agencies as well. *See, e.g., Frankhouser v. Daniel Boone Area Sch. Dist.*, OOR Dkt. AP 2022-2019, 2022 PA O.O.R.D. LEXIS 2667; *Risnychok v. Montgomery Cnty.*, OOR Dkt. AP 2021-2031, 2021 PA O.O.R.D. LEXIS 1976. The OOR has also 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); *Pa. Health and Wellness, Inc. v. Pa. Dep’t of Human Resources*,

OOR Dkt. AP 2020-1398, 2021 PA O.O.R.D. LEXIS 644. Additionally, Section 708(b)(26) shields from public disclosure evaluation committee scoring information and any “other records” used by an evaluation committee during the course of evaluations of competitively bid proposals. *See United Healthcare v. Pa. Dep’t of Human Servs.*, 187 A.3d 1046, 1057 (Pa. Commw. Ct. 2018) (Section 708(b)(26) temporarily exempts offerors’ proposals from disclosure until a contract is awarded or the procurement is canceled); *Osborne v. Pittsburgh City*, OOR Dkt. AP 2024-2094, 2024 PA O.O.R.D. LEXIS 2343.

In support of its position, the Clair Attestation² affirms that the Borough “disclosed that it had received proposals submitted in response to the Request for Proposals for architectural services, which the ‘Borough’ has not produced because a contract has not been awarded.” Clair Attestation, Exempt Records, ¶ 1. The Exemption Log further identifies the date of the proposals (i.e. May 14, 2026), the number of architectural firms that submitted proposals (i.e. 3), and that the recipient was the Borough.

Here, the Clair Attestation, authored by the Borough’s AORO, establishes that a contract has not yet been awarded. Therefore, based on the Borough’s evidence, the Borough has met its burden of proving that the Request, in part, seeks procurement records (i.e. bid proposals) that are exempt from disclosure under the RTKL.³ *See* 65 P.S. § 67.708(a)(1); *Winig v. Cheyney Univ. of Pa.*, OOR Dkt. AP 2022-1606, 2022 PA O.O.R.D. LEXIS 1840 (finding that records related to

² 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 District acted in bad faith or that responsive records exist, “the averments in [the attestation] 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)).

³ The Requester asks the OOR to “compel the production of: 1) the entire content of each of the three bids when approved or denied by Borough Council.” The OOR is without jurisdiction to compel the Borough to provide records at a future date; however, the Requester is not prohibited from filing a new request with the Borough seeking similar records.

proposals were exempt where the agency presented evidence that the contract had not been executed).

3. The Borough demonstrated that some records are exempt internal, predecisional and deliberative records

The Borough argues that an email with two attachments reflect its internal, predecisional deliberations. *See* 65 P.S. § 67.708(b)(10)(i)(A). 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 the exemption at Section 708(b)(10)(i)(A) 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).

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).

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't Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014). 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 excepted”; or in other words, when disclosure of the factual material “would be tantamount to the publication of the [agency’s] evaluation and analysis.” *Id.* at 387-88 (quoting *Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1228-29 (10th Cir. 2007)).

In support of the Borough’s position, the Clair Attestation states, in part:

The [Borough] possesses a Borough employee email with (2) attachments: a Borough Facilities Feasibility Assessment and Facility Options Comparison Table, dated April 2, 2026. These documents are exempt pursuant to Section 708[(b)](10)(i)(A), because they are internal to the [Borough], related to a past or future decision regarding whether to purchase real estate, lease real estate, or develop existing Borough real estate, and are deliberative in character. These documents were prepared by Borough staff to assist Borough Council in assessing various options, but were never presented at a public meeting. Section 708[(b)](10)(i)(A) exempts documents used in predecisional deliberations related to a contemplated or proposed course of action.

Here, the evidence provided by the Borough, including the Borough’s Exemption Log, establishes that the responsive records are internal and were only exchanged between employees of the Borough. The Clair Attestation affirms that the records are deliberative in nature, as the records are “related to a past or future decision regarding whether to purchase real estate, lease real estate, or develop existing Borough real estate.” Clair Attestation, Exempt Records, ¶ 2. The evidence further suggests that these records are predecisional, as they were prepared by Borough staff to assist Borough Council prior to a contemplated or proposed course of action. *Id.*

Accordingly, based upon the evidence, the Borough has demonstrated that the records identified in the Clair Attestation and the Exemption Log were properly withheld pursuant to Section 708(b)(10)(i)(A) of the RTKL.

4. The Borough demonstrated that there are no additional records responsive to the Request

In response to a request for records, “an agency shall 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,” 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 all 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 Burr v. Pa. Dep’t of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In support of the Borough’s assertion that it has no additional records responsive to the Request, the Borough submitted the Clair Attestation, authored by the Borough’s AORO, who is familiar with the records of the Borough. Clair Attestation, ¶ 1-2. Ms. Clair “conducted a thorough examination of files in the possession, custody and control of the [Borough] for records responsive to the [R]equest underlying this appeal, specifically, meeting minutes, physical files and

documents maintained in the [Borough] office, emails of [Borough] employees and elected officials, and electronically stored records.” *Id.* at ¶ 3. Additionally, Ms. Clair “inquired with relevant [Borough] personnel and, if applicable, relevant third-party contractors as to whether the requested records exist in their possession, specifically, emails and other physical or electronic documents maintained by [Borough] staff and elected officials (Borough Council members). As a result, the Borough “identified all records within the Borough’s possession, custody or control that are responsive to the [R]equest and provided them to the [R]equester.” *Id.* at ¶ 5.

Thus, based upon this evidence, the Borough has demonstrated that it performed a good faith search, and no evidence has been provided that contradicts the statements offered by the Borough in the attestation submitted. *See Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (holding that, when there is evidence that a record does not exist, “[i]t is questionable to what degree additional detail and explanation are necessary....”). We note that the preponderance of the evidence is the lowest evidentiary standard. *See Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry). Therefore, the Borough has met its burden of proof that additional responsive records to the Request do not exist in its possession, custody or control.⁴ *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (“[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request”).

⁴ Despite the Requester’s arguments that additional records must exist, the OOR makes no determinations as to whether additional records should exist, as our inquiry is limited to only 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.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied in part** and **dismissed as moot in part**, and the Borough 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 Lancaster 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, but as the quasi-judicial tribunal that adjudicated 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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 24, 2026

/s/ Lyle Hartranft
Lyle Hartranft, Esq.
Appeals Officer

Sent via e-file portal to: Gary Sample; Karen St. Clair, AORO

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