



IN THE MATTER OF

**JOSEPH BUCCI AND KNOX
MCLAUGHLIN GORNALL & SENNETT,
P.C.,
Requester**

v.

**KISKI AREA SCHOOL DISTRICT,
Respondent**

Docket No: AP 2026-2014

On April 7, 2026, Joseph Bucci, Esq. and Knox McLaughlin Gornall & Sennett, P.C. (“collectively Requester”) filed a request (“Request”) with the Kiski Area School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, with regard to the project known as Renovations & Additions to Kiski Area Intermediate School (“the Project”):

1. All communications to or from the architect, Axis Architecture, P.C. (hereinafter “Axis”).
2. All communications to or from the Construction Manager, PJ Dick (“PJD”).
3. All communications to or form the general contractor, Liokareas Construction Company (hereinafter “Liokareas”).

...

¹ Items that were granted by the District and not challenged by the Requester have been omitted.

5. Any response to Liokareas' change order requests from Axis, PJD or Kiski, whether internal among [the District]/PJD/Axis, or shared with Liokareas.²
...
7. Any internal communications among [the District]/PJD/Axis on the Liokareas claims, as well as any response to Liokareas on its claims.
...
10. All communications to or from Liokareas' surety.
...
14. Copies of correspondence from Axis or PJD or [the District] related to the applications for payment submitted by Liokareas.
...
18. Any worksheets or estimates of damages being collected by Kiski to be held for the account of Liokareas.
...
25. All communications or documents related to any recovery schedule(s) for the Project.
...
28. All reports or status updates on the Project submitted to or shared with [the District] by any scheduling consultant.
29. Minutes or notes or emails relating to any Project meetings between or among PJD or Axis and Kiski, or between Kiski and either PJD or Axis related to the Project schedule or completion date.
30. Minutes or notes or emails relating to any Project meetings between or among PJD or Axis and Kiski, or between Kiski and either PJD or Axis related to Liokareas' prime contract.
...
32. Produce all documents related to the Recovery Schedule that the Construction Manager was to prepare and issue as required by Section 0 13200 of the Project Manual.

On May 14, 2026, after invoking a thirty-day extension to respond, *see* 65 P.S. § 67.902(b), the District partially granted and partially denied the Request, arguing that certain Items are insufficiently specific, *see* 65 P.S. § 67.703, seek records that are exempt, *see* 65 P.S. §§

² The District's response reflects that the Requester agreed to an additional extension for the District requested an additional extension of time to produce responses to the change order that were shared with Liokareas. The Requester's agreement to an additional extension is not in the record, but the Requester only objects to the District's denial of the internal communications, as set forth in its response.

67.708(b)(6)(i)(A), 708(b)(10)(i)(A), or protected by the attorney-client privilege and/or the attorney-work product doctrine, and that certain records do not exist.

On May 20, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.³ The OOR invited both parties to supplement the record and directed the District to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On June 8, 2026, the District submitted a position statement, reiterating the District’s reasons for denying the Items that have been appealed.⁴ The position statement was verified under the penalty of unsworn falsification to authorities, 18 Pa.C.S. § 4904, by Christopher Voltz, Esq., an attorney with Tucker Arensberg, the firm representing the District regarding the delayed completion of the Project.

LEGAL ANALYSIS

The District 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 District 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)).

³ The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

⁴ While most of the District’s arguments are consistent with those set forth in its response, they differ with regard to Items 5, 7 and 14, as discussed *infra*.

1. Records responsive to Items 10, 28 and 32 do not exist

The District argues that no records exist that are responsive to Items 10, 28 and 32 of the Request. “The 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). An attestation by the individual who searched for responsive records is sufficient to meet an agency’s burden of proving the nonexistence of a record. *Id.*

The District’s verified position statement provides that. In this role, the firm, particularly attorney Matt Hoffman, has reviewed relevant records and has knowledge as to what documents exist and do not exist. Attorney Voltz worked with attorney Hoffman worked together in responding to the Request and based on attorney Hoffman’s personal knowledge and after consulting with relevant District personnel and contractors, no communications with Liokareas’ surety as requested in Item 10; no reports or status updates requested in Item 28; or documents related to the Recovery Schedule requested in Item 32 existed at the time of the Request. With regard to Item 32, the position statement explains that there is no recovery schedule because Liokareas did not provide the information it was required by Section 013200 of the Project Manual to enable the preparation of a recovery schedule.

The Requester provides no evidence that responsive records exist and the OOR has no reason to doubt the veracity of the District’s evidence. Accordingly, the District has met its burden of proving that no records exist that are responsive to Items 10, 28 and 32. *See also Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (finding that in the absence of countervailing evidence establishing that the agency acted in bad faith or that the agency records exist, averments of nonexistence should be accepted as true.”); *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021), *appeal granted in part*, 280 A.3d 870, *aff’d*,

No. 71 MAP 2022, No. 72 MAP 2022, 2024 Pa. LEXIS 1087 (Feb. 21, 2024) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, which is tantamount to a “more likely than not” inquiry).

2. The record responsive to Item 18 was used in the District’s internal, predecisional deliberations

The District argues that the record that is responsive to Item 18 was used in 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 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).

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 exception applies to information reflecting “that the agency engaged in the deliberative process; it does not require that an agency establish that the information itself reveals or discloses deliberative communication.” *McGowan v. Pa. Dep’t of Env’t Prot.*, 103 A.3d 374, 383 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1101-02 (Pa. Commw. Ct. 2014) (en banc)) (emphasis and quotation marks omitted).

The District’s verified position statement reflects that the District identified a responsive record that was created by a District employee to estimate the damages to be held for the account of Liokareas.⁵ This document has been used in deliberations among District employees and counsel representing the District when deliberating future actions to remedy the delayed completion of the Project. *See Pa. Pub. Util. Comm’n v. Nase*, 302 A.3d 264, 273 (Pa. Commw. Ct. 2023) (recognizing that while records that are characterized as merely informational are not exempt, memos, research, and other documents meant to be used to support an internal deliberation may qualify for exemption). Accordingly, the District has met its burden of proving that this record was used in the District’s internal, predecisional deliberations.

3. Certain Items are insufficiently specific

The District argues that Items 1, 2, 3, 5, 7, 14, 25, 29 and 30 are not sufficiently specific to enable it to locate responsive records. 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.” 65 P.S. § 67.703. When determining whether a particular request is sufficiently specific, the OOR undertakes a nonexclusive, multi-factor test, considering “the extent to which the request specifies subject matter, the extent to which it defines the scope of the records it seeks, and the extent to which it limits the timeframe of the request.” *Pa. Off. of the Governor v. Brelje*, 312 A.3d 928, 937 (Pa. Commw. Ct. 2024) (citing *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015)). The test is not “a conjunctive, bright-line rule requiring each ‘element’ of the test to be satisfied; rather, it [is] a flexible approach” consistent with relevant caselaw. *Id.*

⁵ 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).

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pittsburgh Post-Gazette*, 119 A.3d 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 recipient.’” *Id.* (quoting *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)). 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) (“the valid part of the request was included in a laundry list of requested materials”).

a. Items 1-3 and 25

Items 1-3 have a broad scope and subject matter, seeking all communications relating to the Project to or from Axis (Item 1), PDJ (Item 2) and Liokareas (Item 3). Similarly, Item 25 seeks all communications related to any recovery schedule(s). The Items do not identify any individual senders or recipients and contain no timeframe, although one can be implied from the fact that the Project was ongoing at the time of the Request.

In re: Mazin, 1126 C.D. 2022, 2025 Pa. Commw. Unpub. LEXIS 190 (Pa. Commw. Ct. 2025), although the request specified a subject matter that was well-known to the agency, it failed to identify any particular type of record and included expansive language seeking all correspondence “relating to” the already-general terms it lays out.

As in *Mazin*, Items 1-3 seek records related to the Project and Item 25 seeks records related to recovery schedules. Considering of the broad scope of the Items, it is evident that they do not seek a clearly defined universe of responsive records. *Off. of the Dist. Att’y of Phila. v. Bagwell*, 155 A.3d 1119, 1145 (Pa. Pa. Commw. Ct. 2017) (holding that a request is sufficiently specific where it enumerates a “clearly defined universe of documents.”). As such, the Items are not sufficiently specific.

b. Items 5, 7 and 14

In seeking responses to change order requests (Item 5); communication about Liokareas’ claims and the District’s responses to the firm (Item 7); and correspondence related to applications for payment (Item 14), these Items have a broad scope, but do provide a narrower subject matter than Items 1-3. Significantly, the District indicated in response to Item 5 that it would be granting access to responses that were sent to Liokareas, but denied access to purportedly internal communications amongst Axis, PJD and the District.⁶ Similarly, in response to Items 7 and 14, the District provided correspondence sent to Liokareas regarding the firm’s claims and applications for payment but denied “internal” correspondence amongst Axis, PJD and the District, claiming that it is exempt.

The District argues that these Items require it to review numerous records and make judgment calls as to whether a given record is responsive, *see Pa. Dep’t of Env’t Protection v.*

⁶ According to *Chester Water Auth. v. Pa. Dep’t of Cmty. and Econ. Dev.*, 249 A.3d 1106, 1113 (Pa. 2021), communications with consultants are not internal for the purposes of Section 708(b)(10)(i)(A) of the RTKL.

Legere, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) (finding that a request that sought a clearly defined universe of responsive records and did not require judgments to be made as to the relation of the documents to the request was sufficiently specific). However, the OOR is not persuaded by this argument, as the fact that the District provided or promised to provide records responsive to a portion of each of these Items and asserted exemptions regarding the supposedly internal portions suggests that it is able to locate responsive records and undercuts is subsequent argument that the Items are insufficiently specific. *See Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012) (“the request was obviously sufficiently specific because the School District has already identified potential records”). Accordingly, the OOR finds that these portions are sufficiently specific to enable the District to locate responsive records.

c. Items 29 and 30

Although Items 29 and 30 do not seek all communications, they nevertheless provide a broad scope, seeking notes or emails *relating* to Project meetings *related* to the Project schedule or completion date (Item 29) and *related* to Liokareas’ prime contract (Item 30). As the Items seek records related to certain meetings that are in turn related to certain subjects, it is evident that they do not seek a clearly defined universe of responsive records.

In sum, Items 5, 7 and 14 are sufficiently specific, but Items 1-3, 25, 29 and 30 are not sufficiently specific to enable the District to search for responsive records.⁷ *See* 65 P.S. § 67.703.

⁷ The District asks that the OOR stay the matter to allow the District to review and redact or withhold exempt or privileged records if it finds that the contested Items are sufficiently specific, as potentially responsive records could be exempt or privileged. *See Pa. Off. of the Governor v. Brelje*, 312 A.3d 928, 941 (Pa. Commw. Ct. 2024) (vacating a final determination where the agency asked for additional time to identify responsive records and claim specific applicable exemptions after a finding that the request was sufficiently specific). However, as noted, the District denied “internal” communications responsive to Items 5, 7 and 14, but on appeal, the District provides no supporting evidence, and only argues that the Items are insufficiently specific. Accordingly, the OOR declines to now grant a stay. Nevertheless, the District’s response argued that responsive records included exempt personal financial information and other protected personal information. *See* 65 P.S. §§ 67.708(b)(6)(i)(A). As the Requester does not expressly challenge the District’s assertion of Section 708(b)(6) and such information, so long as it is not financial

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**, and the District is required to produce all records responsive to Items 5, 7 and 14 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 Westmoreland 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.⁸ 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: July 7, 2026

/s/ Blake Eilers

Blake Eilers, Esq.

Senior Appeals Officer

Delivered via OOR E-file Appeal Portal to: Joseph Bucci, Esq.; Brenda Heater; Christopher Voltz, Esq.

information of the District or information that has been held out to the public, is expressly exempt from disclosure, the District may redact it from responsive records.

⁸ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).